DECISIONS

COMMISSION DECISION

of 16 September 2013

on the compensations under the manure decree C 75/98 (ex NN 45/98) implemented by Belgium (Flanders)

(notified under document C(2013) 5818)

(Only the Dutch and the French texts are authentic)

(2013/530/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union (TFEU), and in particular the first subparagraph of Article 108(2) thereof,

Having called on interested parties to submit their comments [1],

Whereas:

I. PROCEDURE

(1) Following receipt of a complaint that the Flemish Government was paying illegal aids to farmers in respect of their use of fertilisers and manure (hereinafter 'the measure'), the services of the European Commission, by letter of 4 February 1998, requested the Belgian authorities to supply information about the implementation of the decision of 20 December 1995 of the Flemish Government on compensation payable to farmers for obligations under the legislation on fertilisers (hereinafter 'manure decree').

(2) The Commission received this information by a letter of the Flemish Minister for the Environment and Employment of 18 March 1998, and by a letter from the Permanent Representation of Belgium of 31 March 1998.

(3) A meeting between the representatives of the competent Belgian authorities and the services of the European Commission took place on 15 April 1998.

(4) By telex of 10 July 1998 the Commission requested additional information from the Belgian authorities to which an answer from the Belgian authorities was received by letter of 7 August 1998, registered on 10 August 1998.

(5) According to information from the Belgian authorities, payments have been made in 1996. Still, the measure had not been notified to the Commission in accordance with Article 93(3) EC (now Article 108(3) TFEU). For this reason, the file was entered in the register of non-notified aids under the number NN 45/98. However, although the scheme was in force in the years 1996 and 1997 the Commission noted the undertaking of the Belgian authorities in their letter of 7 August 1998 not to pay aid for 1997 until the Commission had reached a decision on the compatibility of the aid with the common market. The Belgian authorities informed the Commission that it was the Flemish Government's intention to incorporate this compensation scheme into the Flemish aid programme under Council Regulation (EEC) No 2078/92 [2].

(6) By letter dated 21 January 1999, the Commission informed Belgium that it had decided to initiate the procedure laid down in Article 108(2) TFEU in respect of the measure.

(7) The Commission decision to initiate the procedure was published on 17 April 1999 in the Official Journal [3].

(8) The Commission invited interested parties to submit their comments on the measure.

(9) The Commission received no comments from interested parties.

(10) Notifications concerning other Flemish manure cases (C12/1999, N105/1999, N311/99) were withdrawn by the Belgian authorities.

[1] Invitation to submit comments pursuant to Article 93(2) of the EC Treaty, concerning the aid/measure C 75/98 (ex NN 45/98) – Belgium (Flanders) – Compensations under the manure decree, OJ C 108, 17.4.1999, p. 12.

[2] Council Regulation (EEC) No 2078/92 of 30 June 1992 on agricultural production methods compatible with the requirements of the protection of the environment and the maintenance of the countryside OJ L 215, 30.7.1992, p. 85.

[3] Cited above in footnote 1.

(11) On 6 March 2012 the Commission received a complaint from a farmer on the payment of compensation for 1996 pursuant to the manure decree. In a meeting between the representatives of the Belgian (Flemish) authorities and the services of the European Commission on 16 April 2012, the Commission asked the Belgian authorities to submit their views on the complaint.

(12) The European Commission asked for additional information on 9 November 2012. The Belgian authorities replied by letter of 14 January 2013.

II. **DETAILED DESCRIPTION OF THE AID**

1. TITLE

(13) Compensation under the manure decree.

2. BUDGET

(14) The total budget for the measure for 1996 was BEF (Belgian francs) 427 511 868 broken down as follows:

(a) compensation for reduced yield

— grassland BEF 250 279 282

— maize BEF 50 102 650

(b) compensation for manure disposal costs BEF 65 486 397

(c) compensation for manure storage costs BEF 34 276 829

(d) compensation for purchase of additional fertiliser BEF 27 366 710

Duration

(15) Compensation under the manure decree was paid out for the year 1996.

Beneficiaries

(16) In accordance with the manure decree, compensation is payable to farmers whose undertaking lies, in whole or in part, within a water zone or a nature zone. This applies to 7,502 out of a total of 40,673 undertakings with arable land or livestock in Flanders (18,5 %). In terms of area, of a total of 649,223 ha under arable land or livestock, 47,948 ha (7,5 %) fall within a water zone and 21,919 ha (3 %) fall within a nature zone.

Objective

(17) The objective of the aid scheme is to allow farmers with land in environmentally sensitive areas to be able to adapt to the more stringent standards on manure use, and to compensate for the economic loss suffered by those farmers. The aid is calculated on the basis of income lost, having regard to normal agricultural practice outside of these sensitive zones. According to the Belgian authorities, compensation was also necessary to avoid social unrest.

(18) Aid is granted to compensate farmers in these sensitive zones for:

(a) the decrease in production resulting from lower fertilisation and manure use,

(b) additional manure disposal costs,

(c) additional manure storage costs,

(d) additional purchase of chemical fertilisers.

