COMMISSION DECISION

of 21 December 2007

granting a derogation requested by Belgium with regard to the region of Flanders 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) 6654)

(Only the Dutch version is authentic)

(2008/64/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) Belgium submitted to the Commission a request for a derogation under the third subparagraph of paragraph 2 of Annex III to Directive 91/676/EEC referred to the region of Flanders.

(3) The requested derogation concerns the intention of Belgium to allow the application in Flanders, in specific holdings, of up to 250 kg nitrogen per hectare per year from livestock manure in parcels cultivated with grassland and maize undersown with grassland and up to 200 kg nitrogen per hectare per year from livestock manure in parcels cultivated with winter wheat followed by a catch crop and with beet.

(4) The legislation implementing Directive 91/676/EEC for the region of Flanders, the 'Decree for the protection of water against pollution by nitrates from agricultural sources' (Manure Decree) has been adopted on 22 December 2006 [2] and applies equally to the requested derogation.

(5) The Manure Decree applies through the whole territory of Flanders.

(6) The legislation implementing Directive 91/676/EEC includes limits for the application of both nitrogen and phosphorus. Phosphorus application with chemical fertilisers, as a rule, is prohibited unless soil analysis is performed and a permit is issued by the competent authority.

(7) Water quality data submitted show a downwards trend in average groundwater nitrates concentration and in average nutrient concentration, including phosphorus, in surface waters.

(8) The application of nitrogen from livestock manure decreased, in the period 1997-2005, from 162 million kg to 122 million kg and the application of phosphorus (P_2O_5) from livestock manure decreased, in the same period, from 72 million kg to 50 million kg, both as effect of decrease in livestock numbers, low nutrient feeding and manure processing. The use of nitrogen and phosphorus from chemical fertilisers decreased respectively by 44 % and by 82 % since 1991 and it is now corresponding to 57 kg per hectare nitrogen and 6 kg per hectare phosphate.

(9) The supporting documents presented in the notification show that the proposed amount of respectively 250 kg and 200 kg per hectare per year nitrogen from livestock manure is justified on the basis of objective criteria such as long growing seasons and crops with high nitrogen uptake.

(10) The Commission after examination of the request considers that the proposed amounts of respectively 250 kg and 200 kg per hectare per year of nitrogen from livestock 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 amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

[2] Belgisch Staatsblad of 29.12.2006 p. 76368.

(11) In order to avoid that the application of the requested derogation leads to intensification of livestock rearing, the competent authorities should ensure the limitation of the number of livestock which can be kept in each farm (nutrient emission rights) in the region of Flanders according to the provisions set out in the Manure Decree of 22 December 2006.

(12) This Decision should be applicable in connection with the second action programme in force for the region of Flanders for the period 2007 to 2010 (Manure Decree of 22 December 2006).

(13) 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 Belgium by letter of 5 October 2007, with regard to the region of Flanders, 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) 'farms' means holdings with or without livestock rearing;

(b) 'parcel' means an individual field or a group of fields, homogeneous regarding cropping, soil type and fertilisation practices;

(c) 'grassland' means permanent or temporary grassland (generally temporary lies less than four years);

(d) 'crops with high nitrogen demand and long growing season' means grassland, maize undersown, before or after harvest, with grass mowed and removed from the field acting as a catch crop, winter wheat followed by a catch crop, sugar or fodder beets;

(e) 'grazing livestock' means cattle (with the exclusion of veal calves), sheep, goats and horses;

(f) 'manure treatment' means the process of physical-mechanical separation of pig manure into two fractions, a solid and a clarified fraction, performed in order to improve land application and enhance nitrogen and phosphorus recovery;

(g) 'soil profile' means the soil layer below ground level to a depth of 0,90 m, unless the average highest groundwater level is shallower; in this latter case it shall be to a depth of the average highest groundwater level.

Article 3

Scope

This Decision applies on an individual basis to specified parcels of a farm, cultivated with crops with high nitrogen demand and long growing season and subject to the conditions set out in Articles 4, 5, 6 and 7.

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, 6 and 7.

3. The competent authorities shall ensure that all the applications for derogation are subject to administrative control. Where the control carried out by the competent authorities of the applications referred to in paragraph 1 demonstrates that the conditions provided for in Articles 5, 6 and 7 are not fulfilled, the applicant shall be informed thereof and the application shall be considered to be refused.

Article 5

Manure treatment

1. Manure treatment shall achieve, at least, an efficiency of removal of suspended solid, total nitrogen and total phosphorus in the solid fraction respectively of 80 %, 35 % and 70 %. Efficiency of removal in the solid fraction shall be evaluated through mass balance.

