COMMISSION

COMMISSION DECISION

of 28 February 2006

granting a derogation requested by Austria 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(2006) 590)

(Only the German text is authentic)

(2006/189/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) Austria submitted to the Commission a request for a derogation under the third subparagraph of paragraph 2 of Annex III to Directive 91/676/EEC.

(3) The requested derogation concerns the intention of Austria to allow the application of 230 kg nitrogen per hectare per year from livestock manure on specific cattle holdings with agricultural land available for manure application cropped by grass, grass catch crops or beet or other crops being undersown by grass with low nitrate leaching potential. Approximately 2 000 farms and 60 000 livestock units corresponding respectively to 3 % of farms and 4 % of livestock units are potentially encompassed by the derogation.

(4) The Austrian legislation implementing Directive 91/676/EEC has been adopted and applies equally to the requested derogation.

(5) The Third Report on the implementation of the Nitrates Directive 2000-2003 in Austria shows that the average winter nitrate concentrations in surface waters were below 25 mg/l at all monitoring points. The average concentration of all sites was 5,8 mg/l NO_3. Average nitrate concentration in groundwater was 19,6 mg/l. In 74 % of the sites the average concentration was lower than 25 mg/l. None of the Austrian lakes is euthrophic. Trend analysis shows that water quality is stable in the majority of the sampling points.

(6) The number of livestock and the utilisation of mineral fertiliser decreased substantially in the period 1990-2003, with a reduction of 21 % in cattle, 12 % in pig and 6 % in poultry number. In the period 2000-2002 nitrogen application was on average, respectively 47,8 kg per hectare and 35,4 kg per hectare per year from livestock manure and from chemical fertilisers, which represent among the lowest figures in the EU, with a trend towards reduction respectively of 7 % and 5 % compared to the period 1996/1999.

(7) Austria, in conformity with Article 3(5) of Directive 91/676/EEC, applies an action programme throughout its whole territory.

(8) The supporting documents presented in the Austrian notification show that the proposed amount of 230 kg per hectare per year of nitrogen from cattle manure is justified on the basis of objective criteria such as long growing seasons and crops with high nitrogen uptake.

(9) The Commission after examination of Austrian's request considers that the proposed amount of 230 kg per hectare per year nitrogen from cattle manure will not prejudice the achievement of the objectives of Directive 91/676/EEC, subject to certain strict conditions being met.

[1] OJ L 375, 31.12.1991, p. 1. Directive as last amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

(10) This Decision should be applicable in connection with the present action programme expiring by the end of 2007.

(11) 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 Austria by letter of 3 November 2005, 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) '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 to be undersown before (maize) or after 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 Decision applies on an individual basis and subject to the conditions set out in Articles 4, 5 and 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. 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.

Article 5

Application of manure and other fertilisers

1. 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 per hectare, subject to the conditions laid down in paragraphs 2 to 8.

2. The total nitrogen inputs shall comply with the nutrient demand of the considered crop and the supply from the soil. Total nitrogen application from fertilisers shall not exceed 280 kg per hectare per year.

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 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 outside the farm land;

(f) nitrogen and phosphorus application from manure over each field (parcels of the farm homogeneous regarding cropping and soil type);

(g) 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 shall be prepared by each farm. They shall be submitted to the competent authority for each calendar year.

5. Each farm benefiting from an individual 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. Periodic nitrogen and phosphorous analysis in soil shall be performed for each farm which benefits from an individual derogation 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 every five hectares of land shall be required.

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

8. Fertiliser shall not be applied to land within 30 m of a lake.

Article 6

Land cover

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. Farmers benefiting from an individual derogation shall carry out the following measures:

(a) 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.

(b) Temporary grassland shall be ploughed in spring.

(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 barley and pea undersown with grass.

Article 7

Monitoring

1. Maps showing the percentage of 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.

2. A monitoring network for sampling of surface and shallow groundwater shall be established and maintained to assess the impact of derogation on water quality. The existing monitoring network shall be reinforced in the districts with 3 % or more of farms benefiting from individual derogations over the total number of farms.

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 230 kg nitrogen per hectare per year from livestock manure is applied.

4. Monitoring sites shall be established to provide data on nitrogen in water leaving the root zone and entering the groundwater system and on nitrogen losses by surface and subsurface runoff, both under derogation and non derogation conditions.

Article 8

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.

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

Article 9

Application

This Decision shall apply in the context of the Third Austrian Action programme 2004-2007. It shall expire on 31 December 2007.

Article 10

This Decision is addressed to the Republic of Austria.

Done at Brussels, 28 February 2006.

For the Commission

Stavros DIMAS

Member of the Commission