

DECISIONS

COMMISSION IMPLEMENTING DECISION (EU) 2019/1325

of 27 May 2019

granting a derogation requested by the United Kingdom with regard to Northern Ireland pursuant to Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources

(notified under document C(2019) 3816)

(Only the English text is authentic)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources ⁽¹⁾, and in particular the third subparagraph of paragraph 2 of Annex III thereto,

Whereas:

- (1) Commission Decision 2007/863/EC ⁽²⁾ granted a derogation requested by the United Kingdom with regard to Northern Ireland pursuant to Directive 91/676/EEC, allowing the application of livestock manure up to a limit of 250 kg nitrogen per hectare per year, under certain conditions, on farms in Northern Ireland with at least 80 % grassland.
- (2) Commission Decision 2011/128/EU ⁽³⁾ extended that derogation until 31 December 2014 and Commission Implementing Decision (EU) 2015/346 ⁽⁴⁾ granted a similar derogation until 31 December 2018.
- (3) The derogation granted by Implementing Decision (EU) 2015/346 concerned 478 farms in 2018, corresponding to approximately 1,9 % of the total number of holdings and 4 % of the total net agricultural area in Northern Ireland.
- (4) On 20 February 2019, the United Kingdom submitted to the Commission a request under the third subparagraph of paragraph 2 of Annex III to Directive 91/676/EEC for a derogation for the region of Northern Ireland.
- (5) The United Kingdom, in conformity with Article 3(5) of Directive 91/676/EEC, applies an action programme throughout the whole territory of the region of Northern Ireland.
- (6) The Report from the Commission to the Council and the European Parliament on the implementation of Directive 91/676/EEC for the period 2012-2015 ⁽⁵⁾ shows that in the region of Northern Ireland, 98,2 % of monitoring stations have reported mean nitrate concentrations in the groundwater below 25 mg/l and 1,2 % of monitoring stations have reported mean nitrate concentrations in the groundwater higher than 50 mg/l. For surface water, all monitoring stations have reported mean nitrate concentrations below 25 mg/l.

⁽¹⁾ OJ L 375, 31.12.1991, p. 1.

⁽²⁾ Commission Decision 2007/863/EC of 14 December 2007 granting a derogation requested by the United Kingdom with regard to Northern Ireland pursuant to Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources (OJ L 337, 21.12.2007, p. 122).

⁽³⁾ Commission Decision 2011/128/EU of 24 February 2011 amending Decision 2007/863/EC granting a derogation requested by the United Kingdom with regard to Northern Ireland pursuant to Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources (OJ L 51, 25.2.2011, p. 21).

⁽⁴⁾ Commission Implementing Decision (EU) 2015/346 of 9 February 2015 on granting a derogation requested by the United Kingdom with regard to Northern Ireland pursuant to Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources (OJ L 60, 4.3.2015, p. 42).

⁽⁵⁾ Report of 4 May 2018 from the Commission to the Council and the European Parliament on the implementation of Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources based on Member State reports for the period 2012-2015 (COM(2018) 257 final).

