

Commission Decision of 5 February 2010 amending Decision 2005/880/EC 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 C(2010) 606) (Only the Dutch version is authentic) (2010/65/EU)

COMMISSION DECISION

of 5 February 2010

amending Decision 2005/880/EC 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 C(2010) 606)

(Only the Dutch version is authentic)

(2010/65/EU)

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 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. On 8 December 2005, the Commission adopted Decision 2005/880/EC⁽²⁾ allowing the Netherlands the application of 250 kg nitrogen per hectare per year from livestock manure in farms with at least 70 % grassland.
- (2) The derogation thus granted concerned approximately 25 000 farms in the Netherlands and approximately 900 000 hectares and applied to the period 1 January 2006 to 31 December 2009. The derogation was granted because:
 - (a) the Dutch legislation implementing Directive 91/676/EEC included application standards both for nitrogen and phosphate and application standards related to phosphate aimed to achieve an equilibrium in phosphate fertilisation by 2015;

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- (b) 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;
 - (c) the available water quality data showed a downwards trend in groundwater nitrate concentration and in nutrient concentration (including phosphorus) in surface water;
 - (d) the technical and scientific documents presented in the Dutch notification showed that the proposed amount of 250 kg per hectare per year nitrogen from cattle manure in farms with at least 70 % grassland was 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;
 - (e) the technical and scientific documents presented showed that the proposed amount of 250 kg per hectare per year nitrogen from cattle manure in farms with at least 70 % grassland was justified on the basis of objective criteria such as long growing season and crops with high nitrogen uptake.
- (3) The Commission considered therefore that the amount of manure requested by the Netherlands would not prejudice the achievement of the objectives of Directive 91/676/EEC, subject to certain strict conditions being met. These conditions included 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 were aimed at ensuring fertilisation based on crop needs and reduction and prevention of nitrogen losses to water.
- (4) In order to avoid that the application of the 2006-2009 derogation granted by Decision 2005/880/EC would lead to intensification, the competent authorities were compelled to ensure that manure production both in terms of nitrogen and phosphorus would not increase beyond the level of the year 2002 in accordance with the Dutch third national action programme.
- (5) The Netherlands have communicated the maps and reports referred to in Article 8 and Article 10 of Decision 2005/880/EC in time.
- (6) On 14 July 2009 the Netherlands submitted to the Commission a request for an extension of the derogation. The request referred to a detailed justification and to the approval of fourth Nitrates Action Programme (2010-2013) by the Dutch House of Representatives. This fourth action programme indicates the (considerable) progress made in line with the conditions of the 2006-2009 derogation and the challenges ahead. It builds further on the third action programme and contains reinforced measures

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including stricter nitrogen application standards on sandy soils; stricter phosphorus application standards based on the soil phosphorus status and longer closed periods for land application of fertilisers⁽³⁾. These legal measures aim at a further reduction of nutrient surplus and further improvement of water quality, if need be by further reinforced action beyond the period 2010-2013.

- (7) Water quality shows a further downward trend in groundwater nitrate concentration and in nutrient concentration (including phosphorus) in surface water with main effects of the third action programme still to be expected in the upcoming years.
- (8) Results of monitoring and controls show that, in the period 2006-2009 approximately 24 000 grassland farms corresponding to approximately 830 000 ha of cultivated land were encompassed by the derogation.
- (9) In order to avoid that the application of the requested derogation leads to intensification, the competent authorities should continue to ensure that manure production both in terms of nitrogen and phosphorus does not increase the level of the year 2002.
- (10) The results achieved so far by the Netherlands are in line with the conditions set out in Decision 2005/880/EC.
- (11) The necessary legal framework for implementing Directive 91/676/EEC and executing the fourth action programme has been adopted and applies equally to the requested derogation.
- (12) Given the measures the Netherlands have committed themselves to in the action programme for the period 2010-2013 the Commission considers that the amount of manure requested by the Netherlands for the period 2010-2013 would not prejudice the achievement of the objectives of Directive 91/676/EEC if the same strict conditions established by Decision 2005/880/EC are met.
- (13) Decision 2005/880/EC expires on 31 December 2009.
- (14) For the purpose of ensuring that the cattle farms concerned may continue to benefit from a derogation, it is appropriate to extend the validity of Decision 2005/880/EC to 31 December 2013 under the same conditions as those set out in articles 4 to 10 of Decision 2005/880/EC.
- (15) The deadline for reporting to the Commission, set by Article 10 of Decision 2005/880/EC, should however be adapted and aligned with the deadline for reporting obligations under article 8 of Decision 2005/880/EC.
- (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:

Article 1

Decision 2005/880/EC is amended as follows:

1. Article 1 is replaced by the following:

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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.

2. Article 10, paragraph 1, second subparagraph is replaced by the following:

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

3. Article 11 is replaced by the following:

Article 11

Application

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

Article 2

This Decision is addressed to the Kingdom of The Netherlands.

Done at Brussels, 5 February 2010.

For the Commission

Stavros DIMAS

Member of the Commission

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- (1) OJ L 375, 31.12.1991, p. 1.
- (2) OJ L 324, 10.12.2005, p. 89.
- (3) Act of 26 November 2009 amending the Fertiliser Act, (Staatsblad Koninkrijk der Nederlanden 2009, 551); Government Order of 9 November 2009 amending the government order on fertiliser use and the Government Order on greenhouse horticulture (Staatsblad Koninkrijk der Nederlanden 2009, 477); Government order of 14 December 2009 amending Government Order on implementation Fertiliser Act (Staatsblad Koninkrijk der Nederlanden 2009, 601); Order of the Minister of Agriculture, Nature and Food Safety of 15 December 2009, amending the implementation regulation Fertiliser Act (Staatscourant Koninkrijk der Nederlanden, 30 December 2009, 20342).

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