

DECISIONS

COMMISSION IMPLEMENTING DECISION

of 16 May 2014

granting a derogation requested by the Netherlands pursuant to Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources

(notified under document C(2014) 3103)

(Only the Dutch version is authentic)

(2014/291/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 the one specified in the first sentence of the second subparagraph of paragraph 2 of Annex III to Directive 91/676/EEC and in point (a) thereof, that amount has to be fixed so as not to prejudice the achievement of the objectives specified in Article 1 of that Directive and 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 8 December 2005, the Commission adopted Decision 2005/880/EC ⁽²⁾ allowing the application of grazing livestock manure up to a limit of 250 kg nitrogen per hectare per year, under certain conditions, in farms with at least 70 % grassland.
- (3) On 5 February 2010, the Commission adopted Decision 2010/65/EU ⁽³⁾, amending Decision 2005/880/EC and extending the derogation to 31 December 2013.
- (4) The derogation thus granted concerned 21 752 farms in 2012, corresponding to 46 % of the total net agricultural area.
- (5) On 22 January 2014, the Netherlands submitted to the Commission a request for renewed derogation under the third subparagraph of paragraph 2 of Annex III to Directive 91/676/EEC.
- (6) The Netherlands, in conformity with paragraph 5 of Article 3 of Directive 91/676/EEC, applies an action programme throughout its whole territory.
- (7) The Dutch legislation implementing Directive 91/676/EEC includes application standards both for nitrogen and phosphate.
- (8) The data reported by the Netherlands concerning the period 2008-2011, show an increase of 7 % pig numbers and of 8 % poultry numbers as compared to the period 2004-2007. The numbers of cattle, sheep and goats remained stable. The competent authorities in the Netherlands have set limitations on the number of pigs and poultry coupled with the commitment that manure production both in terms of nitrogen and phosphorus will not increase beyond the level of the year 2002. Moreover, as from January 2015, the competent authorities in the Netherlands shall ensure that an appropriate share of surplus manure from the dairy sector is processed. These measures are necessary to ensure that the application of the current derogation would not lead to further intensification.

⁽¹⁾ OJ L 375, 31.12.1991, p. 1.

⁽²⁾ OJ L 324, 10.12.2005, p. 89.

⁽³⁾ OJ L 35, 6.2.2010, p. 18.