2. The solid fraction resulting from manure treatment shall be delivered to authorised installations for recycling with the aim of reducing odours and other emissions, improving agronomic and hygienic properties, facilitating handling and enhancing recovery of nitrogen and phosphate. The recycled product shall not be applied to agricultural land located in the region of Flanders except for parks, greeneries and private gardens.

3. The clarified fraction resulting from manure treatment shall be removed to storage. To qualify as treated manure, it shall have a minimum nitrogen to phosphate ratio (N/P_2O_5) of 3,3 and a minimum nitrogen concentration of 3 g per litre.

4. Farmers who carry out manure treatment shall submit each year to the competent authorities the data related to the amount of manure sent to treatment, the amount and the destination of the solid fraction and of the treated manure and their contents of nitrogen and phosphorus.

5. The competent authorities shall establish and submit to the Commission the methodologies to assess the composition of treated manure, the variations in composition and treatment efficiency for each farm benefiting from individual derogation.

6. Ammonia and other emissions from manure treatment shall be collected and treated so as to reduce environmental impact and nuisance.

Article 6

Application of manure and other fertilisers

1. The amount of grazing livestock manure and treated manure applied to land each year, including by the animals themselves shall not exceed the amount of manure set out in paragraph 2, subject to the conditions laid down in paragraphs 3 to 11.

2. The amount of grazing livestock manure and treated manure shall not exceed 250 kg of nitrogen per hectare per year on parcels cultivated with grassland and maize undersown with grassland and 200 kg of nitrogen per hectare per year on parcels cultivated with winter wheat followed by a catch crop and with beets.

3. The total nitrogen input shall comply with the nutrient demand of the considered crop and take into account the supply from the soil and the increased manure nitrogen availability due to treatment. It shall not exceed, in any case, 350 kg per hectare per year on parcels cultivated with grassland, 220 kg per hectare per year on parcels cultivated with sugar beet, 275 kg per hectare per year on parcels cultivated with winter wheat followed by a catch crop, fodder beet and maize undersown with grass, with the exception, in this latter case, of parcels on sandy soils, for which nitrogen application shall not exceed 260 kg per hectare per year.

4. A fertilisation plan shall be kept for each farm, for its whole acreage, describing the crop rotation and planned application of manure and nitrogen and phosphate fertilisers. It shall be available in the farm each calendar year by 15 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 and phosphorus produced in the farm;

(c) the description of manure treatment and expected characteristics of treated manure;

(d) the amount, type and characteristics of manure delivered outside the farm or in the farm;

(e) a calculation of manure nitrogen and phosphorus to be applied in the farm;

(f) the crop rotation and acreage of parcels with crops with high nitrogen demand and long growing season and parcels with other crops, including a sketch map indicating location of individual parcels;

(g) the foreseeable nitrogen and phosphorus crop requirements for each parcel;

(h) nitrogen and phosphorus application from manure over each parcel;

(i) application of nitrogen and phosphorus with chemical and other fertilisers over each parcel.

Plans shall be revised no later than seven days following any change in agricultural practices to ensure consistency between plans and actual agricultural practices.

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

6. 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.

7. Nitrogen and phosphorous analysis in soil shall be performed for each farm at least once every four years for each parcel. At least one analysis every 5 hectares of farmland shall be required.

8. Nitrate concentration in soil profile shall be measured every year in autumn on at least 25 % of the farms benefiting from derogation. Soil sampling and analysis shall cover at least 5 % of the parcels cultivated with crops with high nitrogen demand and long growing season and at least 1 % of the other parcels. At least three samples representing three different soil layers shall be required every 2 hectares of farmland.

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

10. At least two thirds of the amount of nitrogen from manure, excluding nitrogen from manure from grazing livestock, shall be applied before 15 May each year.

11. Nitrogen and phosphorus excretion factors for cattle established in paragraph 1 of Article 27 of the Flemish Manure Decree of 22 December 2006 shall apply from the first year of validity of this Decision.

Article 7

Land management

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

(a) grassland shall be ploughed in spring;

(b) grassland shall not include leguminous or other plants fixing atmospheric nitrogen;

(c) ploughed grass shall be followed immediately by a crop with high nitrogen demand and fertilisers shall not be applied in the year of ploughing of permanent grassland;

(d) catch crops shall be seeded immediately after harvest of winter wheat and no later than 10 September;

(e) catch crops shall not be ploughed before 15 February in order to ensure permanent vegetal cover of the arable area for recovering subsoil autumn losses of nitrates and limit winter losses.

Article 8

Other measures

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

2. The competent authorities shall ensure that derogations granted for the application of treated manure are compatible with the capacity of authorized installations for processing of the solid fraction.

