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COMMISSION DECISION

of 5 April 2005

concerning a request for derogation under point 2(b) of Annex III to and Article 9 of Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources

(notified under document number C(2005) 1032)

(Only the Danish text is authentic)

(2005/294/EC)

(OJ L 94, 13.4.2005, p. 34)

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(2005/294/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 point 2(b) of Annex III thereof,

Whereas:

(1) The amount of manure that a Member state intends to apply per hectare each year, which is different from the one specified in point 2 of Annex III and point (a) of Annex III of Directive 91/676/EEC, must be fixed so as not to prejudice the achievement of the objectives specified in Article 1 of that Directive and must 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 18 November 2002, the Commission adopted Decision 2002/915/EC ([2]) concerning a request for derogation under point 2(b) of Annex III to and Article 9 of Directive 91/676/EEC. The derogation was applicable within the framework of the Danish action programme adopted for the year 1999 to 2003 and valid until 1 August 2004. It allowed the application of livestock manure containing up to 230 kg of nitrogen per hectare per year on specific cattle holdings.

(3) On 8 January 2004, Denmark requested an extension of the derogation. This request was completed by technical documents dated 2 February 2004, 2 April 2004, 23 April 2004, 14 June 2004, 2 August 2004, 14 September 2004 and 4 October 2004.

(4) Danish legislation transposing Directive 91/676/EEC can be considered to be in compliance with Directive and its provisions apply equally to the notified derogation.

(5) In December 2003 Denmark completed the evaluation of its second Action Plan on the Aquatic Environment which indicated the achievement of the reduction target for nitrate leaching of 48 % in the period 1985 to 2003.

(6) The Danish Parliamentary agreement on the third Danish Action Plan on the Aquatic Environment 2005 to 2015 set the objectives for a further reduction of nitrate leaching by 13 % in the period 2005 to 2015 and for a reduction of the phosphate surplus by 50 %.

(7) In conformity with Article 5 of Directive 91/676/EEC, Denmark has set action programmes that will ensure compliance with the

([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).

([2]) OJ L 319, 23.11.2002, p. 24.

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objective of a maximum of 50 mg/l of nitrates in groundwater as set out in that Directive.

(8) Results of monitoring and controls show that, in period 2002 to 2003, 1 845 cattle holdings, 213 617 livestock units and 123 068 hectares, corresponding respectively to 4 %, 11 % and 5 % of the total in Denmark, were encompassed by the derogation, set in Decision 2002/915/EC.

(9) Calculations on nitrate leaching based on survey and nutrient analysis in agricultural catchments, in reference sites on sandy and clay soils, show that, in the period 1990 to 2003, nitrate leaching has been reduced by 42 % in loamy soils and by 52 % in sandy soils. This reduction is confirmed for 2002/2003.

(10) Trend analysis of measured nitrate concentration in water leaving the root zones shows that it has decreased steadily and is now approaching 50 mg/l, with a yearly decrease of 3,1 and 6,1 mg/l respectively for loamy and sandy soils. Nitrate concentration in streams in agricultural catchments decreased by 29 % in the period 1990 to 2003. In 2003, nitrate average concentration in upper groundwater was below 50 mg/l, both in sandy and loamy soils.

(11) The Commission, after examination of Denmark's request and, more in particular, in the light of the experience gained from the derogation as provided in Decision 2002/915/EC, considers that the amount of manure envisaged by Denmark, 230 kg of nitrogen per hectare per year, will not prejudice the achievement of the objectives of Directive 91/676/EEC, if certain strict conditions are met.

(12) This Decision is applicable in connection with the framework of the Danish action programme adopted for the years 2004 to 2007.

(13) Decision 2002/915/EC expired on 1 August 2004. In view of the experience gained under that Decision and for the purpose of ensuring that the cattle farmers concerned may continue to benefit from derogation, it is appropriate that the present Decision shall apply from 2 August 2004.

(14) 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

Denmark's request submitted by letter of 8 January 2004 asking the Commission to allow derogation under point 2(b) of Annex III to Directive 91/676/EEC is approved, subject to the conditions laid down hereunder.

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) 'grass' means permanent or temporary grassland (generally temporary lies less than four years),

(c) 'crops being undersown by grass': silage cereals, silage maize and/or spring barley, to be undersown before (maize) or after

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harvest, by grass which will act as a catch crop, for biological retention of nitrogen residual during winter,

(d) 'beets' means forage beets.

