

DECISIONS

COMMISSION IMPLEMENTING DECISION (EU) 2015/1499

of 3 September 2015

granting a derogation requested by 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(2015) 6058)

(Only the Dutch 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 point 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 point 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 29 July 2011, the Commission adopted Implementing Decision 2011/489/EU ⁽²⁾, allowing 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, with cut grassland followed by maize and with cut rye followed by maize and up to 200 kg nitrogen per hectare per year from livestock manure on parcels cultivated with winter wheat and triticale followed by a catch crop and with sugar or fodder beets.
- (3) The derogation granted by Implementing Decision 2011/489/EU concerned approximately 2 970 farmers and 82 820 ha of land and expired on 31 December 2014.
- (4) On 7 April 2015, Belgium submitted to the Commission a request for renewal of the derogation under the third subparagraph of point 2 of Annex III to Directive 91/676/EEC with regard to the region of Flanders.
- (5) The requested derogation concerns the intention 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, grassland mixed with clover, 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) The information provided by Belgium in the context of the derogation granted by Implementing Decision 2011/489/EU, indicates that the derogation has not led to a deterioration of water quality. The Report from the

⁽¹⁾ OJ L 375, 31.12.1991, p. 1.

⁽²⁾ Commission Implementing Decision 2011/489/EU 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 (OJ L 200, 3.8.2011, p. 23).

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 to 2011 ⁽¹⁾ shows that in the region of Flanders for groundwater, around 78 % of monitoring stations have mean nitrate concentrations below 50 mg/l and 63 % 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 to 2007). For surface water, 93 % of monitoring stations have mean nitrate concentrations below 50 mg/l and 70 % of monitoring stations have mean nitrate concentrations below 25 mg/l. The majority of monitoring points in surface waters shows a decreasing trend in nitrate concentrations. In the reporting period 2008 to 2011, around 80 % of rivers and all transitional waters were classified as either eutrophic or hypertrophic.

- (7) Flanders has established the following water quality goals to be reached over the action programme period 2015 to 2018. For surface water concentration below 50 mg nitrates per litre will have to be reached in 95 % of the monitoring points of the agricultural monitoring network; for shallow groundwater, which has a slower recovery rate, the average nitrate concentration will have to be decreased by 20 % compared to the average level of 2010, amounting to 40 mg nitrates per litre; in hydrogeological homogeneous zones for which the nitrate concentrations in shallow groundwaters are on average higher than 50 mg nitrates per litre, the average concentration will have to decrease by 5 mg nitrates per litre.
- (8) In order to reach these goals, Flanders has established a reinforced action programme for the period 2015 to 2018. A review of the policy will be carried out at the end of winter 2016-2017 based on which possible further reinforced action will be taken in order to guarantee that the set water quality goals are reached. The legislation transposing Directive 91/676/EEC for the region of Flanders, the 'Decree for the protection of water against pollution by nitrates from agricultural sources' ⁽²⁾ (hereinafter, the Manure Decree) has been amended ⁽³⁾ in accordance with the action programme for the period 2015 to 2018 on 12 June 2015 and applies in conjunction with this Decision.
- (9) The Manure Decree applies through 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 by Belgium concerning the region of Flanders 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 data reported by Belgium concerning the region of Flanders for the period 2008 to 2011 show an increase of 4,4 % in pig numbers as compared to the period 2004 to 2007. The latest available numbers for 2012 and 2013 show a more moderate increase in pig numbers of 2,6 %. The numbers of poultry show a decrease of 13,2 % from 2004 to 2008, followed by an increase of 20,8 %. The numbers of cattle remained stable. In order to avoid that the application of the requested derogation leads to intensification of livestock rearing, the competent authorities will 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.
- (13) Nitrogen use from livestock manure in the period 2008-2011 showed a decrease of 15 % as compared to the period 2004 to 2007. During the third action programme (2007 to 2010) nitrogen use from livestock manure stagnated at about 101 000 tonnes per year. During the fourth action programme a further decline in nitrogen use from livestock manure was observed, with a value of 94 500 tonnes in 2013. During the reporting period 2008 to 2011, the use of mineral nitrogen showed an increase of 4 % as compared to the period 2004 to 2007. The latest available data for 2012 and 2013 show that mineral nitrogen use is stabilising at 39 000 tonnes.
- (14) After examination of the request it can be considered 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 2015 to 2018.