Legal basis

(19) According to the information provided by the Belgian authorities, payments for farmers to compensate for obligations under the legislation on fertilisers were based on four legal texts:

(a) Decision of 20 December 1995 of the Flemish Government on compensation payable to farmers for obligations under the legislation on fertilisers,

(b) Decision of 20 December 1995 of the Flemish Government setting the compensation for the years 1996 and 1997 under Article 15(9) of the Decree of 23 January 1991 on the protection of the environment against pollution by manure,

(c) Decision of 19 March 1996 of the Flemish Government laying down rules on additional obligations with regard to disposal and on assistance with additional manure surpluses in areas where more stringent standards for manure spreading apply,

(d) Decision of 15 July 1997 of the Flemish Government amending the Decision of 20 December 1995 of the Flemish Government setting the compensation for the years 1996 and 1997 under Article 15(9) of the Decree of 23 January 1991 on the protection of the environment against pollution by manure.

(20) None of these legal texts have been notified to the Commission in accordance with Article 93 of the EC Treaty (now Article 108(3) TFEU).

Manure policy in Flanders

(21) According to the Belgian authorities, manure policy in Flanders is based on the Decree of 20 December 1995 amending the Decree of 23 January 1991 on the protection of the environment against pollution by fertilisers. This decree aims to reduce the environmental problems caused by the enrichment of surface water and groundwater and the leaching of phosphates and nitrates into the soil, with the risk of penetration into ground and surface water. According to the report on the environment and nature in Flanders, agriculture accounts for 56 % of the net nitrogen and phosphate load on the environment. The discharging of ammoniac from livestock housing and the spreading of slurry account for 21 % of polluting emissions in Flanders.

(22) The manure decree sets out the objectives in relation to achieving and/or maintaining the requisite quality standards for soil, water (surface and groundwater) and air. It provides for the gradual tightening of restrictions on manure use. It thus allows for adjustments during a transitional phase. The standards governing fertiliser use are to be tightened gradually, except in particularly vulnerable areas, namely water zones and nature zones where stricter rules came into force immediately.

(23) The decree also provides for a freeze on manure production and on the livestock headage in Flanders at the 1992 level. To that end a local permit policy is introduced. At the same time, for larger-sized undertakings the permit will be cut by up to 25 % upon renewal. The livestock farming sector was given time (until 2002) to find ways of reducing manure surpluses and their impact.

(24) The more stringent restrictions came into effect immediately on 1 January 1996 in the following areas:

(a) water catchment and conservation areas,

(b) natural areas, nature reserves, forest land,

(c) Bird Directive areas,

(d) valleys and ecologically valuable farmland,

(e) nitrate-sensitive land,

(f) phosphate-polluted land.

(25) According to the Belgian authorities, the designation of these sensitive areas took account of the requirements of Council Directive 91/676/EEC [4] concerning the protection of waters against pollution caused by nitrates from agricultural sources and Council Directive 79/409/EEC [5] on the conservation of wild birds.

General limits for the application of fertilisers and manure

(26) In accordance with the manure decree, the following general limits for the application of fertilisers and manure applied from 1 January 1996 to 31 December 1998 throughout Flanders, except for water zones and nature zones. These limits have been expressed in kg of phosphorus pentoxide, in kg of nitrogen from chemical fertilisers and in kg of total nitrogen per year permitted, as shown in the table below.

Crop group	Phosphorous pentoxide	Nitrogen from chemical fertilisers	Total nitrogen
Grassland	170	250	450
Maize	160 (1996) 155 (1997) 150 (1998)	200	325
Crops with low nitrogen requirement (*)	125	125	170
Other crops	150	225	325

(*) Including chicory, all fruit, shallots, onion, flax, legumes and carrots.

(27) The Belgian authorities also published the following limits as indicative of the targets they wished to meet from 2003 onwards.

Crop group	Phosphorous pentoxide	Nitrogen from chemical fertilisers	Nitrogen from livestock, manure and other fertilisers	Total nitrogen
Grassland	125	250	250	450
Maize	100	130	225	275
Crops with low nitrogen requirement (*)	100	70	125	125
Other crops	100	150	200	275

(*) Including chicory, all fruit, shallots, onion, flax, legumes and carrots.

[4] Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources, OJ L 375, 31.12.1991, p. 1.

[5] Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds, OJ L 103, 25.4.1979, p. 1.

(28) In addition to these quantitative limits, on ordinary farmland it is prohibited to spread manure or other organic fertilisers during the following periods: from 21 September to 21 January, on all Sundays and public holidays, on all Saturdays, except those between 1 February and 15 May, at night (between 10 PM and 7 AM), when ground is flooded, frozen or covered with snow.