- (7) The number of farms in Northern Ireland increased by 2 % while the total agricultural area did not change from the period 2008 to 2011 to the period 2012 to 2015. The number of cattle did not change, while the number of sheep, pigs and poultry increased by 2 %, 18 % and 14 %, respectively in the period 2012 to 2015 compared to 2008 to 2011. Average nitrogen loading from livestock manure in the period 2012-2015 was 98 kg/ha, with an increase of 1,2 % compared to 2008-2011. Phosphorus average surplus in the period 2012 to 2015 was 11,4 kg/ha, with a decline of 16 % compared to the period 2008 to 2011. Average chemical N fertiliser use increased by 4,1 % in the period 2012 to 2015 compared to 2008-2011. Average chemical P fertiliser use increased by 26 % in the period 2012-2015 compared to 2008 to 2011. However, the average use of chemical P fertiliser in the period 2012 to 2015 was still 40 % lower compared to the average use of that fertiliser in the period 2004 to 2007.
- (8) In Northern Ireland, 93 % of agricultural land is devoted to grassland. Overall, in grassland farms, 42 % of the land area is farmed extensively and has a stocking rate of less than 1 livestock unit per hectare and low fertiliser inputs, 4 % is farmed under agri-environmental programmes and only 25 % is farmed more intensively, at a stocking rate of 2 livestock units per hectare or more. 4 % of agricultural land is used for arable agriculture. The average chemical fertiliser use on grassland is 76 kg/ha nitrogen and 5 kg/ha phosphorus.
- (9) Northern Ireland is characterised by high rainfall and the prevalence of soil with poor drainage. Due to impeded drainage, the denitrification potential of the majority of soils in Northern Ireland is relatively high, reducing the nitrate concentration in soil and, therefore, the amount of nitrate susceptible to leaching.
- (10) The Northern Irish climate, characterised by an even distribution of rainfall throughout the year and a relatively narrow annual temperature range promotes a relatively long grass-growing season ranging from 270 days per year in the coastal area to the east to around 260 days per year in the central lowlands.
- (11) After examination of the request from the United Kingdom for the region of Northern Ireland in accordance with the third subparagraph of paragraph 2 of Annex III to Directive 91/676/EEC and in the light of the Nutrients Action Programme Regulations (Northern Ireland) 2019 ⁽⁶⁾ and the experience gained from the derogations provided for in Decision 2007/863/EC and Implementing Decision (EU) 2015/346, the Commission considers that the application of an amount of grazing livestock manure proposed by the United Kingdom for the region of Northern Ireland, corresponding to 250 kg nitrogen will not prejudice the achievement of the objectives of Directive 91/676/EEC if the conditions set out in this Decision are met.
- (12) The supporting information presented by the United Kingdom shows that the proposed amount of 250 kg nitrogen per hectare per year from livestock manure on farms with at least 80 % grassland is justified on the basis of objective criteria such as long growing seasons and crops with high nitrogen uptake.
- (13) Implementing Decision (EU) 2015/346 expired on 31 December 2018. To ensure that the farmers concerned can benefit from the requested derogation, it is therefore necessary to adopt this Decision.
- (14) Directive 2007/2/EC of the European Parliament and of the Council ⁽⁷⁾ lays down general rules aimed at the establishment of the Infrastructure for Spatial Information in the Union for the purposes of environmental policies of the Union and policies or activities of the Union which may have an impact on the environment. Where applicable, the spatial information collected in the context of this Decision should be in line with the provisions set out in that Directive. In order to reduce the administrative burden and enhance data coherence, the United Kingdom, when collecting the necessary data under this Decision should, where appropriate, make use of the information generated under the Integrated Administration and Control System established pursuant to Chapter II of Title V of Regulation (EU) No 1306/2013 of the European Parliament and of the Council ⁽⁸⁾.
- (15) The measures provided for in this Decision are in accordance with the opinion of the Nitrates Committee set up pursuant to Article 9 of Directive 91/676/EEC,

⁽⁶⁾ SR 2019 No 81.

⁽⁷⁾ Directive 2007/2/EC of the European Parliament and of the Council of 14 March 2007 establishing an Infrastructure for Spatial Information in the European Community (INSPIRE) (OJ L 108, 25.4.2007, p. 1).

⁽⁸⁾ Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 (OJ L 347, 20.12.2013, p. 549).

HAS ADOPTED THIS DECISION:

Article 1

Derogation

The derogation requested by the United Kingdom with regard to Northern Ireland by letter of 19 February 2019, for the purpose of allowing application to the land of a higher amount of nitrogen from livestock manure than that provided for in the first sentence of the second subparagraph of paragraph 2 of Annex III to Directive 91/676/EEC, is granted, subject to the conditions laid down in Article 4 to 10.

Article 2

Scope

The derogation granted pursuant to Article 1 shall apply to grassland farms for which an authorisation has been granted in accordance with Article 5.

Article 3

Definitions

For the purposes of this Decision, the following definitions shall apply:

- (a) 'grass' means permanent grassland or temporary grassland;
- (b) 'grassland farms' means holdings where 80 % or more of the agricultural acreage available for manure application is grass;
- (c) 'grazing livestock' means cattle (with the exclusion of veal calves), sheep, deer, goats and horses;
- (d) 'parcel' means an individual field or a group of fields, homogeneous regarding cropping, soil type and fertilisation practices;
- (e) 'fertilisation plan' means an advance calculation about the planned use and availability of nutrients;
- (f) 'fertilisation account' means the nutrient balance based on the real use and uptake of nutrients.