⁽¹⁾ Four-year report within the framework of the Nitrates Directive (91/676/EEC) for the Flemish Region, K. Desimpelaere, E. Lesage — Vlaamse Landmaatschappij, R. Eppinger, H. Maeckelberghe, K. Van Hoof — Vlaamse Milieumaatschappij, June 2012.

⁽²⁾ *Belgisch Staatsblad* of 29 December 2006, p. 76368.

⁽³⁾ *Belgisch Staatsblad* of 29 July 2015, p. 47994.

- (15) Directive 2000/60/EC of the European Parliament and the Council ⁽¹⁾ provides for a comprehensive, cross-border approach to water protection organised around river basin districts, with the objective of achieving a good status for European bodies of water by 2015. Reducing nutrients is an integral part of that objective. Granting of a 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 fulfil obligations derived from it.
- (16) Directive 2007/2/EC of the European Parliament and of the Council ⁽²⁾ 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 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 administrative burden and enhance data coherence, Belgium, 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 ⁽³⁾.
- (17) 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 Belgium, 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 point 2 of Annex III to Directive 91/676/EEC and in point (a) thereof, is granted, subject to the conditions laid down in Articles 4 to 12.

Article 2

Scope

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

Article 3

Definitions

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

- (a) 'farms' means agricultural holdings 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);

⁽¹⁾ 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 (OJ L 327, 22.12.2000, p. 1).

⁽²⁾ 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).

⁽³⁾ 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).

- (d) 'crops with high nitrogen demand and long growing season' means any of the following:
- (i) grassland;
 - (ii) grassland with less than 50 % of clover;
 - (iii) maize undersown, before or after harvest, with grass mowed and removed from the field acting as a catch crop;
 - (iv) cut grassland or cut rye followed by maize;
 - (v) winter wheat or triticale followed by a catch crop;
 - (vi) 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 tonne effluent and a maximum phosphate content of 1 kg per tonne 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.

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 2015, the annual application shall be submitted by 31 July.
2. Together with the annual application referred to in paragraph 1, the farmers shall undertake in writing to fulfil the conditions provided for in Articles 5, 6 and 7.

Article 5

Manure treatment

1. The competent authorities shall ensure that 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.
2. Farmers benefitting from the 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 benefitting from an individual derogation.
4. The competent authorities shall ensure that 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 those purposes the competent authorities shall ensure that 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 12, 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 any of the following values:

(a) 250 kg of nitrogen per hectare per year on parcels cultivated with the following:

- (i) grassland and maize undersown with grassland;
- (ii) cut grassland followed by maize;
- (iii) cut rye followed by maize;
- (iv) grassland with less than 50 % of clover;

(b) 200 kg of nitrogen per hectare per year on parcels cultivated with the following:

- (i) winter wheat followed by a catch crop;
- (ii) triticale followed by a catch crop;
- (iii) sugar or fodder beets.

2. Treated manure, not qualifying as effluent with low nitrogen and phosphate content, may 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 tonnes 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, as established in the action programme.

5. Phosphate from chemical fertilizer shall not be used 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 and the description of the housing and storage system, including the volume of manure storage available;
- (b) a calculation of manure nitrogen (minus losses in housing and storage) 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 within 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;
- (i) calculations for assessment of compliance with nitrogen and phosphorus application standards.

The fertilisation 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 be submitted to the competent authority for each calendar year by 15 March of the following calendar year.

8. 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.

9. Results of nitrogen and phosphorus analysis in soil shall be available for each farm benefitting from the derogation.

Sampling and analysis shall be carried out no later than 31 May 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 five hectares of farmland shall be required.

10. 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 benefitting from the derogation in such a way that at least 85 % of those farms are involved. At least three samples representing three different soil layers within the soil profile shall be required every 2 hectares of farmland.

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

12. At least two thirds of the amount of nitrogen from manure, excluding nitrogen from manure from grazing livestock, shall be applied before 1 June each year.