Limits for the application of fertilisers and manure in water zones

(29) Stricter standards apply in water zones with a view to the production of drinking water or because they are particularly sensitive to nitrogen leaching. The term 'water zone' stands for:

(a) water catchment areas and protection zones types II and III for groundwater, delimited pursuant to the Decree of 24 January 1984 laying down measures for groundwater management,

(b) sensitive areas identified by the Flemish Government as requiring stricter standards within the sub-hydrographic reservoirs of surface water intended for the production of drinking water, delimited in accordance with the Law of 26 March 1971 on the protection of surface water against pollution,

(c) areas of nitrate-sensitive land where stricter standards are required as determined by the Flemish Government and delimited pursuant to the Decree of 24 January 1984 laying down measures for groundwater management.

(30) The following table shows the standards governing manure use applicable from 1 January 1996 for water zones. These rules are based on the yield standards for the crop groups listed and environmentally acceptable losses for these zones. The quantities are expressed in kg of P_2O_5 and kg of nitrogen per hectare per year.

Crop group	Phosphorous pentoxide	Nitrogen from chemical fertilisers	Nitrogen from livestock manure and other fertilisers	Total nitrogen
Grassland	120	200	200	350
Maize	100	150	170	275
Crops with low nitrogen requirement	80	70	125	125
Other crops	100	150	170	275

(31) In water zones, manure spreading is prohibited between 1 September and 21 January inclusive, except in zones A and B of areas used for surface water collection where the prohibition extends to 15 February inclusive.

Limits for the application of fertilisers and manure in nature zones

(32) The term 'nature zone' stands for:

(a) valley areas and ecologically valuable farmland as indicated on the rural development maps provided for in the Law of 29 March 1962 on the organisation of national and town planning,

(b) special protection zones delimited by the Decision of the Flemish Government of 17 October 1988,

(c) specific habitats and adjoining buffer zones,

(d) forest areas, natural areas, nature development areas or nature reserves, as indicated in the rural development maps provided for in the Law of 29 March 1962 on the organisation of national and town planning, with a transitional measure applicable until 31 December 1997.

(33) The table below shows the standards governing manure use applicable from 1 January 1996 for nature zones. These rules are based on the yield standards for the crop groups listed and environmentally acceptable losses for these zones. The quantities are expressed in kg of P_2O_5 and kg of nitrogen per ha per year.

Crop group	Phosphorous pentoxide	Nitrogen from chemical fertilisers	Total nitrogen
Grassland	120	200	400
Maize	100	150	275
Crops with low nitrogen requirement	80	70	125
Other crops	100	150	275

(34) In nature zones, manure spreading is prohibited between 1 September and 21 January inclusive, and on grassland areas of importance for the conservation of birds, manuring may also be prohibited between 1 April and 30 June. Furthermore, it is prohibited to apply any fertiliser of any kind in forest areas, natural areas, nature development areas or nature reserves from 1 January 1998, with the exception of droppings from livestock grazing the land, with a maximum permitted stocking rate of 2 livestock units per ha measured over the year. Family farms may obtain temporary exemption from this ban.

Compensation for decreases in production

(35) According to the manure decree, compensation is paid automatically only in respect of grassland and maize. For other crops, it is assumed that the reduced levels of fertiliser use will not result in decreases in production. However, in the latter case, the farmer may obtain compensation if (s)he is able to provide evidence of losses.

Compensation for decreases of production on grassland

(36) Compensation for the change in yield of grassland is calculated on the basis of the difference between the permitted fertiliser standard in the areas outside of the sensitive zones, and the permitted standards in the sensitive zones, with a distinction between areas situated in water zones and those situated in nature zones. The objective of the aid is to compensate the loss of yield and profitability caused by those reductions.

(37) The starting point for the calculation of the aid are the average semi-gross margins (SGM) in BEF/ha for the past three years preceding the granting of the compensation according to the income tax code. A distinction is made between land which is used for dairy farming and other grassland. For the purpose of calculating the SGM, Flanders is divided into 13 areas, depending on the agronomic characteristics of the area concerned.

(38) For milk-producing grasslands, the highest SGM is in Antwerp Kempenland (55 700 BEF/ha), the lowest is in the Dunes area (33 167 BEF/ha), while the average for Flanders as a whole is 44 160 BEF/ha. For non milk-producing grasslands, the highest SGM is in the sand/loam region of West Flanders (36 100 BEF/ha), the lowest is in the Dunes area (24 633 BEF/ha), while the average for Flanders as a whole is 31 941 BEF/ha.

(39) For water zones, compensation is based on the fact that the maximum permitted level of nitrogen use is set at 350 kg/ha compared with 450 kg/ha for normal zones. This corresponds to a reduction of 22 %. According to the law of diminishing returns, the Belgian authorities calculate that this will result in a reduction of yields of 15 %. However, the effect on the profitability of the holding will be greater. After discounting fixed costs, the Belgian authorities calculate that on average the SGM amounts to 40 % of total yield. Thus a reduction of yield of 15 % will result in a 37,5 % reduction of the SGM (15 % × 100/40). The basis of the payment of compensation for reduced yields in the area concerned is thus SGM × 37,5 %. At the same time, in the water zones farmers are required to use 50 kg/ha less chemical fertilisers. This represents a saving of BEF 800 (50 kg N × 16 BEF/kg). This sum is therefore deducted from the aid payable.