- (9) Nitrogen use from livestock manure in the period 2008-2011 was 344 thousand tonnes, with a slight decrease as compared to 2004-2007. Chemical N fertiliser use decreased by around 18 % in the period 2008-2011 compared to 2004-2007. Phosphorus surplus in the period 2008-2011 was 16 thousand tonnes with a decline of 51 % compared to 2004-2007.
- (10) The climate in the Netherlands, characterised by an annual rainfall evenly distributed throughout the year and a relatively narrow annual temperature range promote a long grass-growing season of 250 days per year.
- (11) The information provided by the Dutch authorities in the context of the derogation granted by Decision 2010/65/EU, indicates that the derogation has not led to a deterioration of water quality. The Report from the Commission to the Council and the European Parliament on the implementation of 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 2008-2011 shows that in the Netherlands for groundwater, around 88 % of monitoring stations have mean nitrate concentrations below 50 mg/l and 79 % of monitoring stations have mean nitrate concentrations below 25 mg/l. Monitoring data show a downward trend in nitrate concentration in groundwater as compared to the previous reporting period (2004-2007). For surface water, 98 % of monitoring stations have mean nitrate concentrations below 50 mg/l and 92 % of monitoring stations have mean nitrate concentrations below 25 mg/l. The majority of monitoring points in surface waters shows a stable or decreasing trend in nitrate concentrations. The annual nitrogen and phosphorus soil surplus has been reduced, mainly through a reduction of manure and mineral fertilizer inputs due to continuous decrease of nitrogen and phosphorus application standards in the Dutch action programmes. In the reporting period 2008-2011, all fresh and transitional waters were classified as either eutrophic or hypertrophic.
- (12) The Commission considers that the conditions for granting derogation must be changed on the basis of the examination of the request from the Netherlands submitted on 22 January 2014 and consideration of the action programme, the information on water quality and the experience gained from the derogation granted by Decision 2010/65/EU and from the derogations in place in other Member States. Consequently the Commission considers that an amount of grazing livestock manure corresponding to 230 kg nitrogen per hectare per year can be allowed on farms with at least 80 % grassland on southern and central sandy soils and on loess soils as defined in the action programme, whereas 250 kg nitrogen per hectare per year can only be allowed on farms with at least 80 % grassland on other soils. The Commission considers that this will not prejudice the achievement of the objectives of Directive 91/676/EEC, subject to certain strict conditions being met.
- (13) These conditions include the establishment of a fertiliser plan at farm level, the recording of fertiliser practices through fertiliser accounts, periodic soil analysis, green cover in winter after maize, specific provisions on grass ploughing, no manure application before grass ploughing, adjustment of fertilisation to take into account the contribution of leguminous crops, no application of phosphate from chemical fertilisers and reinforced controls. These conditions are aimed at ensuring fertilisation based on crop needs and reduction and prevention of nitrogen and phosphorus losses to water.
- (14) The information presented by the Netherlands shows that the amount of grazing livestock manure corresponding to 230 kg nitrogen per hectare per year on farms with at least 80 % grassland in southern and central sandy soils and in loess soils as defined in the action programme and to 250 kg nitrogen per hectare per year on farms with at least 80 % grassland on other soils 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.
- (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.
- (16) Directive 2000/60/EC of the European Parliament and the Council of 23 October 2000 establishing a framework for Community action in the field of water policy ⁽¹⁾ provides for a comprehensive, cross-border approach to water protection organised around river basin districts (RBDs), with the objective of achieving good status for European bodies of water by 2015. Reducing nutrients is an integral part of that objective. Granting of derogation under this Decision is without prejudice to the provisions pursuant to Directive 2000/60/EC and does not exclude that additional measures may be needed to fulfill obligations derived from it.

⁽¹⁾ OJ L 327, 22.12.2000, p. 1.

- (17) 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) ⁽¹⁾ lays down general rules aimed at the establishment of the Infrastructure for Spatial Information in the European Community for the purposes of Community environmental policies and policies or activities which may have an impact on the environment. Where applicable, the spatial information collected in the context of this derogation should be in line with the provisions set in this Directive. In order to reduce administrative burden and enhance data coherence, the Netherlands, when collecting the necessary data under this derogation 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 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 ⁽²⁾.

HAS ADOPTED THIS DECISION:

Article 1

The derogation requested by the Netherlands by letter of 22 January 2014 for the purpose of allowing a higher amount of grazing livestock manure applied to the land each year than that provided for in subparagraph (a) of paragraph 2 of Annex III to Directive 91/676/EEC is granted, subject to the conditions laid down in this Decision.

Article 2

Definitions

For the purpose of this Decision:

1. 'grassland farm' means any holding where at least 80 % of the acreage available for manure application is grass;
2. 'grazing livestock' means cattle (with the exclusion of veal calves), sheep, goats and horses, donkeys, deer, and water buffalo;
3. 'farm land' means the acreage owned, rented or managed by the farmer under another written individual contract, on which the farmer has a direct management responsibility.
4. 'Grass' means permanent grassland or temporary grassland which lies less than five years.

Article 3

Scope

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

Article 4

Annual application and commitment

1. Farmers who want to benefit from a 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 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 230 kg nitrogen per hectare per year on farms with at least 80 % grassland in southern and central sandy soils and in loess soils as defined in the action programme and 250 kg nitrogen per hectare per year on farms with at least 80 % grassland on other soils, subject to conditions laid down in paragraphs 2 to 9.

