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COMMISSION DECISION

of 14 December 2007

granting a derogation requested by the United Kingdom with regard to Northern Ireland 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) 6281)

(Only the English version is authentic)

(2007/863/EC)

(OJ L 337, 21.12.2007, p. 122)

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**COMMISSION DECISION****of 14 December 2007****granting a derogation requested by the United Kingdom with regard to Northern Ireland 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) 6281)***(Only the English version is authentic)**

(2007/863/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) On 10 August 2007, the United Kingdom submitted to the Commission a request for a derogation under the third subparagraph of paragraph 2 of Annex III to Directive 91/676/EEC with regard to Northern Ireland.
- (3) The requested derogation concerns the intention of the United Kingdom to allow the application in Northern Ireland of up to 250 kg nitrogen per hectare per year from livestock manure in grassland farms. Approximately 732 holdings in Northern Ireland corresponding to 2,7 % of total farms, 4 % of the Utilized Agricultural Land and 5 % of the Livestock Unit are potentially encompassed by the derogation.
- (4) The legislation implementing Directive 91/676/EEC, the *Nitrates Action Programme Regulations (Northern Ireland) 2006 (Regulations 2006 No 489)*, 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).

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- (5) The *Phosphorus (Use in Agriculture) Regulations (Northern Ireland) 2006* set out measures governing land application of phosphate fertilisers in order to prevent water pollution. The regulations prohibit the application of chemical fertilisers unless it is demonstrated that the amount is not in excess of crop requirement, requiring, *inter alia*, the assessment of soil fertility status through chemical analysis.
- (6) Water quality data submitted show that low nitrate concentrations are a common feature of water bodies in Northern Ireland. In 2005 the average nitrate concentration in groundwater was below 20 mg/l nitrates in 71 % of the monitoring sites and concentrations greater than 50 mg/l nitrates were recorded in no more than 7 % of the sampling points. Data on water quality in rivers showed that in 2005 the mean nitrate concentration was below 20 mg/l in 99 % of sampling points and no monitoring station exceeded 50 mg/l nitrates. All large lakes had an average concentration of less than 10 mg/l nitrates.
- (7) According to the third report on implementation of the Nitrates Directive 72 % of groundwater monitoring sites showed stable or decreasing trends in nitrates concentration in the period 1999-2003; nitrate concentration in surface water was stable or declining in 87 % of surface water monitoring stations in the same period.
- (8) In conformity with paragraph 5 of Article 3 of Directive 91/676/EEC, the *Nitrates Action Programme Regulations (Northern Ireland) 2006* applies throughout the whole Northern Irish territory.
- (9) The number of livestock and the utilisation of chemical fertilisers decreased in the last decade. Cattle, pig and sheep number decreased respectively by 2 %, 36 % and 22 % in the period 1995-2005. Chemical nitrogen fertiliser use decreased by 41 % in the period 1995 to 2005 and the application rate for 2005 was 89 kg per hectare nitrogen, phosphate fertiliser use declined by 49 % in the same period and in 2005 phosphorus use was on average 7 kg per hectare. Nitrogen surplus at national level declined from 159 kg/ha in 1995 to 124 kg/ha in 2005.
- (10) Due to high rainfall and the prevalence of soil with poor drainage, in Northern Ireland, ninety-three percent of agricultural land is devoted to grassland, of which a large part is classified as having good to very good potential for grass growth. Due to impeded drainage, the denitrification potential of the majority of soils in Northern Ireland is relatively high, reducing the nitrate concentration in soil and, therefore, the amount of nitrate susceptible to leaching.
- (11) In Northern Ireland 70 % of the land is farmed extensively and 45 % of the total land area is farmed under agro-environmental schemes.

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- (12) The Northern Irish climate, characterised by an annual rainfall evenly distributed throughout the year and a relatively narrow annual temperature range promotes a relatively long grass-growing season ranging from 270 days per year in the coastal area to the east to around 260 days per year in the central lowlands where land is actively managed and farmed.
- (13) 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 long growing seasons and crops with high nitrogen uptake.
- (14) 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.
- (15) This Decision should be applicable in tandem with the Nitrates Action Programme Regulations (Northern Ireland) 2006, in force in Northern Ireland for the period 2007-2010.
- (16) 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 United Kingdom with regard to Northern Ireland by letter of 10 August 2007 and the extension requested by letter of 23 September 2010, 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) of that subparagraph, is granted, subject to conditions laid down in this Decision.

▼B*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).

▼B*Article 3***Scope**

This Decision applies on an individual basis and subject to the conditions set out in Articles 4, 5 and 6 to 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 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 8.
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;

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- (f) results of soil analysis related to nitrogen and phosphorus soil status if available;
- (g) nitrogen and phosphorus application from manure over each field (parcels of the farm homogeneous regarding cropping and soil type);
- (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 dirty water 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 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. Nitrogen and phosphorous analysis in soil shall be performed for each farm benefiting from an individual derogation at least 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. Manure may not be spread in the autumn before grass cultivation.

8. Each grassland farm benefiting from an individual derogation shall ensure that the phosphorus balance, calculated according to the methodology established by the competent authority in compliance with Article 7(2) of this Decision, does not exceed a surplus of 10 kg phosphorus per hectare per year.

Article 6

Land management

80 % 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) temporary grassland 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 will however not apply to clover in grassland with less than 50 % clover and to cereals and pea undersown with grass.

Article 7

Other measures

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

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2. The competent authorities shall establish and submit to the Commission the detailed procedure for the calculation of the phosphorus balance in derogation farms taking into account the input of phosphate with concentrate, forage and fertilisers and the output into products (live animal, meat and other animal products), forage and crops.

*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. ►**M1** Those maps shall be submitted to the Commission annually by June. ◀

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 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 lakes.

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 and phosphorus maximum fertilisation rates and conditions on land use.

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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 Article 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 November 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 derogation.

▼M1*Article 11***Application**

This Decision shall apply in the context of the *Nitrates Action Programme Regulation (Northern Ireland) 2010*.

It shall expire on 31 December 2014.

▼B*Article 12*

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