

II

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory)

DECISIONS

COMMISSION

COMMISSION DECISION

of 20 December 2007

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

(notified under document number C(2007) 6643)

(Only the French text is authentic)

(2008/96/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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) Belgium submitted to the Commission a request for a derogation under third subparagraph of paragraph 2 of Annex III to Directive 91/676/EEC referred to the region of Wallonia.

- (3) The requested derogation concerns the intention of Belgium to allow the application in Wallonia of up to 230 kg nitrogen per hectare per year from livestock manure in specific holdings with more than 48 % of acreage as grassland. The nitrogen application from livestock manure on grassland would not exceed 230 kg per hectare per year, while on arable crops of these farms it would not exceed 115 kg/ha nitrogen per hectare per year.

- (4) The designation of nitrates vulnerable zones in respect to Wallonia, in conformity with paragraphs 2 and 4 of Article 3 of Directive 91/676/EEC, covers approximately 42 % of this region's territory and 54 % of utilised agricultural land.

- (5) Approximately 500 farms, corresponding to 5,6 % of total number of farms in nitrate vulnerable zones, and 3 % of the Utilised Agricultural Land are estimated to be encompassed by the derogation.

- (6) The legislation implementing Directive 91/676/EEC in Wallonia 'Arrêté du Gouvernement wallon du 15 février 2007 modifiant le Livre II du Code de l'Environnement constituant le Code de l'Eau en ce qui concerne la gestion durable de l'azote en agriculture' has been adopted and applies equally to the requested derogation.

⁽¹⁾ OJ L 375, 31.12.1991, p. 1. Directive as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

- (7) Water quality data submitted show that in Wallonia in 2005 average nitrate concentration in surface water in nitrate vulnerable zones was 16,7 mg/L, with stable or decreasing trends in 84 % of monitoring sites in the period from 2001 to 2005. Median groundwater concentration in 2005 was 24,8 mg/L nitrates, with stable or decreasing trends in 74 % of monitoring sites in the period from 2001 to 2005.
- (8) Average nitrogen input per hectare from livestock manure decreased by 12 % since 1990 and in 2004 was 101 kg/ha of Utilised Agricultural Land, of which 94 % from cattle manure, 3 % from pig manure and 2 % from poultry manure. Average application of chemical fertilisers decreased for both nitrogen and phosphate since 1990, respectively by 19 % and by 49 % and in 2004 was on average of 109 kg/ha and 28 kg/ha respectively for nitrogen and phosphate.
- (9) The supporting documents presented in the notification show that the proposed amount of 230 kg per hectare per year of nitrogen from manure is justified on the basis of objective criteria such as long growing seasons and crops with high nitrogen uptake.
- (10) The Commission after examination of the request considers that the proposed amount of 230 kg per hectare per year nitrogen from manure will not prejudice the achievement of the objectives of Directive 91/676/EEC, subject to certain strict conditions being met.
- (11) This Decision should be applicable in connection with the second action programme in force for the region of Wallonia for the period 2007 to 2010.
- (12) 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 referred to the region of Wallonia by letter of 19 October 2006, 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) 'cattle farms' means holdings with more than three livestock units, where at least two-thirds of livestock are cattle;
- (b) 'grassland' means acreage of the cattle farm cultivated with permanent or temporary grassland (generally temporary lies less than four years).

Article 3

Scope

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

Article 4

Annual authorisation and commitment

1. Farmers who want to benefit from a derogation 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.
3. The competent authorities shall ensure that all the applications for derogation are subject to administrative control. Where the control carried out by the national authorities of the applications referred to in paragraph 1 demonstrates that the conditions provided for in Articles 5 and 6 are not fulfilled, the applicant shall be informed thereof and the application shall be considered to be refused.