Article 9

Measures on manure production and transport

1. The competent authorities shall ensure respect of the limitation of the number of livestock which can be kept in each farm (nutrient emission rights) in the region of Flanders according to the provisions set out in the Manure Decree of 22 December 2006.

2. The competent authorities shall ensure that manure transport from accredited transporters classified in categories A 2ºb, A 5º, A 6º, B and C according to articles 4 and 5 of the Flemish Ministerial Decree of 19 July 2007 [1] is recorded through geographic positioning systems.

3. The competent authorities shall ensure that manure composition with regard to nitrogen and phosphorus concentration is assessed before each transport. Manure samples shall be analysed by recognised laboratories and results of the analysis shall be communicated to the competent authorities and to the receiving farmer.

Article 10

Monitoring

1. Maps showing the percentage of farms, number of parcels, percentage of livestock and percentage of agricultural land covered by individual derogation for 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 by February 2008.

2. A monitoring network for sampling of surface and shallow groundwater shall be established and maintained to assess the impact of the derogation on water quality.

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 parcels where up to 200 kg nitrogen per hectare per year and 250 kg nitrogen per hectare per year from manure from grazing livestock and treated manure are applied according to Article 6(2).

[1] Belgisch Staatsblad of 31.8.2007 p. 45564.

4. Monitoring sites, corresponding to at least 150 farms, shall be established in order to provide data on nitrogen and phosphorus concentration in soil water, on mineral nitrogen in soil profile and corresponding nitrogen and phosphorus losses through the root zone into groundwater, as well as on nitrogen and phosphorus losses by surface and subsurface run-off, both under derogation and non derogation conditions. The monitoring sites shall be representative of each soil type (clay, loamy, sandy and loessial soils), fertilisation practices and crops. The composition of the monitoring network shall not be modified during the period of applicability of this decision.

5. A reinforced monitoring shall be conducted in agricultural catchments on sandy soils.

Article 11

Controls

1. The competent authorities 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 nitrogen per hectare per year from livestock manure, with nitrogen and phosphorus maximum fertilisation rates, conditions on land use and on manure treatment and transport.

2. The competent authorities shall ensure the control of the results of analysis with regards to nitrate concentration in soil profile in the autumn. Where controls show that the threshold of 90 kg nitrogen per hectare or the lower values established by the Flemish Government according to paragraph 1 of Article 14 of the Flemish Manure Decree of 22 December 2006 is exceeded in a specific parcel, the farmer shall be informed and the parcel excluded from derogation in the following year.

3. The competent authorities shall ensure on-the-spot controls of at least 1 % of manure transport operations, based on risk assessment and results of administrative controls referred to in paragraph 1. Controls shall include, at least, verification of the fulfilment of the obligations on accreditation, assessment of accompanying documents, verification of manure origin and destination and sampling of transported manure. Manure sampling can be carried out, where appropriate using automatic manure samplers installed on the vehicles, during loading operations. Manure samples shall be analysed by laboratories recognised by the competent authorities and results of the analysis shall be communicated to the delivering and to the receiving farmer.

4. 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 application of legislation implementing Directive 91/676/EEC. The field inspections shall cover at least 5 % of the farms benefiting from an individual derogation in respect to the conditions set out in Articles 5, 6 and 7.

Article 12

Reporting

1. The competent authority shall submit the results of the monitoring every year to the Commission, with a report on water quality evolution, evaluation of nitrate residue in soil profile in autumn for the different crops in farms benefiting from a derogation and evaluation practice. It shall illustrate how the evaluation of the implementation of the derogation conditions is carried on through controls at farm and parcel level and include information on non compliant farms based on the results of administrative and field inspections.

2. The report shall also include information on manure treatment, including further processing and utilisation of the solid fractions, and provide detailed data on characteristic of treatments systems, their efficiency and composition of treated manure.

3. In addition to the data referred to in paragraphs 1 and 2 the report shall include data related to fertilisation in all farms which benefit from individual derogation, trends in manure production in the region of Flanders, as far as nitrogen and phosphorus are concerned, results of administrative and field controls on manure transport and results of controls on nutrient balances at farm level for calculation of excretion coefficients for pig and poultry.

4. The first report shall be transmitted by December 2008 and subsequently every year by July.

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

Article 13

Application

This Decision shall apply in the context of the action programme 2007 to 2010 for the Region of Flanders (Manure Decree of 22 December 2006) and shall expire on 31 December 2010.

Article 14

This Decision is addressed to the Kingdom of Belgium.

Done at Brussels, 21 December 2007.

For the Commission
Stavros DIMAS
Member of the Commission