(40) For nature zones, compensation is based on the same principles. In a nature zone, the maximum permitted level of nitrogen use is 400 kg/ha compared with 450 kg/ha for normal zones, which corresponds to a reduction of 11 %. The Belgian authorities calculate that this will result in a reduction of yields of 7 %. A reduction of yield of 7 % will result in a 17,5 % reduction of the SGM (7 % × 100/40). The basis of the payment of compensation for reduced yields in the nature zones is thus SGM × 17,5 %. In addition, the same reduction of aid of BEF 800 (see above para. 39) is made in respect of savings from reduced fertiliser use.

(41) The table below summarises the highest, lowest and average rates of aid payable.

Milk-producing grasslands	SGM	Aid rate, water zones (SGM × 37,5 % − 800)	Aid rate, nature zones (SGM × 17,5 % − 800)
Antwerp Kempenland	55 700	20 088	8 948
Dunes	33 167	11 638	5 004
Average	44 160	15 760	9 928
Other grasslands	SGM	Aid rate, water zones (SGM × 37,5 % − 800)	Aid rate, nature zones (SGM × 17,5 % − 800)
West Flanders sand/loam region	36 100	12 738	5 518
Dunes	24 633	8 437	3 511
Average	31 941	11 177	4 789

(42) The Belgian authorities emphasise that these are maximum compensation rates per hectare. The total area of grassland eligible for compensation is 31 003 ha, of which 17 468 ha are in the water zones, and 13 535 ha in the nature zones. The maximum theoretical compensation which might have been paid is BEF 202 822 411 in the water zones and BEF 65 900 155 in the nature zones. However, given the lower aid rates for non-milk grassland, the actual compensation granted for grassland was BEF 250 275 012 per year, of which BEF 186 505 640 were granted in water zones and BEF 63 769 372 in nature zones. According to the Belgian authorities, this difference between the maximum theoretical aid rates and the rates of aid actually paid is due to a number of factors, in particular the fact that compensation was only paid in respect of grassland which was already being used as grassland by the same farm in 1994.

Compensation for maize

(43) For maize a flat rate aid for loss of production of BEF 3 600/ha applies provided that this maize is still grown on the same parcel, and not sown on former grassland that has been ploughed up. This aid is based on estimates that the average dry material production for maize is 14 500 kg/ha and the average loss of yield resulting from the stricter standards is 900 kg/ha. Based on an estimated cost price of BEF 4/kg dry material this results in a loss of income of BEF 3 600.

(44) In addition farmers are encouraged to sow grass after maize, thereby reducing the drainage of nitrates from the soil and nitrate leaching. For this, a further aid of BEF 3 600/ha was granted. According to the Belgian authorities this aid only covers the cost of grass seed.

Compensation for additional manure disposal costs

(45) Aid is provided to holdings in water and nature zones to cover the additional costs of disposing of manure surpluses which result from the lower limits on manure application.

(46) Aid is granted if a holding has additional manure surpluses which have accumulated as a result of the stricter standards governing manure application. For the calculation of the aid, a distinction is made between:

(a) family livestock farms and other livestock holdings which did not acquire additional arable land between 1993 and 1996; the area of arable land according to the 1996 register is taken into account for calculating the possibilities for manure disposal;

(b) non-family livestock holdings which did acquire additional land between 1993 and 1996; the area to be taken into account for determining the possibilities for manure disposal is based on the arable land recorded in 1994 (situation on the holding in 1993).

(47) For the purpose of calculating the aid a weighted average is used, based on the calculation of the number of animals of each species (cattle, pigs, poultry, others) in Flanders and the typical mineral composition of the manure from each species in terms of mineral content.

(48) On this basis it is estimated that each tonne of manure contains 6,6 kg of nitrogen and 4,2 kg of di-phosphorous pentoxide.

(49) Aid is paid per unit of mineral (per kg of di-phosphorous pentoxide (P_2O_5) and per kg of nitrogen (N)) eligible for compensation. The location of the holding determines the level of payment. The amount of aid payable is:

(a) BEF 13/unit: for holdings in a 'white' municipality with a revised output of < 75 kg P_2O_5/ha,

(b) BEF 20/unit: in a 'grey' municipality with a revised output of 75 to 125 kg P_2O_5/ha,

(c) BEF 27/unit: for one holding in a municipality with a revised output of > 125 kg P_2O_5/ha.

(50) The amounts of aid are higher for municipalities with higher revised outputs because the manure has to be transported over longer distances.

