COMMISSION IMPLEMENTING DECISION

of 23 October 2012

on granting a derogation requested by the Kingdom of Denmark pursuant to Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources

(notified under document C(2012) 7182)

(Only the Danish text is authentic)

(2012/659/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 those specified 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, that amount is to be fixed so as not to prejudice the achievement of the objectives specified in Article 1 of that Directive and it has to be justified on the basis of objective criteria, such as long growing seasons and crops with high nitrogen uptake.

(2) On 18 November 2002, the Commission adopted Decision 2002/915/EC [2] granting a derogation requested by Denmark pursuant to Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources, allowing the application of livestock manure containing up to 230 kg nitrogen per hectare per year on specific cattle holdings within the framework of the Danish action programme 1999-2003. The derogation was extended by Commission Decision 2005/294/EC [3] in connection with the Danish action programme 2004-2007 and by Commission Decision 2008/664/EC [4] in connection with the Danish action programme 2008-2012.

(3) The derogation granted by Decision 2008/664/EC concerned approximately (for the year 2009/2010) 1 507 cattle holdings, 299 901 livestock units and 134 698 hectare of arable land, corresponding respectively to 3,3 %, 12,5 % and 6,1 % of the total in Denmark.

(4) On 20 June 2012, Denmark submitted to the Commission a request for renewal of the derogation under the third subparagraph of paragraph 2 of Annex III to Directive 91/676/EEC.

(5) Denmark has established an action programme for the period 2012-2015, in conformity with Article 5 of Directive 91/676/EEC, by means of Order on commercial livestock, livestock manure, silage, etc. (the livestock manure notice) No 764 of 28 June 2012, Consolidated Act on farms' use of fertiliser and on plant cover No 415 of 3 May 2011 and Order on farms' use of fertiliser and on plant cover No 845 of 12 July 2011, which applies to the whole Danish territory.

(6) Monitoring data show that for groundwater, 82 % of monitoring sites have mean nitrate concentrations below 50 mg/l, and 67 % below 25 mg/l. For water courses, 99 % of monitoring sites have mean nitrate concentrations below 50 mg/l and 76 % of monitoring sites below 25 mg/l.

(7) The Commission, after examination of Denmark's request and in the light of the experience gained from the derogation as provided in Decisions 2002/915/EC, 2005/294/EC and 2008/664/EC considers that the amount of manure envisaged by Denmark, 230 kg nitrogen per hectare per year, will not prejudice the achievement of the objectives of Directive 91/676/EEC, subject to certain strict conditions being met.

(8) Decision 2008/664/EC expired on 31 July 2012. For the purpose of ensuring that the cattle farmers concerned may continue to benefit from the derogation, it is appropriate to extend the validity of Decision 2008/664/EC.

(9) The articles 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 the Kingdom of Denmark by letter of 20 June 2012, 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:

[1] OJ L 375, 31.12.1991, p. 1.
[2] OJ L 319, 23.11.2002, p. 24.
[3] OJ L 94, 13.4.2005, p. 34.
[4] OJ L 217, 13.8.2008, p. 16.

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

(d) 'beets' means forage beets;

(e) 'crops with high nitrogen uptake and long growing season' means grass, grass catch crops or beets and other crops being undersown by grass;

(f) '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;

(g) 'plough layer' is the upper 30 cm of farmland where the soil analysis shall be done for accurate fertilisation.

Article 3

Scope

This derogation applies on an individual basis and under the conditions prescribed in Articles 4 to 6 of this Decision to cattle farms where the crop rotation includes more than 70 % of crops with high nitrogen uptake and 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 of this Decision.

Article 5

Application of manure and other fertilisers

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

(1) the total nitrogen inputs must comply with the nutrient uptake of the considered crop, considering the nitrogen supply from the soil. It shall not exceed for all crops, in any case, the maximum application standards for nitrogen, as established in the action programme. The nitrogen maximum application standards shall be fixed at least 10 % below economic optimum.

(2) each cattle farm benefiting from an individual derogation must prepare, for its whole acreage, a fertilisation plan, to be kept on farm. It shall cover the period 1 August to 31 July the following year. The fertilisation plan shall include the following:

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

(b) the number of livestock, a description of the housing and storage system, including the volume of manure storage available;

(c) a calculation of manure nitrogen and phosphorus produced on the farm;

(d) the description of manure treatment, if present, and expected characteristics of treated manure;

(e) the amount, type and characteristics of manure delivered outside the farm or to the farm;

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

(g) a calculation of nitrogen and phosphorus application from manure for each parcel;

(h) a calculation of nitrogen and phosphorus application from chemical and other fertilisers for each parcel;

(i) the indication of the time of application of manure and chemical fertilisers.