⁽¹⁾ OJ L 108, 25.4.2007, p. 1.

⁽²⁾ OJ L 347, 20.12.2013, p. 549.

2. The total nitrogen and phosphate inputs shall comply with the nutrient demand of the crop and the supply from the soil. The total nitrogen and phosphate inputs shall not exceed the maximum application standards established in the action programme.

3. The use of phosphate from chemical fertiliser is not allowed on farms benefitting from derogation under this Decision.

4. A fertilisation plan shall be kept for each farm land describing the crop rotation of the farmland and the planned application of manure and other nitrogen and phosphate fertilisers. It shall be available on the farm for each calendar year by June at the latest for the first year and February for subsequent years.

5. 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 (less losses in housing and storage) and phosphorus produced on the farm;
- (c) the crop rotation plan, which must specify the acreage of individual fields with grass and other crops, including a sketch map indicating the location of individual fields;
- (d) the foreseeable nitrogen and phosphorus crop requirements;
- (e) the amount and the type of manure delivered to contractors not used on the farm land;
- (f) the amount of imported manure used on the farm land;
- (g) a calculation of the contribution from organic matter mineralization, leguminous crops and atmospheric deposition and amount of nitrogen present in the soil at the moment when the crop starts to use it to a significant degree;
- (h) nitrogen and phosphorus application from manure over each field (parcels of the farm, homogeneous regarding cropping and soil type);
- (i) application of nitrogen with chemical and other fertilisers over each field;
- (j) calculations for assessment of compliance with nitrogen and phosphorus application standards.

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

6. A fertilisation account shall be kept for each farm land. It shall be submitted to the competent authority for each calendar year.

7. The fertilisation account shall set out the following:

- (a) the crop acreages;
- (b) the number and type of livestock;
- (c) the manure production per animal;
- (d) the amount of fertilisers imported by the farm;
- (e) the amount of manure offloaded from the farm and to whom.

8. For each grassland farm benefiting from an individual derogation, the farmer shall accept that the fertiliser application and account can be subject to control.

9. Periodic nitrogen and phosphorus analysis in soil shall be performed for each farm which benefits from an individual derogation at least every four years for each homogeneous area of the farm, with regard to crop rotation and soil characteristics.

Nitrogen analysis in respect of mineral nitrogen and parameters to assess the nitrogen contribution from organic matter mineralisation shall be performed after ploughing grassland, for each homogeneous area of the farm.

In respect of the analyses referred to in the first and the second subparagraphs, one analysis per five hectares of land shall be required as a minimum.

10. Manure shall not be spread in the autumn before grass cultivation.

Article 6

Land cover

1. Farmers benefiting from a derogation under this Decision shall cultivate with grass 80 % or more of the acreage available for manure application on their farms.
2. Farmers benefiting from a derogation under this Decision shall moreover carry out the following measures:
 - (a) on sand and loess soil, grass or other crops ensuring soil coverage during the winter shall be cultivated after maize in order to reduce leaching potential;
 - (b) catch crops shall not be ploughed before 1 February in order to ensure permanent vegetal cover of arable area for recovering subsoil autumn losses of nitrates and limit winter losses;
 - (c) grass on sandy and loessial soils shall only be ploughed in spring;
 - (d) ploughed grass on all soil types shall be followed immediately by a crop with high nitrogen demand and fertilisation shall be based on soil analysis concerning mineral nitrogen and other parameters providing references for estimate of nitrogen release from soil organic matter mineralisation; and
 - (e) if crop rotation includes leguminous or other plants fixing atmospheric nitrogen, fertiliser application shall be reduced accordingly.
3. By way of derogation from point (c), grass ploughing is permitted in autumn for planting flowers bulbs.

Article 7

Measures on manure production

The national authorities in the Netherlands shall ensure that manure production at national level both in terms of nitrogen and phosphorus will not increase beyond the level of the year 2002. This shall entail that production rights for pigs and poultry are maintained for the duration of the derogation granted by this Decision.