(51) In addition, aid is also payable to compensate farmers who are no longer able to take advantage of contractual arrangements with neighbouring farms to spread excess manure on those farms. To qualify, the holding must have entered into an arrangement for the disposal of excess manure in 1995 with a user with land in an area where the stricter standards apply and must be established in a municipality with a revised output of over 100 kg P_2O_5/ha. Compensation is paid per unit

of mineral, i.e. per kg P_2O_5 and per kg N less disposed of to these users. The maximum quantity which may be eligible for compensation is the difference in disposal possibilities between the normal standards governing manure application and those applying in areas subject to stricter rules. The location of the holding determines the amount payable, which is:

(a) BEF 27/unit: one holding in a municipality with a revised output of > 125 kg P_2O_5/ha,

(b) BEF 20/unit for all other holdings.

(52) Family livestock holdings with manure surpluses on parcels of land in the Kluizen sub-hydrographic basin for surface water collection or on nitrate-sensitive land on the banks of the Maas may take advantage of the obligation of the manure bank to accept additional surpluses of manure arising as a result of the stricter standards governing manure application. In this case the compensation for the disposal and storage of manure is reduced in proportion to the quantity of minerals for which the manure bank has provided assistance.

Compensation for increased storage costs

(53) Because manure spreading in water zones and nature zones was banned for the period starting from 1 September, instead of 21 September as in other zones, certain farmers encountered difficulties since on many farms manure is spread after the harvest and they harvest a number of crops after the (annual) start date for the ban. This was no longer possible in water and nature zones. The Belgian authorities estimate that as a consequence, these undertakings would require additional manure storage facilities for three months.

(54) The difference in standards governing manure application between ordinary areas and water and nature zones is equivalent to about 50 kg P_2O_5/ha. Since one tonne of manure contains an average of 5,2 kg P_2O_5, 50 kg P_2O_5/ha corresponds approximately to 10 tonnes storage capacity per ha required.

(55) Based on an estimate that the cost of building a 500 m^3 storage facility is BEF 1 263 120 the Belgian authorities estimate that the provision of the necessary storage capacity involves an investment of about BEF 2 500 per tonne of storage capacity which will be amortised over 20 years, and is therefore equivalent to BEF 125/t/year. Annual compensation of BEF 1 250/ha is therefore payable to farmers producing livestock manure with arable land in areas where stricter rules on manure application and spreading apply.

(56) Farmers who in 1996 received this compensation for manure storage under the manure decree cannot obtain interest-rate subsidies or capital premiums in the same year for building storage facilities for livestock manure under the Flemish Agricultural Investment Fund (VLF).

Compensation for use of chemical fertilisers

(57) Since farmers with land situated in water zones cannot fully make up the permitted quantity of nitrogen per hectare using animal manure, the Belgian authorities anticipate that farmers in these areas will endeavour to maintain production levels by applying additional chemical fertiliser especially for 'other crops' and for maize.

(58) It is assumed that these holdings will use an additional 60 kg of N/ha at a cost of BEF 16/kg. The aid payable therefore amounts to BEF 960 (60 × 16), which is rounded up to a flat rate BEF 1 000/ha.

Procedure for the payment of aid

(59) Farmers with arable land in 1994 located in water and nature zones may apply to the manure bank, which is responsible for the administration of the scheme, for compensation in those areas. They are required to indicate on maps and plans their arable land parcel by parcel, with a crop plan for 1994 and for the year of application. If arable land is located in several areas or zones, the compensation is calculated on the basis of the strictest standards on manure application and spreading. The manure bank examines applications and informs those concerned as to what compensation will be paid, using all the information available to it. Compensation is not paid if it amounts to less than BEF 1 000. Applicants have a right of appeal to the Flemish Minister of the Environment, who is required to issue a decision within six months, otherwise the appeal is considered upheld.

(60) The manure bank, police officers and officials of the environment inspection department of the environment, nature, land and water management authority and other officials are entitled to undertake checks that farmers are meeting their obligations under the manure decree. If infringements are found, farmers may be required to repay the aid. No aid may be granted under the manure decree for land covered by set-aside.

III. ASSESSMENT OF THE AID

(61) The measures described above constitute State aid within the meaning of Article 107(1) of the Treaty. The compensation originates from State resources and is paid to certain categories of farmers, i.e. those located in water zones or nature zones. This support distorts or threatens to distort competition and affect trade between Member States because it improves the competitive position of farmers receiving the compensation when compared with farmers in other parts of Belgium or in other Member States who are not in receipt of aid. Furthermore, in so far as the products produced by those farmers are the subject of intra-EU trade, the measures appear likely to affect trade between Member States.

(62) In their written observations the Belgian authorities have emphasised the environmental objectives of the aid scheme and in this context they have cited the provisions of Council Regulation (EEC) No 2078/92 of 30 June 1992 on agricultural production methods compatible with the requirements of the protection of the environment and the maintenance of the countryside (hereinafter Regulation (EEC) No 2078/92) ([6]) and the Community guidelines on State aid for environmental protection ([7]). Point 2.1 of the environment aid guidelines states that in the agricultural sector the guidelines do not apply to the field covered by Regulation (EEC) No 2078/92. It is therefore appropriate to begin by considering the application of Regulation (EEC) No 2078/92 to the measures concerned.

