

DECISIONS

COMMISSION IMPLEMENTING DECISION

of 29 July 2011

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

*(notified under document C(2011) 4503)***(Only the Dutch version is authentic)**

(2011/489/EU)

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) If the amount of manure that a Member State intends to apply per hectare each year is different from those specified in the first sentence of the second subparagraph of paragraph 2 of Annex III to Directive 91/676/EEC and in point (a) of that subparagraph, that amount is to be fixed so as not to prejudice the achievement of the objectives specified in Article 1 of that Directive and it has to be justified on the basis of objective criteria, such as, in the present case, long growing seasons and crops with high nitrogen uptake.

(2) On 21 December 2007, the Commission adopted Decision 2008/64/EC granting a derogation requested by the Kingdom of Belgium with regard to the region of Flanders pursuant to Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources ⁽²⁾, allowing the Kingdom of Belgium to authorise in the region of Flanders, under certain conditions, the application of up to 250 kg nitrogen per hectare per year from livestock manure on parcels cultivated with grassland and maize undersown with grassland and up to 200 kg nitrogen per hectare per year from livestock manure on parcels cultivated with winter wheat followed by a catch crop and with beet.

(3) The derogation granted by Decision 2008/64/EC concerned approximately 3 300 farmers and 83 500 ha of land and expired on 31 December 2010.

(4) On 15 March 2011, the Kingdom of Belgium submitted to the Commission a request for renewal of the derogation under the third subparagraph of paragraph 2 of Annex III to Directive 91/676/EEC referred to the region of Flanders.

(5) The requested derogation concerns the intention of the Kingdom of Belgium to allow the application in Flanders, in specific holdings, of up to 250 kg nitrogen per hectare per year from grazing livestock manure and treated pig manure on parcels cultivated with grassland, maize undersown with grassland and cut grassland or cut rye followed by maize and up to 200 kg nitrogen per hectare per year from livestock manure and treated pig manure on parcels cultivated with winter wheat or triticale followed by a catch crop and with beet.

(6) Flanders established clear water quality goals to be reached over the two next action programme periods. For surface water the quality standard of 50 mg nitrates per litre will be reached in 84 % of the monitoring points of the agricultural monitoring network by 2014 and in 95 % of these points by 2018. For shallow groundwater, which has a slower recovery rate, the average nitrate concentration will be decreased by 10 % in 2014 and 20 % by 2018 compared to the average level of 2010 amounting to 40 mg nitrates per litre. Specific focus is given to the hydrogeological homogeneous zones for which the nitrate concentrations in shallow groundwaters are on average higher than 50 mg nitrates per litre for which the average concentration will need to decrease by 5 mg nitrates per litre per action programme period.

(7) In order to reach these goals, Flanders has established a reinforced action programme for the period 2011-14. A review of the policy will be carried out by 2014 based on which possible further reinforced action will be taken in the action programme for the period 2015-18 in order to guarantee that the set water quality goals are reached.

⁽¹⁾ OJ L 375, 31.12.1991, p. 1.

⁽²⁾ OJ L 16, 19.1.2008, p. 28.

- (8) The legislation implementing Directive 91/676/EEC for the region of Flanders, the 'Decree for the protection of water against pollution by nitrates from agricultural sources' of 22 December 2006 (hereinafter 'the Manure Decree') has been amended ⁽¹⁾ in accordance with the action programme for the period 2011-14 on 6 May 2011 and applies in conjunction with this Decision.
- (9) The Manure Decree applies throughout the whole territory of the region of Flanders.
- (10) The Manure Decree includes limits for the application of both nitrogen and phosphorus.
- (11) The supporting documents presented in the notification show that the proposed amount of respectively 250 and 200 kg per hectare per year nitrogen from livestock manure is justified on the basis of objective criteria such as long growing seasons and crops with high nitrogen uptake.
- (12) The Commission after examination of the request considers that the proposed amounts of respectively 250 and 200 kg per hectare per year of nitrogen from grazing livestock manure and treated pig manure, will not prejudice the achievement of the objectives of Directive 91/676/EEC, subject to certain strict conditions being met which apply in addition to the reinforced measures taken in the action programme for the period 2011-14.
- (13) In order to avoid that the application of the requested derogation leads to intensification of livestock rearing, the competent authorities should ensure the limitation of the number of livestock which can be kept in each farm (nutrient emission rights) in the region of Flanders according to the provisions set out in the Manure Decree.
- (14) 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,
- (a) 'farms' means agricultural holding with or without livestock rearing;
- (b) 'parcel' means an individual field or a group of fields, homogeneous regarding cropping, soil type and fertilisation practices;
- (c) 'grassland' means permanent or temporary grassland (generally temporary lies less than 4 years);
- (d) 'crops with high nitrogen demand and long growing season' means grassland; maize undersown, before or after harvest, with grass mowed and removed from the field acting as a catch crop; cut grassland or cut rye followed by maize; winter wheat or triticale followed by a catch crop; sugar or fodder beets;
- (e) 'grazing livestock' means cattle (with the exclusion of veal calves), sheep, goats and horses;
- (f) 'manure treatment' means the processing of pig manure in two fractions, a solid and a liquid fraction, performed in order to improve land application and enhance nitrogen and phosphorus recovery;
- (g) 'treated manure' means the liquid fraction resulting from manure treatment;
- (h) 'effluent with low nitrogen and phosphate content' means treated manure with a maximum nitrogen content of 1 kg per ton effluent and a maximum phosphate content of 1 kg per ton effluent;
- (i) 'soil profile' means the soil layer below ground level to a depth of 0,90 m, unless the average highest groundwater level is shallower; in this latter case it shall be to a depth of the average highest groundwater level.