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

(3) each cattle farm benefiting from an individual derogation shall submit the fertilisation account to the competent authorities, including applied amounts of manure and nitrogen fertilisers, by end of March each year;

(4) periodic nitrogen and phosphorus analysis in the plough layer shall be done by each cattle farm benefiting from an individual derogation for accurate fertilisation. Sampling and analysis must be carried out 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 per five hectares of farmland shall be carried out. Results of nitrogen and phosphorus analysis in the plough layer shall be available at the cattle farm benefiting from derogation;

(5) livestock manure shall not be spread in the autumn before grass cultivation.

Article 6

Land management

1. 70 % or more of the acreage available for manure application on a cattle farm benefiting from an individual derogation shall be cultivated with crops with high nitrogen uptake and long growing season.

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 and the ploughing will be followed by a crop with high nitrogen uptake.

4. Crop rotation shall not include leguminous or other plants fixing atmospheric nitrogen. This will however not apply to clover or alfalfa in grassland with less than 50 % clover or alfalfa and to barley/pea undersown with grass.

Article 7

Monitoring

1. The competent authority shall ensure that maps showing the percentage of cattle farms, percentage of livestock and percentage of agricultural land covered by individual derogations for each municipality are drawn up and updated every year.

2. In order to ascertain that the derogation will not jeopardise the objective of Directive 91/676/EEC, monitoring shall be done in root zone water, surface waters and groundwater, in order to provide data on nitrogen and phosphorus in the soil profile and nitrates concentrations in surface and groundwater, both under derogation and non-derogation conditions. Monitoring shall be carried out at farm field scale in the agricultural catchment national monitoring programme. The monitoring sites shall include main soil types, fertilisation practices and crops.

3. Surveys and continuous nutrient analysis shall be carried out in the agricultural catchment national monitoring programme and shall provide data on local land use, crop rotations and agricultural practices on cattle farms benefiting from an individual derogation. Collected information and data from nutrient analysis as referred to in Article 5 of this Decision and monitoring as referred to in Article 7(2) of this Decision shall be used for model-based calculations of the magnitude of nitrogen and phosphorus losses from cattle farms benefiting from an individual derogation based on scientific principles.

4. The competent authorities shall quantify the percentage of land under derogation covered by clover or alfalfa in grassland and by barley/pea undersown with grass.

Article 8

Controls

1. The competent authorities shall ensure that all the applications for derogation are submitted to administrative control. Where the control 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 refused.

2. A programme of 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 inspections shall consist of field inspections and on-the-spot control and cover annually at least 5 % of the farms benefiting from an individual derogation in respect to the conditions set out in Articles 5 and 6 of this Decision. Where verification indicates non-compliance, the farmer shall be fined according to the national system and the request for derogation the next year shall be refused.

3. The competent authorities shall be granted the necessary powers and means to verify compliance with the conditions of the derogation granted under this Decision.

Article 9

Reporting

The competent authorities shall submit every year by December and for 2016 by June a report containing the following information:

(a) maps showing the percentage of cattle farms, percentage of livestock, percentage of agricultural land covered by individual derogations for each municipality, as well as maps on local land use, referred to in Article 7(1) of this Decision;

(b) the results of ground and surface water monitoring, as regards nitrates and phosphorus concentrations, including information on water quality trends, both under derogation and non-derogation conditions, as well as the impact of derogation on water quality, as referred to in Article 7(2) of this Decision;

(c) the results of soil monitoring as regards nitrogen and phosphorus concentrations in the root zone water, both under derogation and non-derogation conditions, as referred to in Article 7(2) of this Decision;

(d) results of the surveys on local land use, crop rotations and agricultural practices, referred to in Article 7(3) of this Decision;

(e) results of model-based calculations of the magnitude of nitrogen and phosphorus losses from farms benefiting from an individual derogation, referred to in Article 7(3) of this Decision;

(f) tables showing the percentage of agricultural land under derogation covered by clover or alfalfa in grassland and by barley/pea undersown with grass, referred to in Article 7(4) of this Decision;

(g) evaluation of the implementation of the derogation conditions, on the basis of controls at farm level and information on non-compliant farms, on the basis of the results of the administrative and field inspections, referred to in Article 8(1) and 8(2) of this Decision.

Article 10

This derogation shall apply from 1 August 2012. It shall expire on 31 July 2016.

Article 11

This Decision is addressed to the Kingdom of Denmark.

Done at Brussels, 23 October 2012.

For the Commission

Janez POTOČNIK

Member of the Commission