Applicability of Regulation (EEC) No 2078/92

(63) The Belgian authorities explain that the compensation for farmers granted as part of the measure in the nature zones and the water zones should be seen as an implementation of the provisions of Regulation (EEC) No 2078/92.

(64) Regulation (EEC) No 2078/92 establishes a Community aid scheme which is intended to promote, inter alia, the *voluntary* use of farming practices which reduce the polluting effects of agriculture, on the basis of undertakings given by the farmer (Article 2(1)). Member States shall determine the conditions for granting aid, and the amount of aid to be paid, on the basis of the undertaking given by the beneficiary and of the loss of income as well as the need to provide an incentive (Article 5(1) (a), (b)). In addition, subject to conditions determined by the Commission, the Community may also contribute to certain premiums granted by Member States in order to compensate for income losses resulting from the mandatory application of the restrictions referred to in Article 2 in the context of measures implemented in those Member States pursuant to Community provisions (Article 4(5) of Regulation (EEC) No 2078/92).

(65) Furthermore, according to Article 10(1), Member States have the possibility to introduce nationally financed schemes for additional measures for which the conditions of granting the aid differ from the requirements of the Regulation or the amounts of which exceed the limits stipulated therein. These schemes have to comply with the objectives of the Regulation and State aid rules.

(66) The scheme at issue is not aimed at providing compensation for losses linked to compliance with voluntary undertakings made by farmers. Nor does it involve Community co-financing of compensation in the context of measures implemented by Belgium subject to conditions determined by the Commission. Rather, the scheme concerns the (exclusively) national funding of compensation for losses stemming from compliance with obligations under the national legislation on fertilisers.

(67) Therefore, the aid falls outside the scope of application of the Regulation and must be examined under the applicable State aid rules.

IV. APPLICATION OF THE COMMUNITY GUIDELINES ON STATE AID FOR ENVIRONMENTAL PROTECTION

General considerations

(68) It is necessary to consider whether the measure may be considered compatible with the 1994 Guidelines laid down by the Commission in respect of State aid for environmental protection ([8]) (hereinafter 'the Guidelines') which were applicable at the time of the measure ([9]).

(69) In this context it is necessary to note that the aid measures for the compensation of reduced yield on grassland or of maize, the aids for the disposal of manure surpluses and the compensation for additional costs of artificial fertiliser use constitute operating aids. In reply to a question from the services of the Commission, the Belgian authorities have explained that the manure storage costs, while comparable to the costs of investing in additional manure storage, are in fact not directly linked to actual investments. In the light of these explanations, the Commission considers that this measure should also be considered as an operating aid.

([6]) Cited above in footnote 2.
([7]) Information from the Commission - Community guidelines on State aid for environmental protection, OJ C 72, 10.3.1994, p. 3.
([8]) Cited above in footnote 7.
([9]) See Commission notice on the determination of the applicable rules for the assessment of unlawful State aid, OJ C 119, 22.5.2002, p. 22.

(70) In general, the Commission considers that the payment of operating aids to the agricultural sector is unlikely to provide a lasting contribution to the development of the sector, and may entail a distortion of the conditions of competition which disadvantages farmers who are not in receipt of such aids. The Commission therefore takes a strict approach to the assessment of such aids.

(71) The payment of operating aid for environmental protection measures is dealt with in point 3.4 of the Guidelines. This reads:

> 'In accordance with long-standing policy, the Commission does not normally approve operating aid which relieves firms of costs resulting from the pollution or nuisance they cause. However, the Commission may make an exception to this principle in certain well-defined circumstances. It has done so, so far, in the field of waste management and relief from environmental taxes. The Commission will continue to assess such cases on their merits and in the light of the strict criteria it has developed in the two fields just mentioned. These are that the aid must only compensate for extra production costs by comparison with traditional costs, and should be temporary and in principle degressive, so as to provide an incentive for reducing pollution or introducing more efficient use of resources more quickly. Furthermore, the aid must not conflict with other provisions of the EC Treaty, and in particular those relating to the free movement of goods and services.
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> In the field of waste management, the public financing of the additional costs of selective collection, recovery and treatment of municipal waste for the benefit of businesses as well as consumers may involve State aid but can in that case be authorised provided that businesses are charged in proportion to their use of the system or the amount of waste they produce in their enterprise. Aid for the collection, recovery and treatment of industrial and agricultural waste will be considered on a case-by-case basis.
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> Temporary relief from new environmental taxes may be authorised where it is necessary to off-set losses in competitiveness, particularly at international level. A further factor to be taken into account is what the firms have to do in return, to reduce their pollution. This provision also applies to reliefs from taxes introduced pursuant to EC legislation in which Member States have discretion as to the relief or its amount.'

(72) As regards aids for the storage and disposal of excess manure, the Commission considers that excess manure may be considered as a form of agricultural waste. In accordance with the Guidelines quoted above, aid for the disposal of such waste is to be considered on a case-by-case basis in the light of the criteria of point 3.4 thereof.