Article 7

Land management

Farmers benefitting from an 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) on derogated parcels crop rotation shall not include leguminous or other plants fixing atmospheric nitrogen. This shall, however, not apply to clover in grassland with less than 50 % clover;
- (d) a crop with high nitrogen demand shall be seeded within 2 weeks after grass has been ploughed and fertilisers shall not be applied in the year of ploughing of permanent grassland;
- (e) catch crops shall be seeded within 2 weeks after the harvest of winter wheat 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.

This derogation shall be applied without prejudice to the measures needed to comply with other environmental legislation of the Union.

*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.
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 the results of the analysis shall be communicated to the competent authorities and to the farmer to which the manure is delivered.
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 derogations for each municipality are drawn up and updated every year.

Data on crop rotations and agricultural practices covered by individual derogations shall be collected and updated every year by the competent authority.

2. The monitoring network for sampling of surface and shallow groundwater referred in Article 10(2) of Commission Decision 2008/64/EC ⁽¹⁾ shall be maintained to assess the impact of the derogation on water quality. The monitoring network will include measurements of the nitrate and phosphate of rivers flowing to the North Sea. The amount of initial monitoring sites shall not be reduced and the location of the sites shall not be changed during the period of applicability of this Decision.
3. A reinforced monitoring shall be conducted in agricultural catchments on sandy soils.
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.

⁽¹⁾ Commission Decision 2008/64/EC of 21 December 2007 granting a derogation requested by 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 (OJ L 16, 19.1.2008, p. 28).

The composition of the monitoring network shall not be modified during the period of applicability of this Decision.

5. 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 may be used for model-based calculations of the magnitude of nitrate leaching and phosphorus losses from fields where up to 250 kg or up to 200 kg nitrogen per hectare per year of grazing livestock manure and treated pig manure is applied.

6. 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.

Article 11

Verification

1. All the applications for derogation shall be submitted to administrative control of the competent authorities. 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 case, the application shall be considered to be refused.

2. A programme of field inspections shall be established by the competent authorities 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 7 % of the farms benefiting from an individual derogation in respect to the conditions set out in Articles 5, 6 and 7. Where verification indicates non-compliance, the farmer shall be informed thereof. In this case, the request for derogation the next year shall be considered to be refused.

3. The results of the measurements referred to in Article 6(9) 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 shall be refused.

4. The competent authorities shall ensure on-spot controls of at least 2 % 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 may 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

1. The competent authorities shall submit every year by 30 June 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, referred to in Article 10(1);
- (b) the results of water monitoring, including information on water quality trends for ground, surface waters, and waters flowing to the North Sea, as well as the impact on derogation on water quality referred to in Article 10(2);

- (c) an 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 benefitting from a derogation and parcels on other farms;
- (d) information on nitrate and phosphorus concentration in water leaving the root zone and entering the groundwater and surface water system referred to in Article 10(6) and the results from the reinforced water monitoring in agricultural catchments in sandy soils referred to in Article 10(3);
- (e) 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, referred to in Article 10(5);
- (f) an 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;
- (g) 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;
- (h) information on the amount of farms benefitting from derogation and derogated parcels on which treated manure and effluent with low nitrogen and phosphate content has been applied as well as their volumes;
- (i) the methodologies to assess the composition of treated manure, the variations in composition and treatment efficiency for each farm benefitting from individual derogation, referred to in Article 5(3);
- (j) the inventory of manure treatment installation referred to in Article 5(4);
- (k) a summary and an evaluation of data obtained from the monitoring sites referred to in Article 10(4);
- (l) data related to fertilisation in all farms which benefit from an individual derogation, including information on yields and on soil types;
- (m) trends in livestock numbers for each livestock category in Flanders region and in derogation farms.

The spatial data contained in the report shall, where applicable, fulfil the provisions of Directive 2007/2/EC. In collecting the necessary data, Belgium 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 13

Period of Application

This Decision shall expire on 31 December 2018.

Article 14

Addressee

This Decision is addressed to the Kingdom of Belgium.

Done at Brussels, 3 September 2015.

For the Commission
Karmenu VELLA
Member of the Commission