Article 5

Application of manure and other fertilisers

1. The amount of livestock manure applied each year on cattle farms, including by the animals themselves, shall not exceed the amount of manure containing 230 kg of nitrogen per hectare, subject to the conditions laid down in paragraphs 2 to 8.
2. The amount of livestock manure applied on grassland each year shall not exceed 230 kg of nitrogen per hectare. The amount of livestock manure applied on other farmland each year shall not exceed 115 kg of nitrogen per hectare.

3. A fertilisation plan shall be kept for each farm describing the crop rotation, the planned application of manure and nitrogen and phosphate fertilisers. It shall be available in the farm each calendar year by 31 March 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 (less losses in housing and storage) and phosphorus produced in the farm;
- (c) the crop rotation and acreage for grassland and for each crop, including a sketch map indicating location of individual fields;
- (d) the foreseeable nitrogen and phosphorus crop requirements;
- (e) the amount and the type of manure delivered outside and to the farm;
- (f) nitrogen and phosphorus application from manure over each field;
- (g) application of nitrogen and phosphorus with chemical and other fertilisers over each field.

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

4. Fertilisation accounts shall be prepared by each farm. They shall be submitted to the competent authority for each calendar year.

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

6. Phosphorous analysis in soil shall be performed for each farm which benefits from an individual derogation 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 every five hectares of farmland shall be required.

7. Nitrate concentration in soil shall be measured every year in each farm which benefits from an individual derogation. At least five samples per year shall be analysed for each farm.

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

Article 6

Land management

1. 48 % or more of the acreage available for manure application on the cattle holding shall be cultivated with grass.
2. Farmers benefiting from an individual derogation shall carry out the following measures:
 - (a) Temporary grassland shall be ploughed in spring.
 - (b) Grassland shall not include leguminous or other plants fixing atmospheric nitrogen. This will however not apply to leguminous in grassland with less than 50 % leguminous.

Article 7

Other measures

1. This derogation shall be applied without prejudice to the measures needed to comply with other Community environmental legislation.
2. Each farmer benefiting from an individual derogation shall be provided with technical assistance through an advisory service, which shall ensure the evaluation of the results of soil analysis, fertilisation plans and fertilisation accounts. Results of evaluation shall be transmitted to the competent authorities in charge of compliance checking in respect to the conditions set out in Articles 5 and 6.

Article 8

Monitoring

1. Maps showing the percentage of farms, percentage of livestock and percentage of agricultural land covered by individual derogation in each agricultural zone shall be drawn by the competent authority and shall be updated every year. Those maps shall be submitted to the Commission annually and for the first time by the end of 2007.
2. A monitoring network for sampling of surface and shallow groundwater shall be established and maintained to assess the impact of the derogation on water quality.

3. Survey and 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 nitrogen per hectare per year from livestock manure is applied.

4. Monitoring sites shall be established in order to provide data on nitrogen concentration in soil water and corresponding nitrogen losses through the root zone into groundwater, as well as on nitrogen losses by surface and subsurface runoff, both under derogation and non derogation conditions.

Article 9

Reporting

1. The competent authority shall submit the results of the monitoring every year to the Commission, with a concise report on water quality evolution, evaluation of nitrate residue in soil in autumn in farms benefiting from a derogation and evaluation practice. The report shall provide information on how the evaluation of the implementation of the derogation conditions is carried on through controls at farm level and include information on non compliant farms based on the results of administrative and field inspections. The first report shall be transmitted by June 2008 and subsequently every year by June.

2. The results thus obtained will be taken into consideration by the Commission with regard to an eventual new request for a derogation.

Article 10

Application

This Decision shall apply in the context of the second action programme 2007-2010 for the Region of Wallonia. 'Arrêté du Gouvernement wallon du 15 février 2007 modifiant le Livre II du Code de l'Environnement constituant le Code de l'Eau en ce qui concerne la gestion durable de l'azote en agriculture'. It shall expire on 31 December 2010.

Article 11

This Decision is addressed to the Kingdom of Belgium.

Done at Brussels, 20 December 2007.

For the Commission

Stavros DIMAS

Member of the Commission