Moreover, the competent authorities in the Netherlands shall ensure that as from January 2015 an appropriate share of surplus manure from the dairy sector is processed.

Article 8

Monitoring

1. Maps showing the percentage of grassland farms, percentage of livestock and percentage of agricultural land covered by individual derogation in each municipality, shall be drawn up by the competent authority and shall be updated every year.
2. A monitoring network for sampling of soil water, streams and shallow groundwater shall be established and maintained at derogation monitoring sites.
3. The monitoring network, corresponding to at least 300 farms benefiting from individual derogations, shall be representative of each soil type (clay, peat, sandy, and sandy loessial soils), fertilisation practices and crop rotation. The composition of the monitoring network shall not be modified during the period of applicability of this Decision.
4. Survey and continuous nutrient analysis shall provide data on local land use, crop rotations and agricultural practices on farms benefiting from individual derogations. Those data can be used for model-based calculations of the magnitude of nitrate leaching and phosphorus losses from fields where up to 230 kg or up to 250 kg nitrogen per hectare per year of manure from grazing livestock is applied.

5. The monitoring network including shallow groundwater, soil water, drainage water and streams in farms belonging to the monitoring network, shall provide data on nitrate and phosphorus concentration in water leaving the root zone and entering the groundwater and surface water system.
6. Reinforced water monitoring shall address agricultural catchments in sandy soils.

Article 9

Controls

1. The competent national authority shall carry out administrative controls in respect of all farms benefiting from an individual derogation for the assessment of compliance with the maximum amount of 230 kg or 250 kg nitrogen per hectare per year from grazing livestock manure on farms with at least 80 % grassland, with total nitrogen and phosphate application standards and conditions on land use. Where the control carried out by the national authorities 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 inspections shall be established on a risk basis and with appropriate frequency, taking account of results of controls of the previous years and results of general random controls of legislation implementing Directive 91/676/EEC and any information that might indicate non-compliance.

Administrative inspections shall address at least 5 % of farms benefiting from an individual derogation with regard to land use, livestock number and manure production.

Field inspections shall be carried out in at least 7 % of farms benefiting from an individual derogation under this Decision in respect to the conditions set out in Article 5 and 6 of this Decision.

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

Article 10

Reporting

1. The competent authorities shall submit to the Commission every year by March a report containing the following information:

- (a) data related to fertilisation in all farms which benefit from an individual derogation, including information on yields and on soil types;
- (b) trends in livestock numbers for each livestock category in the Netherlands and in derogation farms;
- (c) trends in national manure production as far as nitrogen and phosphate in manure are concerned;
- (d) a summary of the results of controls related to excretion coefficients for pig and poultry manure at national level;
- (e) maps showing the percentage of farms, percentage of livestock and percentage of agricultural land covered by individual derogation in each municipality, as referred to in Article 8(1);
- (f) the results of water monitoring, including information on water quality trends for ground and surface water, as well as the impact of derogation on water quality.
- (g) information on nitrate and phosphorus concentration in water leaving the root zone and entering the groundwater and surface water system as referred to in Article 8(5) and the results from the reinforced water monitoring in agricultural catchments in sandy soils as referred to in Article 8(6)
- (h) the results of the surveys on local land use, crop rotations and agricultural practices, and the results of model-based calculations of the magnitude of nitrate and phosphorus losses from farms benefitting from an individual derogation, as referred to in Article 8(4);
- (i) an 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 9.

2. The spatial data contained in the report shall, where applicable, fulfil the provisions of Directive 2007/2/EC. In collecting the necessary data, the Netherlands shall make use, where appropriate, 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.

Article 11

Application

This Decision shall expire on 31 December 2017.

Article 12

This Decision is addressed to the Kingdom of the Netherlands.

Done at Brussels, 16 May 2014.

For the Commission
Janez POTOČNIK
Member of the Commission