Article 4

Applications for authorisation

1. Grassland farmers may submit an application for an annual authorisation to apply livestock manure containing up to 250 kg nitrogen per hectare per year to the competent authorities. The application shall contain a declaration stating that the grassland farmer submits to all the controls provided for in Article 9.
2. In the annual application referred to in paragraph 1, the applicant shall undertake in writing to fulfil the conditions laid down in Articles 6 and 7.

Article 5

The granting of authorisations

Authorisations to apply an amount of livestock manure containing up to 250 kg nitrogen per hectare per year shall be granted subject to the conditions laid down in Articles 6 to 7.

Article 6

Conditions regarding application of manure and other fertilisers

1. The amount of livestock manure from grazing livestock applied to the land each year on grassland farms, including by the animals themselves, shall not exceed the amount of manure containing 250 kg nitrogen per hectare, subject to the conditions laid down in paragraphs 2 to 8.
2. The total nitrogen inputs shall neither exceed the foreseeable nutrient demand of the crop nor the maximum fertilisation rate applicable to the grassland farm, established in the Nutrients Action Programme Regulations (Northern Ireland) 2019 and shall take into account the supply from the soil.

3. A fertilisation plan shall be prepared and kept for each grassland farm. The fertilisation plan shall describe the crop rotation of the farmland and the planned application of manure and other fertilisers. The fertilisation plan shall include at least the following:

- (a) the crop rotation plan specifying the following:
 - the acreage of parcels with grass;
 - the acreage of parcels with crops other than grass;
 - a sketch map indicating the location of individual parcels;
- (b) the number of livestock on the grassland farm;
- (c) a description of the housing and manure storage system, including the volume of manure storage available;
- (d) a calculation of manure nitrogen and phosphorus produced on the grassland farm;
- (e) the amount, type and characteristics of manure delivered outside the grassland farm or to the grassland farm;
- (f) the foreseeable nitrogen and phosphorus crop requirements for each parcel;
- (g) results of soil analysis related to nitrogen and phosphorus soil status if available;
- (h) the nature of the fertiliser to be used;
- (i) a calculation of nitrogen and phosphorus application from manure for each parcel;
- (j) a calculation of nitrogen and phosphorus application from chemical and other fertilisers for each parcel.

The fertilisation plan shall be available at the grassland farm for each calendar year by 1 March of that year. It shall be revised no later than seven days following any change in agricultural practices at the grassland farm.

4. Fertilisation accounts, including information related to the management of nitrogen and phosphorus inputs and the management of soiled water, shall be prepared and kept for each grassland farm. They shall be submitted to the competent authority for each calendar year by 31 March of the following calendar year.

5. Periodic sampling and analyses of the soil with respect to nitrogen and phosphorus shall be performed by each grassland farm.

Sampling and analysis shall be carried out at least once every four years for each homogeneous area of the grassland farm, with regard to crop rotation and soil characteristics.

At least one analysis per five hectares of farmland shall be carried out.

The results of the nitrogen and phosphorus analysis in the soil shall be available at the grassland farm.

6. Livestock manure shall not be spread in the autumn before grass cultivation.

7. For each grassland farm, the farmer shall ensure that the phosphorus balance, calculated according to the methodology established by the Nutrients Action Programme Regulations (Northern Ireland) 2019, does not exceed a surplus of 10 kg phosphorus per hectare per year.

8. At least 50 % of slurry produced on the holding shall be applied by 15 June of each year. Low emission slurry spreading equipment shall be used for any slurry applications after 15 June of each year.

Article 7

Conditions regarding land management

- 1. Temporary grassland shall be ploughed in spring.
- 2. Ploughed grass on all soil types shall be followed immediately by a crop with high nitrogen demand.
- 3. Crop rotation shall not include leguminous or other plants fixing atmospheric nitrogen. However, crop rotation may include clover in grassland with less than 50 % clover and other leguminous plants that are undersown with grass.

*Article 8***Monitoring**

1. The competent authorities shall ensure that maps are drawn up showing the following:

- (a) the percentage of grassland farms in each District covered by the authorisations;
- (b) the percentage of livestock in each District covered by the authorisations;
- (c) the percentage of agricultural land in each District covered by the authorisations;
- (d) local land use.

