

COMMISSION IMPLEMENTING DECISION

of 18 December 2013

on granting a derogation requested by the United Kingdom of Great Britain and Northern Ireland with regard to England, Scotland and Wales pursuant to Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources

(notified under document C(2013) 9167)

(Only the English text is authentic)

(2013/781/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 long growing seasons and crops with high nitrogen uptake.
- (2) On 29 May 2009, the Commission adopted Decision 2009/431/EC granting a derogation requested by the United Kingdom of Great Britain and Northern Ireland with regard to England, Scotland and Wales pursuant to Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources ⁽²⁾, allowing the application of livestock manure up to a limit of 250 kg nitrogen per hectare per year, under certain conditions, within the framework of the Action Programmes in England (Regulation 2008 No 2349), Scotland (Regulation 2008 No 298, as amended) and Wales (Regulation 2008 No 3143) and which has an expiration date of 31 December 2012.
- (3) The derogation granted by Decision 2009/431/EC concerned 433 farms in 2010 (425 in England, 6 in Scotland and 2 in Wales), 404 farms in 2011 (396 in England, 7 in Scotland and 1 in Wales), and 390 farms in 2012 (385 in England, 4 in Scotland and 1 in Wales). The derogation granted by Decision 2009/431/EC, in the years 2009-2012 concerned approximately 110 000

livestock units (corresponding to 0,9 % of the total), 45 000 hectares of grassland (corresponding to 0,4 % of the total) and 5 000 hectares of arable land (corresponding to 0,1 % of the total), in Great Britain.

- (4) On 20 December 2012, the United Kingdom 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, subject to the same conditions as those laid down in Decision 2009/431/EC.
- (5) The United Kingdom has established Action Programmes for the period 2013-2016, in accordance with Article 5 of Directive 91/676/EEC, by means of the following regulations: the Nitrate Pollution Prevention Regulations 2008 (SI 2008/2349) and amending regulations SI 2009/3160, SI 2012/1849, SI 2013/1001 and SI 2013/2619 in England; the Action Programme for Nitrate Vulnerable Zones Regulations 2008 (Scottish SI 2008/298) and amending regulations Scottish SI 2013/123 in Scotland; the Nitrate Pollution Prevention (Wales) Regulations 2013 (SI 2013/2506 (W. 245)) in Wales.
- (6) The designated vulnerable zones to which the action programmes apply, according to Regulation SI 2013/2619 for England, Scottish SI 2002 No 276 and Scottish SI 2002 No 546 for Scotland and Regulation SI 2013/2506 (W. 245) for Wales, cover 58 % of the total area of England, 14 % of the total area of Scotland and 2,3 % of the total area of Wales.
- (7) Water quality data submitted show that for groundwater in England 85 % of groundwater bodies have mean nitrate concentrations below 50 mg/l nitrate and 60 % concentrations below 25 mg/l nitrate. For Wales, 95 % of groundwater bodies have mean nitrate concentrations of less than 50 mg/l nitrate, and 87 % have concentrations below 25 mg/l. For Scotland over 87 % of groundwater bodies have mean nitrate concentrations of less than 50 mg/l nitrate, and 62 % have concentrations below 25 mg/l. For surface waters in England 59 % of monitoring sites have mean nitrate concentrations below 25 mg/l and 8 % have concentrations over 50 mg/l nitrate. For Scotland and Wales over 95 % of monitoring sites have mean nitrate concentrations below 25 mg/l. For Scotland no monitoring sites have mean nitrate concentrations over 50 mg/l nitrate and for Wales 1 % of monitoring sites have concentrations over 50 mg/l nitrate.

⁽¹⁾ OJ L 375, 31.12.1991, p. 1.

⁽²⁾ OJ L 141, 6.6.2009, p. 48.

- (8) The Commission, after examination of the request of the United Kingdom of Great Britain and Northern Ireland and in the light of the experience gained from the derogation provided for in Decision 2009/431/EC considers that the amount of manure proposed by the United Kingdom of Great Britain and Northern Ireland, 250 kg nitrogen per hectare per year, will not prejudice the achievement of the objectives of Directive 91/676/EEC, subject to certain strict conditions being met.
- (9) The supporting documents presented by the United Kingdom show that the proposed amount of 250 kg per hectare per year nitrogen from grazing livestock manure in grassland farms is justified on the basis of objective criteria such as high net precipitation, long growing seasons and high yields of grass with high nitrogen uptake.
- (10) Decision 2009/431/EC has an expiration date of 31 December 2012. For the purpose of ensuring that the farmers concerned may continue to benefit from the derogation, it is appropriate to extend the validity of Decision 2009/431/EC.
- (11) 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,

HAS ADOPTED THIS DECISION:

Article 1

The derogation requested by the United Kingdom with regard to England, Scotland and Wales by letter of 20 December 2012, 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:

- (a) 'grassland farms' means holdings where 80 % or more of the agricultural area available for manure application is grass;
- (b) 'grazing livestock' means cattle (with the exclusion of veal calves), sheep, deer, goats and horses;
- (c) 'grass' means permanent grassland or temporary grassland (temporary implying leys of less than four years);
- (d) 'parcel' means an individual field or a group of fields, homogeneous regarding cropping, soil type and fertilisation practices.

