

II

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

DECISIONS

COMMISSION

COMMISSION DECISION

of 29 May 2009

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 number C(2009) 3853)

(Only the English version is authentic)

(2009/431/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Commission a request for a derogation under the third subparagraph of paragraph 2 of Annex III to Directive 91/676/EEC with regard to England, Scotland and Wales.

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,

- (3) The requested derogation concerns the intention of the United Kingdom of Great Britain and Northern Ireland to allow the application in England, Scotland and Wales of up to 250 kg nitrogen per hectare per year from livestock manure in grassland farms. Approximately 1 950 holdings in England, Scotland and Wales corresponding to 1,3 % of total farms, 1,5 % of the utilised agricultural land and 21 % of the total dairy livestock are estimated to be encompassed by the derogation.

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.

- (4) The legislation implementing Directive 91/676/EEC, including designation of vulnerable zones and establishment of the action programme in England (Regulations 2008 No 2349), Scotland (Regulations 2008 No 298) and Wales (Regulations 2008 No 3143), has been adopted and applies in tandem with this Decision.

- (2) On 14 January 2009, the United Kingdom of Great Britain and Northern Ireland submitted to the

- (5) The designated vulnerable zones to which the action programmes apply cover 68 % of the total area of England, 14 % of the total area of Scotland and 4 % of the total area of Wales.

⁽¹⁾ OJ L 375, 31.12.1991, p. 1.

(6) Water quality data submitted show that for groundwater in England 83 % of groundwater bodies have mean nitrate concentrations below 50 mg/l nitrate and 58 % concentrations below 25 mg/l nitrate. For Scotland and Wales, over 90 % of groundwater bodies have mean nitrate concentrations of less than 50 mg/l nitrate, and over 70 % have concentrations below 25 mg/l. For surface waters in England more than 50 % of monitoring sites have mean nitrate concentrations below 25 mg/l and no more than 9 % have over 50 mg/l nitrate. For Scotland and Wales over 90 % of monitoring sites have mean nitrate concentrations below 25 mg/l and no sites have over 50 mg/l nitrate.

(7) Dairy cattle, beef cattle and sheep are the main types of grazing livestock in England, Scotland and Wales and livestock numbers show a decreasing trend in the period 1995-2007 (13 % reduction for cattle and 22 % for sheep and lamb). Around 48 % of the total production of livestock manure is handled as solid manure coming from straw based systems, 52 % of all livestock manure is handled as slurry.

(8) The use of chemical fertilisers in the last 20 years has reduced with 42 % for nitrogen and 49 % for phosphorus. The use of chemical nitrogen on dairy grassland has reduced by 37 % since 1999 and amounts to 128 kg N/ha in 2007. The OECD national nitrogen and phosphorus balances show for the period 1985 and 2002 a decline for the nitrogen balance from 46 to 22 kg N/ha and for the phosphorus balance from 15 to 12 kg P/ha.

(9) Grasslands occupy 69 % of the total agricultural area in England, Scotland and Wales of which 46 % is extensive and 54 % managed grassland. 31 % of the total agricultural area is arable land.

(10) The supporting documents presented in the notification 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.

(11) The Commission, after examination of the request, considers that the proposed amount of 250 kg per hectare will not prejudice the achievement of the objectives of Directive 91/676/EEC, subject to certain strict conditions being met.

(12) This Decision should be applicable in connection with the action programmes for England, Scotland and Wales for the period 2009 to 2012.

(13) 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 of Great Britain and Northern Ireland with regard to England, Scotland and Wales 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).

Article 3

Scope

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

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 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.

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 and take into account the supply from the soil.

3. A fertilisation plan shall be kept for each farm describing the crop rotation of the farmland and the planned application of manure and nitrogen and phosphate fertilisers. It shall be available in the farm each calendar year by 1 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 area of 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 the farm or to the farm;
- (f) results of soil analysis related to nitrogen and phosphorus soil status if available;
- (g) nitrogen and phosphorus application from manure over each field;

(h) 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, including information related to management of nitrogen and phosphorus inputs, shall be kept by each farm. They shall be submitted to the competent authority for each calendar year.

5. Each grassland farm benefiting from derogation shall accept that the application referred to in paragraph 1 of Article 4, the fertilisation plan and the fertilisation accounts can be subject to control.

6. Results of nitrogen and phosphorus analysis in soil shall be available for each farm benefiting from a derogation. 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 required.

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

Article 6

Land management

Eighty per cent or more of the area available for manure application on farms shall be cultivated with grass. 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. This however will not apply to clover in grassland with less than 50 % clover or to other leguminous plants that are under-sown with grass.

*Article 7***Other measures**

This derogation shall be applied without prejudice to the measures needed to comply with other Community legislation for the protection of public and animal health and of the environment.

*Article 8***Monitoring**

1. Maps showing the percentage of grassland farms, percentage of livestock and percentage of agricultural land covered by an individual derogation in each district, shall be drawn by the competent authority and shall be updated every year. Those maps shall be submitted to the Commission annually, attached to the report referred to in Article 10 of this Decision.

2. Monitoring of the farms covered by the action programme and the derogation shall be carried out at farm field scale and in agricultural monitoring catchments. The reference monitoring catchments shall be representative of the different soil types, levels of intensity and fertilisation practices.

3. Survey and nutrient analysis as referred to in Article 5 of this Decision 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 250 kg nitrogen per hectare per year in manure from grazing livestock is applied.

4. Monitoring of shallow groundwater, soil water, drainage water and streams in farms belonging to the agricultural catchment monitoring sites shall provide data on nitrate and phosphorus concentration in water leaving the root zone and entering groundwater and surface water.

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

6. A study shall be conducted in order to collect, by the end of the derogation period, detailed scientific information on intensive grassland systems in order to improve nutrient management. This study will focus on nutrient losses, including nitrates leaching, denitrification losses and phosphate losses, under intensive dairy production systems in representative areas.

*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 250 kg nitrogen per hectare per year from grazing livestock manure, with nitrogen maximum fertilisation rates and conditions on land use.

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 legislation implementing Directive 91/676/EEC. The field inspections shall cover at least 3 % of farms benefiting from an individual derogation in respect to the conditions set out in Articles 5 and 6.

*Article 10***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 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 results of administrative and field inspections.

The first report shall be transmitted by June 2010, 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 derogation.

*Article 11***Application**

This Decision shall apply in the context of the regulations implementing the action programme in England (Regulations 2008 No 2349), Scotland (Regulations 2008 No 298) and Wales (Regulations 2008 No 3143). It shall expire on 31 December 2012.

Article 12

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

Done at Brussels, 29 May 2009.

For the Commission

Stavros DIMAS

Member of the Commission