HAS ADOPTED THIS DECISION:

Article 1

The derogation requested by the Kingdom of Belgium by letter of 15 March 2011, on behalf of the Flanders region, for the purpose of allowing a higher amount of 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 and in point (a) thereof, is granted, subject to the conditions laid down in this Decision.

Article 2

Definitions

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

⁽¹⁾ Belgisch Staatsblad of 13 May 2011, p. 27876.

Article 3

Scope

This Decision applies on an individual basis to specified parcels of a farm, cultivated with crops with high nitrogen demand and long growing season and subject to the conditions set out in Articles 4 to 7.

Article 4

Annual application and commitment

1. Farmers who want to benefit from derogation under this Decision shall submit an application to the competent authorities annually by 15 February. For the year 2011, the annual application shall be submitted by farmers by 15 July.

2. Together with the annual application referred to in paragraph 1, they shall undertake in writing to fulfil the conditions provided for in Articles 5, 6 and 7.

*Article 5***Manure treatment**

1. The solid fraction resulting from manure treatment shall be delivered to authorised installations for recycling with the aim of reducing odours and other emissions, improving agronomic and hygienic properties, facilitating handling and enhancing recovery of nitrogen and phosphate. The recycled product shall not be applied to agricultural land located in the region of Flanders except for parks, greeneries and private gardens.

2. Farmers benefiting from derogation who carry out manure treatment shall submit each year to the competent authorities the data related to the amount of manure sent to treatment, the amount and the destination of the solid fraction and of the treated manure and their contents of nitrogen and phosphorus.

3. The competent authorities shall establish and regularly update the acknowledged methodologies to assess the composition of treated manure, the variations in composition and treatment efficiency for each farm benefiting from individual derogation.

4. Ammonia and other emissions from manure treatment shall be collected and treated so as to reduce environmental impact and nuisance for those installations that cause higher emissions than the reference situation, which is storage and land application of raw livestock manure. For these purposes an inventory of installations requiring emission treatment shall be established and regularly updated.

*Article 6***Application of manure and other fertilisers**

1. Subject to the conditions laid down in paragraphs 2 to 11, the amount of grazing livestock manure, treated manure and effluent with low nitrogen and phosphate content applied to derogated parcels each year, including the manure applied by the animals themselves shall not exceed 250 kg of nitrogen per hectare per year on parcels cultivated with the following:

- (a) grassland and maize undersown with grassland;
- (b) cut grassland followed by maize;
- (c) cut rye followed by maize,

and 200 kg of nitrogen per hectare per year on parcels cultivated with:

- (d) winter wheat followed by a catch crop;
- (e) triticale followed by a catch crop;
- (f) sugar or fodder beets.

2. Treated manure, not qualifying as effluent with low nitrogen and phosphate content, can only be applied

to derogated parcels if it has a nitrogen to phosphate ratio (N/P_2O_5) of minimum 3,3.

3. The application of effluent with low nitrogen and phosphate content shall be limited to maximal 15 ton per hectare.

4. The total nitrogen and phosphate input shall comply with the nutrient demand of the considered crop and take into account the supply from the soil and the increased manure nitrogen availability due to treatment. It shall not exceed for all crops, in any case, the maximum application standards for phosphate and nitrogen, either expressed in total nitrogen or efficient nitrogen, as established in the action programme.