Aids for the storage and disposal of excess manure: assessment

(73) The Commission notes that the present measure was *temporary*, in that it applied only for the years 1996 and 1997. Furthermore, the Commission notes that the Belgian authorities have not notified the continuation of direct aid payments for manure storage or disposal, although the arrangements for manure collection from certain farmers by the manure bank remain unchanged.

(74) The Commission must also take account of the fact that the aid measures are not *degressive*, since the same level of aid is provided for each of the two years in question (cf paras. 38-40, 49-51).

(75) Furthermore, on the basis of the information provided by the Belgian authorities, it appears that the measure is intended to compensate for the full costs of the storage and disposal of excess manure resulting from the restrictions imposed in the sensitive zones. Thus the farmers would be relieved of the charges for waste disposal. Also, there appears to be no requirement on farmers in the sensitive zones to take any steps to reduce their manure output. There is thus *no counterpart from the farmers for the receipt of the aid*, which simply compensates them for meeting the stricter standards on the use of manure laid down in the sensitive zones. Consequently, the measure does not create an incentive for reducing the production of manure.

(76) For these reasons, the Commission considers that the measures do not comply with the Guidelines and are not in line with the objectives of Regulation (EEC) No 2078/92. Hence, the Commission considers that they are not compatible with the internal market.

Aids for loss of production

(77) As regards the aids to compensate farmers for production losses resulting from the restrictions on the use of animal manure, including the aid to compensate the additional costs of artificial fertilisers, the Commission notes that aids for production losses are not specifically referred to in the Guidelines. Nevertheless, to the extent that restrictions on the use of manure result in reduced yields, they are likely to increase the production costs of farmers for the remaining crops.

According to the principles set out in the Guidelines referred to above, it would appear that such aids may only be justified if the following conditions are met ([10]):

(a) the aid should be temporary and, in principle, degressive so as to provide an incentive for reducing pollution or introducing more efficient uses of resources more quickly;

(b) the aid must only compensate for extra production costs compared to traditional methods;

(c) the aid must not conflict with other provisions of the EC Treaty.

In addition, it follows from Article 10 of Regulation (EEC) No 2078/92 that aid granted outside the ambit of the Regulation but with the aim to achieve one of the restrictions set out in its Article 2 must comply with the objectives of the Regulation.

The aid should be temporary and degressive

(78) Since the aid only applied for a two-year period, it would appear to be temporary. In the submission of information from 14 January 2013 the Belgian authorities confirmed that the measures were discontinued in 1998.

(79) However, for the time the measure applied, there was no degressivity of the aid (cf. para. 38-40, 49-51), which therefore did not create an incentive for introducing more efficient uses of resources more quickly.

Absence of over-compensation

(80) As noted above, compensation for loss of production on grassland is calculated by reference to the total fertiliser use permitted in the non-sensitive zones, namely 450 kg N/ha for grassland and 325 kg N/ha maize. According to the Belgian authorities, these figures have been calculated on a scientific basis in order to ensure that the nitrate concentration of ground water and surface water does not exceed 50 mg NO_3-N/l, or 11,3 mg NO_3-N/l, taking into account an average permissible loss of 70 kg NO_3-N/l per hectare per year. Their objective is to combine optimum production with minimum leaching. The limits for the nature zones and the water zones have been calculated in the same way, taking account of the fact that their nitrate status is more sensitive than for the other zones.

(81) In their letter of 7 August 1998, the Belgian authorities explained that is has been decided to calculate the compensation for the difference in standard based upon the total amount of nitrogen that can be legally applied, including both nitrogen from artificial fertilisers and nitrogen from animal manure. According to the Belgian authorities, this approach was used because it was considered necessary to ensure equality of treatment of farmers in a single region so that farmers whose land is situated in areas covered by more stringent local standards did not suffer in comparison with farmers whose land was not affected by such standards. If the standards were the same for all farmers in all areas this competitive advantage would be removed and no compensation would need to be paid. In this situation, if farmers make an effort to exceed the basic environmental quality standard, it is possible to calculate a compensation payment on the basis of the difference between what is achieved and the quality standard.

(82) Based on this principle of equality within the same region, the Belgian authorities considered that the applicable rules do not constitute over-compensation for farmers and/or compensation for ceasing agricultural practices which are contrary to EU regulations. According to their argument, the competitive disadvantage or advantage within a single agricultural region will be more pronounced within that region than within the EU as a whole. That is why, within Flanders, the entire loss suffered by farmers whose land is situated in the areas with more stringent local standards was compensated (for the actual loss at yield suffered).

(83) Furthermore, the Belgian authorities pointed out that in 1996 and 1997 the Flemish region already imposed stricter local standards, while the nitrate Directive did not require this until 20 December 1998. In the sensitive water zones, a restriction of 200 kg N/ha has been imposed for grassland, while for maize and other crops it was 170 kg N/ha. Thus, according to the Belgian authorities, the permitted quantity of animal manure has, since 1996, already been lower than was stipulated under the first action programme under Directive 91/676/EEC, and for certain crops it has been limited to the level stated under the second action programme.