Those maps shall be updated every year.

2. The competent authorities shall monitor soil, surface water and groundwater and shall provide the Commission with data on nitrogen and phosphorus concentrations in soil water, on mineral nitrogen in the soil profile and on nitrate concentrations in groundwater and surface water, both under derogation and non-derogation conditions. The monitoring shall be carried out at farm field scale and in agricultural monitoring catchments. The monitoring sites shall be representative of the main soil types and levels of intensity, the prevalent fertilisation practices and the main crops.

3. The competent authorities shall conduct reinforced water monitoring in agricultural catchments located in proximity to the most vulnerable water bodies.

4. The competent authorities shall carry out surveys on local land use, crop rotations and agricultural practices for grassland farms covered by authorisations.

5. Information and data collected from nutrient analysis as referred to in Article 6(5) and from monitoring as referred to in paragraph 2 of this Article shall be used for model-based calculations of the magnitude of nitrogen and phosphorus losses from grassland farms covered by authorisations.

*Article 9***Controls and inspections**

1. The competent authorities shall carry out administrative controls in respect of all applications for authorisation for the assessment of compliance with the conditions set out in Articles 6 and 7. Where it is demonstrated that those conditions are not fulfilled, the application shall be refused and the applicant shall be informed of the reasons for the refusal.

2. The competent authorities shall establish a programme for field inspections of grassland farms covered by authorisations on a risk basis and with appropriate frequency, taking account of the results of controls of the previous years and the results of general random controls of legislation implementing Directive 91/676/EEC and any other information that might indicate non-compliance with the conditions set out in Articles 6 and 7.

3. Field inspections shall be carried out in at least 5 % of the grassland farms covered by authorisations to assess compliance with the conditions set out in Articles 6 and 7.

4. Where it is established in any year that a grassland farm covered by an authorisation did not fulfil the conditions set out in Articles 6 and 7, the holder of the authorisation shall be sanctioned in accordance with national rules and shall not be eligible for an authorisation the following year.

5. The competent authorities shall be granted the necessary powers and means to verify compliance with the conditions for an authorisation granted under this Decision.

*Article 10***Reporting**

The competent authorities shall, every year by 30 June, submit a report to the Commission containing the following information:

- (a) maps showing for each District the percentage of farms, percentage of livestock and percentage of agricultural land covered by an authorisation, as well as maps on local land use, as referred to in Article 8(1);

- (b) the results of ground and surface water monitoring, as regards nitrate concentrations, including information on water quality trends, both under derogation and non derogation conditions as well as the impact of derogation on water quality, as referred to in Article 8(2);
- (c) the results of soil monitoring as regards nitrogen and phosphorus concentrations in soil water and on mineral nitrogen in soil profile, both under derogation and non derogation conditions, as referred to in Article 8(2);
- (d) a summary and evaluation of data obtained from the reinforced water monitoring as referred to in Article 8(3);
- (e) the results of the surveys on local land use, crop rotations and agricultural practices, as referred to in Article 8(4);
- (f) the results of model-based calculations of the magnitude of nitrate and phosphorus losses from farms benefitting from an authorisation, as referred to in Article 8(4);
- (g) an evaluation of the implementation of the conditions for the authorisations on the basis of the results of the administrative controls and field inspections, as referred to in Article 9(1) and (2);
- (h) trends in livestock numbers and manure production for each livestock category in Northern Ireland and in grassland farms benefitting from an authorisation;
- (i) a comparative analysis of controls of grassland farms in Northern Ireland covered by authorisations and grassland farms in Northern Ireland not covered by authorisations.

The spatial data contained in the report shall, where applicable, comply with Directive 2007/2/EC. In collecting the necessary data, the competent authorities shall make use, where appropriate, of the information generated under the Integrated Administration and Control System set up in accordance with Article 67(1) of Regulation (EU) No 1306/2013.

Article 11

Period of application

This Decision shall expire on 31 December 2022.

Article 12

Addressee

This Decision is addressed to the United Kingdom of Great Britain and Northern Ireland.

Done at Brussels, 27 May 2019.

For the Commission
Karmenu VELLA
Member of the Commission