5. The use of phosphate from chemical fertiliser is banned on derogated parcels.

6. A fertilisation plan shall be kept for each farm, for its whole acreage, describing the crop rotation and planned application of manure and nitrogen and phosphate fertilisers. It shall be available in the farm each calendar year by 15 February at the latest.

The fertilisation plan shall include the following:

- (a) the number of livestock, a description of the housing and storage system, including the volume of manure storage available;
- (b) a calculation of manure nitrogen and phosphorus produced in the farm;
- (c) the description of manure treatment and expected characteristics of treated manure;
- (d) the amount, type and characteristics of manure delivered outside the farm or in the farm;
- (e) the crop rotation and acreage of parcels with crops with high nitrogen demand and long growing season and parcels with other crops;
- (f) the foreseeable nitrogen and phosphorus crop requirements for each parcel;
- (g) a calculation of nitrogen and phosphorus application from manure over each parcel;
- (h) a calculation of nitrogen and phosphorus application from chemical and other fertilisers over each parcel.

Plans shall be revised no later than 7 days following any change in agricultural practices to ensure consistency between plans and actual agricultural practices.

7. Fertilisation accounts shall be prepared by each farm; they shall include applied amounts and time of application of manure and nitrogen fertilisers.

8. Results of nitrogen and phosphorus analysis in soil shall be available for each farm benefiting from derogation. Sampling and analysis must be carried out no later than 1 June and at least once every 4 years for phosphorus and for nitrogen for each homogeneous area of the farm, with regard to crop rotation and soil characteristics. At least one analysis per 5 hectares of farmland shall be required.

9. Nitrate concentration in the soil profile shall be measured every year in autumn and at the latest by 15 November on at least 6 % of all derogated parcels and 1 % of the other parcels in use by farms benefiting from derogation in such a way that at least 85 % of these farms are involved. At least three samples representing three different soil layers within the soil profile shall be required every 2 hectares of farmland.

10. Manure, treated manure or effluent with low nitrogen and phosphate content with a total nitrogen content higher than 0,60 kg nitrogen per ton, as well as chemical and other fertilisers shall not be spread on derogated parcels between 1 September and 15 February the following year.

11. At least two thirds of the amount of nitrogen from manure, excluding nitrogen from manure from grazing livestock, shall be applied before 31 May each year.

Article 7

Land management

Farmers benefiting from individual derogation shall carry out the following measures:

- (a) grassland shall be ploughed in spring for all soil types except clay soils;
- (b) grassland on clay soils shall be ploughed before 15 September;
- (c) grassland on derogated parcels shall not include sown leguminous or other plants fixing atmospheric nitrogen;
- (d) a crop with high nitrogen demand shall be seeded within 2 weeks after ploughed grass and fertilisers shall not be applied in the year of ploughing of permanent grassland;
- (e) catch crops shall be seeded within 2 weeks after harvest of winter wheat or triticale and no later than 10 September;
- (f) catch crops shall not be ploughed before 15 February in order to ensure permanent vegetal cover of the arable area for recovering subsoil autumn losses of nitrates and limit winter losses.

Article 8

Other measures

The competent authorities shall ensure that derogations granted for the application of treated manure are compatible

with the capacity of authorised installations for manure treatment and processing of the solid fraction.

Article 9

Measures on manure production and transport

1. The competent authorities shall ensure respect of the limitation of the number of livestock which can be kept in each farm (nutrient emission rights) in the region of Flanders according to the provisions set out in the Manure Decree.

2. The competent authorities shall ensure that manure transport from accredited transporters is recorded through geographic positioning systems for all transports as from 1 January 2012. Until that date, the competent authorities shall ensure that manure transport from accredited transporters classified in categories A 5°, A 7°, B and C according to Articles 4 and 5 of the Flemish Ministerial Decree of 19 July 2007 ⁽¹⁾ is recorded through geographic positioning systems.

3. The competent authorities shall ensure that manure composition with regard to nitrogen and phosphorus concentration is assessed before each transport. Manure samples shall be analysed by recognised laboratories and results of the analysis shall be communicated to the competent authorities and to the receiving farmer.

4. The competent authorities shall ensure that a document specifying the amount of transported manure and its nitrogen and phosphorus content is available during transport.

Article 10

Monitoring

1. The competent authority shall ensure that maps showing the percentage of farms, number of parcels, percentage of livestock, percentage of agricultural land and local land use covered by individual derogation for each municipality are drawn up and updated every year. Data on crop rotations and agricultural practices covered by individual derogation shall be collected and updated every year.