Article 3

Scope

This derogation applies on an individual basis and under the conditions prescribed in Articles 4 to 6 to cattle farms where the crop rotation includes more than 70 % of particularly nitrogen consuming crops, with a long growing season.

Article 4

Annual authorisation and commitment

1. Cattle farmers shall submit an application for derogation to the competent authorities annually.

2. Together with that annual application, they shall undertake in writing to fulfil the conditions provided for in Articles 5 and 6.

Article 5

Application of manure and other fertilisers

The amount of livestock manure applied to the land each year on cattle farms, including by the animals themselves, shall not exceed the amount of manure containing 230 kg of nitrogen, under the following conditions:

(a) the total nitrogen inputs must comply with the nutrient demand of the considered crop and the supply from the soil, the fertilisation rate being fixed 10 % under optimal economic level;

(b) a fertilisation plan and account must be kept for each farm. A plan describing the crop rotation and covering the period 1 August to 31 March the following year must be available to the authorities by 1 September at the latest. By 21 April such plans covering the whole of the period must be completed with information on expected application of manure and nitrogen fertilisers and must be available to the authorities. Crop rotation plans must specify grass, grass catch crops or beet and other crops being undersown by grass. Fertilisation plans must include the estimated need for nitrogen and phosphorous application, and nitrogen application shall be fixed 10 % below the economic optimum. It also must specify the nature of fertiliser to be used (e.g. livestock manure, waste products, chemical fertiliser) and contain a sketch map indicating location of individual fields. Plans must be revised no later than seven days following any changes in agricultural practices to ensure consistency between plans and actual agricultural practices. A fertilisation account must be annually submitted to the competent authority. These regulations must be encompassed in statutory orders;

(c) each cattle farm must submit, together with its annual application, the fertilisation account and accept that they can be subject to random control;

(d) periodic nitrogen and phosphorous analysis in soil will be done by each cattle farmer who is granted derogation for accurate fertilisation (at least every three years per 5 ha of land);

(e) no manure will be spread in the autumn before a grass cultivation, and the ploughing will be followed by a high nitrogen demanding crop.

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Article 6

Land cover

1. 70 % or more of the acreage available for manure application on the cattle holding in question shall be cultivated with grass, grass catch crops or beets and other crops being undersown by grass with low nitrate leaching potential.

2. Grass catch crops shall not be ploughed before 1 March in order to ensure permanent vegetal cover of arable area for recovering subsoil autumn losses of nitrates and limit winter losses.

3. Temporary grasslands shall be ploughed in spring.

4. 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 barley/pea undersown with grass.

Article 7

Monitoring

1. Two maps, showing the percentage of cattle farms and percentage of agricultural land encompassed by the derogation in each municipality of Denmark, shall be updated every year, and transmitted to the Commission. The first submission will take place in the last quarter of 2005.

2. Survey and continuous nutrient analysis shall be carried out in the agricultural catchment national monitoring programme covering approximately 4 500 ha. The reference sites shall be chosen on sandy and clay soils.

3. Survey and continuous nutrient analysis shall provide data on local land use, crop rotations and practices on cattle farms. These data can be used for model-based calculations of the magnitude of nitrate leaching from fields where up to 230 kg of nitrogen per hectare per year in livestock manure is applied based on scientific principles.

4. In order to prove that the derogation will not jeopardise the objective of the national action programme and the Directive, a network of sampling of soil water, streams and of shallow groundwater established as agricultural catchment monitoring sites under the national monitoring programme shall be maintained to provide data on state of nitrate content in water leaving the root zone and entering the groundwater system.

Article 8

Reporting

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1. The results of the monitoring shall be transmitted every year to the Commission, with a concise report on evaluation practice (controls at cattle farm level) and water quality evolution (based on root zone leaching monitoring, surface/ground water quality and model-based calculations).

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2. The results thus obtained will be taken into consideration by the Commission with regard to an eventual new request for derogation by the Danish authorities, to be assessed in the framework of the procedure of Article 9 of Directive 91/676/EEC.

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Article 9

Validity

This derogation shall apply from 2 August 2004. It shall expire on ►M1 31 July 2012 ◄.

Article 10

This Decision is addressed to the Kingdom of Denmark.