Article 3

Scope

This Decision applies on an individual basis to grassland farms and subject to the conditions prescribed in Articles 4, 5 and 6.

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.
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 and 6.

Article 5

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 7.
2. The total nitrogen inputs shall not exceed the foreseeable nutrient demand of the considered crop, shall take into account the supply from the soil, and shall not exceed the maximum application standard applying to the farm, established in the Nitrates Action Programme.
3. A fertilisation plan shall be kept for each farm describing the crop rotation of the farmland and the planned application of manure and other fertilisers. It shall be available in the farm each calendar year before 1 March. The fertilisation plan shall comprise at least the following:

- (a) The crop rotation plan, which must specify the acreage of parcels with grass and parcels with other crops, including a sketch map indicating the location of individual parcels;
- (b) the number of livestock, a description of the housing and storage system, including the volume of manure storage available;
- (c) a calculation of manure nitrogen and phosphorus produced in the farm;
- (d) the amount, type and characteristics of manure delivered outside the farm or to the farm;
- (e) the foreseeable nitrogen and phosphorus crop requirements for each parcel;

- (f) results of soil analysis related to nitrogen and phosphorus soil status;
- (g) the nature of the fertilizer to be used;
- (h) a calculation of nitrogen and phosphorus application from manure over each parcel;
- (i) a calculation of nitrogen and phosphorus application from chemical and other fertilisers over each parcel.

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

4. Fertilisation accounts, including information related to management of nitrogen and phosphorus inputs, shall be kept by each farmer. They shall be submitted to the competent authority for each calendar year.

5. For each grassland farm benefiting from derogation, the farmer shall accept that the application referred to in Article 4(1), the fertilisation plan and the fertilisation accounts can be subject to control.

6. Periodic nitrogen and phosphorus analysis in soil shall be done by each farmer who is granted derogation for accurate fertilisation.

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

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

Results of nitrogen and phosphorus analysis in soil shall be available at the farm benefiting from derogation.

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

Article 6

Land management

1. Eighty per cent or more of the area available for manure application on farms shall be cultivated with grass.
2. Farmers benefiting from an individual derogation shall carry out the following measures:
 - (a) temporary grassland on sandy soils shall be ploughed in spring;
 - (b) ploughed grass on all soil types shall be followed immediately by a crop with high nitrogen demand;
 - (c) crop rotation shall not include leguminous or other plants fixing atmospheric nitrogen.

3. Point (c) of paragraph 2 shall, however, not apply to clover in grassland with less than 50 % clover and to other leguminous plants that are undersown with grass.

Article 7

Monitoring

1. The competent authority shall ensure that maps showing the percentage of grassland farms, percentage of livestock and percentage of agricultural land covered by individual derogation for each district as well as maps on local land use are drawn up and updated every year.

2. Monitoring shall be carried out on soil, surface water and groundwater in order to provide data on nitrogen and phosphorus concentration in soil water, on mineral nitrogen in soil profile and nitrate concentrations in groundwater and surface water, both under derogation and non-derogation conditions. Monitoring shall be carried out at farm field scale and in agricultural monitoring catchments. The monitoring sites shall include main soil types, fertilisation practices and crops.

3. A reinforced water monitoring shall be conducted in agricultural catchments located in proximity to most vulnerable water bodies.

4. Surveys on local land use, crop rotations and agricultural practices shall be carried out on farms benefiting from individual derogations. Collected information and data from nutrient analysis as referred to in Article 5(6) and monitoring as referred to in paragraph 2 of this Article shall be used for model-based calculations of the magnitude of nitrate and phosphorus losses from farms benefiting from derogation.

Article 8

Controls

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 and 6 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 an individual derogation in respect of the conditions set out in Articles 5 and 6 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 competent authorities shall be granted the necessary powers and means to verify compliance with derogation granted under this Decision.

*Article 9***Reporting**

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

- (a) maps showing the percentage of farms, percentage of live-stock, percentage of agricultural land covered by individual derogation for each district, as well as maps on local land use, referred to in Article 7(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 7(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 7(2);
- (d) summary and evaluation of data obtained from the reinforced water monitoring referred to in Article 7(3);
- (e) results of the surveys on local land use, crop rotations and agricultural practices, referred to in Article 7(4);
- (f) results of model-based calculations of the magnitude of nitrate and phosphorus losses from farms benefitting from an individual derogation, referred to in Article 7(4);

- (g) evaluation of the implementation of the derogation conditions, on the basis of controls at farm level and information on non-compliant farms, on the basis of the results of the administrative controls and field inspections, referred to in Article 8(1) and (2).

*Article 10***Application**

This Decision shall apply in the context of the regulations designating the vulnerable zones in England (SI 2013/2619), Scotland (Scottish SI 2002 No 276 and Scottish SI 2002 No 546) and Wales (SI 2013/2506 (W. 245)) and in the context of the regulations implementing the action programme in England (SI 2008/2349 and amending regulations SI 2009/3160, SI 2012/1849, SI 2013/1001 and SI 2013/2619), Scotland (Scottish SI 2008/298 and amending regulations Scottish SI 2013/123) and Wales (SI 2013/2506 (W. 245)).

This Decision shall expire on 31 December 2016.

Article 11

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

Done at Brussels, 18 December 2013.

For the Commission

Janez POTOČNIK

Member of the Commission