2. The monitoring network for sampling of surface and shallow groundwater established under Decision 2008/64/EC shall be maintained to assess the impact of the derogation on water quality. The amount of initial monitoring sites cannot be reduced and the location of the sites cannot be changed during the period of applicability of this Decision.

3. A reinforced monitoring shall be conducted in agricultural catchments on sandy soils.

⁽¹⁾ Belgisch Staatsblad of 31 August 2007, p. 45564, in execution of some articles of the Manure Decree.

4. The monitoring sites, corresponding to at least 150 farms, established under Decision 2008/64/EC shall be maintained in order to provide data on nitrogen and phosphorus concentration in soil water, on mineral nitrogen in soil profile and corresponding nitrogen and phosphorus losses through the root zone into groundwater, as well as on nitrogen and phosphorus losses by surface and subsurface runoff, both under derogation and non-derogation conditions. The monitoring sites shall include main soil types (clay, loamy, sandy and loessial soils), fertilisation practices and crops. The composition of the monitoring network shall not be modified during the period of applicability of this Decision.

Article 11

Verification

1. The competent authorities shall ensure that all the applications for derogation are submitted to administrative control. Where the control demonstrates that the conditions provided for in Articles 5, 6 and 7 are not fulfilled, the applicant shall be informed thereof. In this instance, the application shall be considered to be refused.

2. A programme of field inspections shall be established based on risk analysis, results of controls of the previous years and results of general random controls of application of legislation implementing Directive 91/676/EEC. The field inspections shall cover at least 5 % of the farms benefiting from individual derogation in respect to the conditions set out in Articles 5, 6 and 7 of this Decision. Where verification indicates non-compliance, the farmer shall be informed thereof. In this instance, the request for derogation the next year shall be considered to be refused.

3. The results of the measurements as referred to in Article 6(8) shall be verified. Where verification indicates non-compliance, including that the basic threshold, as defined in the Manure Decree, was exceeded, the farmer shall be informed thereof and an application for derogation for the following year for the parcel or parcels will be refused.

4. The competent authorities shall ensure on-spot controls of at least 1 % of manure transport operations, based on risk assessment and results of administrative controls referred to in paragraph 1. Controls shall include verification of the fulfilment of the obligations on accreditation, assessment of accompanying documents, verification of manure origin and destination and sampling of transported manure. Manure sampling can be carried out, where appropriate, using automatic manure samplers installed on the vehicles, during loading operations. Manure samples shall be analysed by laboratories recognised by the competent authorities and results of the analysis shall be communicated to the delivering and to the receiving farmer.

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

Article 12

Reporting

The competent authorities shall submit every year by December and for 2014 by September a report containing the following information:

- (a) maps showing the percentage of farms, percentage of livestock, percentage of agricultural land and local land use, as well as data on crop rotations and agricultural practices in derogation farms, as referred to in Article 10(1);
- (b) the results of water monitoring, including information on water quality trends for ground and surface waters, as well as the impact on derogation on water quality as referred to in Article 10(2);
- (c) evaluation of the nitrate residue in soil profile in autumn for the derogated parcels and a comparison with nitrate residue data and trends on non-derogated parcels for similar crop rotations. Non-derogated parcels should include non-derogated parcels on farms benefiting from derogation and parcels on other farms;
- (d) evaluation of the implementation of the derogation conditions, on the basis of controls at farm and parcel level, as well as controls on manure transport, and information on non-compliant farms, on the basis of the results of the administrative and field inspections;
- (e) information on manure treatment, including further processing and utilisation of the solid fractions, and provide detailed data on the characteristics of treatments systems, their efficiency and composition of treated manure;
- (f) information on the amount of farms benefiting from derogation and derogated parcels on which treated manure and effluents with low nitrogen and phosphate content has been applied as well as their volumes;
- (g) the methodologies to assess the composition of treated manure, the variations in composition and treatment efficiency for each farm benefiting from individual derogation, referred to in Article 5(3);
- (h) the inventory of manure treatment installation as referred to in Article 5(4);
- (i) summary and evaluation of data obtained from the monitoring sites referred to in Article 10(4).

Article 13

Application

This Decision shall apply in the context in conjunction with the action programme 2011-14 for the Region of Flanders (Manure Decree) and shall expire on 31 December 2014.

Article 14

This Decision is addressed to the Kingdom of Belgium.

Done at Brussels, 29 July 2011.

For the Commission
Janez POTOČNIK
Member of the Commission
