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COMMISSION DECISION

of 8 December 2005

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 number C(2005) 4778)

(Only the Dutch text is authentic)

(2005/880/EC)

(OJ L 324, 10.12.2005, p. 89)

Amended by:

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**COMMISSION DECISION****of 8 December 2005****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 number C(2005) 4778)***(Only the Dutch text is authentic)**

(2005/880/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 subparagraph (b) 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 introductory sentences of paragraph 2 and subparagraph (a) of Annex III to Directive 91/676/EEC, 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 April 2005, the Netherlands submitted to the Commission a request for a derogation under subparagraph (b) of paragraph 2 of Annex III to Directive 91/676/EEC.
- (3) The requested derogation concerns the intention of the Netherlands to allow the application of 250 kg nitrogen per hectare per year from livestock manure in farms with at least 70 % grassland. Approximately 25 000 farms in the Netherlands and approximately 900 000 hectares are concerned by that request for derogation.
- (4) The Dutch legislation implementing Directive 91/676/EEC has been adopted and applies equally to the requested derogation.
- (5) The Dutch legislation implementing Directive 91/676/EEC includes application standards both for nitrogen and phosphate. Application standards related to phosphate are aimed to achieve an equilibrium in phosphate fertilisation by 2015.
- (6) The Netherlands addressed the issue of nutrient surplus from manure and mineral fertilisers through several policy instruments and in the period 1992 to 2002 decreased cattle numbers by 17 %, pigs by 14 % and sheep and goats by 21 %. Nitrogen and phosphorus in manure decreased respectively by 29 and 34 % in the period 1985 to 2002. Nitrogen and phosphorus surpluses decreased respectively by 25 and 37 %, in the period 1992 to 2002.
- (7) Water quality data show a downwards trend in groundwater nitrate concentration and in nutrient concentration (including phosphorus) in surface water.
- (8) The technical and scientific documents presented in the Dutch notification show that the proposed amount of 250 kg per

⁽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).

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hectare per year nitrogen from cattle manure in farms with at least 70 % grassland is compatible with the achievement of the level of 11,3 mg/l N (corresponding to 50 mg/l NO₃) in water in all soil types, and to approximately a zero phosphorus surplus, under conditions of optimal management.

- (9) The technical and scientific documents presented show that the proposed amount of 250 kg per hectare per year nitrogen from cattle manure in farms with at least 70 % grassland is justified on the basis of objective criteria such as long growing season and crops with high nitrogen uptake.
- (10) The Commission considers therefore that the amount of manure requested by the Netherlands will not prejudice the achievement of the objectives of Directive 91/676/EEC, subject to certain strict conditions being met.
- (11) These conditions include the establishment of fertiliser plans on a farm by farm basis, 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 and adjustment of fertilisation to take into account the contribution of leguminous crops. These provisions are aimed at ensuring fertilisation based on crop needs and reduction and prevention of nitrogen losses to water.
- (12) In order to avoid that the application of the requested derogation leads to intensification, the competent authorities should ensure that manure production both in terms of nitrogen and phosphorus does not increase beyond the level of the year 2002 in accordance with the action programme to be implemented by the Netherlands.
- (13) Accordingly the requested derogation should be approved.
- (14) This Decision should be applicable in connection with the action programme of the Netherlands for 2006 to 2009.
- (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,

HAS ADOPTED THIS DECISION:

▼M1*Article 1*

The derogation requested by the Netherlands by letter of 8 April 2005 and the extension requested by letter of 14 July 2009, 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.

▼B*Article 2***Definitions**

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

- (a) 'grassland farms' means holdings where 70 % or more of the acreage available for manure application is grass;
- (b) 'grazing livestock' means cattle (with the exclusion of veal calves), sheep, goats and horses, donkeys, deer and water buffalo;
- (c) '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;

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- (d) 'Grass' means permanent grassland or temporary grassland which 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 for grassland 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 and fertiliser accounts are submitted 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. 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 comply with the nutrient demand of the considered crop and 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 on the farm by 1 February 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 on the farm;
- (c) the crop rotation and acreage 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 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;

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- (h) nitrogen and phosphorus application from manure over each field (parcels of the farm, homogeneous regarding cropping and soil type);
- (i) application of nitrogen and phosphorus 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.

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

5. Each grassland farm benefiting from an individual derogation shall accept that fertiliser application and account can be subject to control.

6. Periodic nitrogen and phosphorous 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 subparagraph, one analysis per five hectares of land shall be required as a minimum.

7. Manure may not be spread in the autumn before grass cultivation.

*Article 6***Land cover**

1. 70 % or more of the acreage available for manure application on farms shall be cultivated with grass. Farmers benefiting from an individual derogation shall 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 substantially 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 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;
- (e) if crop rotation includes leguminous or other plants fixing atmospheric nitrogen fertiliser application shall be reduced accordingly.

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2. 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 shall ensure that manure production both in terms of nitrogen and phosphorus will not increase beyond the level of the year 2002.

*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 by the competent authority and shall be updated every year.

Those maps shall be submitted to the Commission annually and for the first time in the second quarter of 2006.

2. A monitoring network for sampling of soil water, streams and shallow groundwater shall be established and maintained as derogation monitoring sites.

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.

3. 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 250 kg nitrogen per hectare per year in manure from grazing livestock is applied.

4. 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.

5. A 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 250 kg nitrogen per hectare per year from grazing livestock manure, with total nitrogen and phosphate application standards and conditions on land use.

2. A programme of 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.

Specific 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 3 % of farms in respect to the conditions set out in Article 5 and 6.

▼B*Article 10***Reporting**

1. The competent authority shall submit the results of the monitoring, every year, to the Commission, with a concise report on evaluation practice (controls at farm level, including information on non compliant farms based on results of administrative and field inspections) and water quality evolution (based on root zone leaching monitoring, surface/ground water quality and model-based calculations).

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The report shall be transmitted to the Commission annually in the second quarter of the year following the year of activity.

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2. In addition to the data referred to in paragraph 1 the report shall include the following:

- (a) data related to fertilisation in all farms which benefit from an individual derogation;
- (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 country level.

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

4. In order to provide elements regarding management in grassland farms, for which a derogation applies, and the achieved level of optimisation of management, a report on fertilisation and yield shall be prepared annually for the different soil types and crops by the competent authority and submitted to the Commission.

▼M1*Article 11***Application**

This Decision shall apply until 31 December 2013 in the context of the fourth Dutch Nitrates Action Programme.

▼B*Article 12*

This Decision is addressed to the Kingdom of the Netherlands.