(84) On 14 January 2013 the Belgian authorities provided detailed information on the method of calculation in order to show that this was in line with agricultural practice and with the EU legal provisions in force at the time of the measure.

([10]) Cited above in footnote 7, point 3.4.

(85) However, based on the available information the provisions in the water zones and the nature zones do not appear to go substantially beyond the obligations set out in Directive 91/676/EEC. In this context, the Commission notes that the Belgian authorities themselves have indicated in their written observations that they had identified the water zones and the nature zones to be particularly sensitive to nitrate pollution, and that they therefore considered lower limits necessary in order to ensure that the target of 50 mg/l nitrates in surface freshwaters, in particular those used for the extraction of drinking water, and in groundwaters was attained. This was the level which was compulsory at the end of 1995 according to Directive 91/676/EEC.

(86) Furthermore, as regards the method of calculating the compensation, the Commission requested the Belgian authorities to provide validated studies to demonstrate the accuracy of the assumptions used for the calculation. In particular, the Belgian authorities were requested to provide the results of studies demonstrating that a reduction in total fertiliser use from 450 kg N/ha to 350 kg N/ha does in fact result in a reduction in yield of 15 %, and that a reduction from 450 kg N/ha to 400 kg N/ha results in a reduction in yield of 7 %. The Belgian authorities demonstrated the accuracy of the underlying assumptions used for the calculation in their answer from 14 January 2013.

(87) Furthermore, the Belgian authorities were also requested to provide additional information on the assumptions used to calculate the effects of this loss of production on the overall profitability of the holding, using a range of hypotheses, including purely arable production and mixed arable/livestock production. In particular, the Commission asked the Belgian authorities to provide a detailed explanation as to why a 15 % loss of grass production in a mixed arable/livestock holding is considered to constitute a 40 % loss of profitability of the holding, taking into account the different types of livestock production. The Belgian authorities provided this information in their answer from 14 January 2013.

(88) Furthermore, the Belgian authorities were requested to provide calculations based on alternative methods of providing compensation, for example the cost of buying replacement feed as a substitute for the lost production. In their answer from 14 January 2013 the Belgian authorities maintain that, as such calculations were not carried out at the time of the measure, it is not possible to make such calculations anymore.

(89) Therefore, in the Commission's view the Belgian authorities have not demonstrated that the aid was limited to the extra production costs only. Furthermore, as shown above (para. 79), the aid was not degressive.

(90) Hence, the granting of aid for loss of production does not fulfil the conditions of the Guidelines. For these reasons, the Commission considers these aid measures not to be compatible with the Treaty.

V. **CONCLUSION**

(91) The Commission finds that Belgium has unlawfully implemented the compensation under the manure decree in breach of Article 93(3) EC Treaty (now Article 108(3) TFEU).

(92) The measures fall outside the scope of Regulation (EEC) No 2078/92.

(93) The measures for the compensation for the storage and disposal of excess manure and the loss of production constitute operating aids which only exceptionally can be declared compatible. For this, the strict approach of the Guidelines foresees that the aid for storage and disposal can be declared compatible if it is temporary and degressive and if it requires a counterpart from the farmer. For the aid for loss of production, the aid should be temporary and degressive and only compensate for extra production costs. As analysed above, these conditions were not fulfilled.

(94) In the absence of any counterpart from the beneficiaries for the receipt of the aid, and in so far as the aid measures do not appear to contain any incentives for the beneficiaries to take additional steps towards the improvement of environmental protection, according to the Commission, this aid measure does not contribute towards the development of certain economic activities within the meaning of Article 107(3)(c) TFEU.

(95) The manure decree was abrogated in 1998 and all the measures were discontinued.

(96) For the reasons above, the Commission finds that during its period of application in the years 1996 and 1997 the measure constituted illegal and incompatible aid which in principle has to be recovered.

(97) Due to the fact that the powers of the Commission to recover incompatible aid are subject to a limitation period of ten years ([11]), this incompatible aid cannot be recovered.

(98) Any individual aid which, at the time of the granting fulfilled the conditions of a block exemption or an approved scheme is compatible with the internal market, up to the maximum aid intensities applicable to that type of aid.

HAS ADOPTED THIS DECISION:

Article 1

The State aid granted as compensation under the manure decree, unlawfully put into effect by Belgium in breach of Article 93(3) of the EC Treaty, is incompatible with the internal market.

Article 2

Individual aid granted under the scheme referred to in Article 1 which at the time it was granted fulfilled the conditions of a block exemption or an approved scheme is compatible with the internal market, up to maximum aid intensities applicable to that type of aid.

Article 3

This Decision is addressed to the Kingdom of Belgium.

Done at Brussels, 16 September 2013.

For the Commission

Dacian CIOLOȘ

Member of the Commission

([11]) Council Regulation No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, OJ L 83, 27.3.1999, p. 1, article 15.