COMMISSION IMPLEMENTING DECISION (EU) 2016/1040

of 24 June 2016

on granting a derogation requested by Italian Republic with regard to the Regions of Lombardia and Piemonte pursuant to Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources

(notified under document C(2016) 3820)

(Only the Italian text is authentic)

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 3 November 2011, the Commission adopted Implementing Decision 2011/721/EU ([2]), allowing Italy to authorise in the regions of Emilia Romagna, Lombardia, Piemonte and Veneto, under certain conditions, the application of up to 250 kg nitrogen per hectare per year from cattle manure and treated pig manure on farms with at least 70 % of crops with high nitrogen demand and long growing season.

(3) The derogation granted by Implementing Decision 2011/721/EU concerned approximately 300 farms and 13 000 ha of land and expired on 31 December 2015.

(4) On 20 January 2016, Italy submitted to the Commission a request for a derogation under the third subparagraph of paragraph 2 of Annex III to Directive 91/676/EEC with regard to the Regions of Lombardia and Piemonte.

(5) The requested derogation concerns the intention of Italy to allow the application in the Regions of Lombardia and Piemonte of up to 250 kg nitrogen per hectare per year from cattle manure and treated pig manure on farms with at least 70 % of crops with high nitrogen demand and long growing season. Approximately 600 cattle farms and 60 pig farms in the Regions of Lombardia and Piemonte corresponding to respectively 15 % and 6 % of total cattle and total pig farms in the same regions, 4 % of the Utilized Agricultural Area (UAA) and 14 % of the total dairy livestock and 7,4 % of total pig numbers in the same regions are estimated to be potentially encompassed by the derogation. Arable farms can also apply for the derogation.

(6) The legislation implementing Directive 91/676/EEC and establishing the action programmes in Lombardia (Decision n. X/5171 of 16 May 2016) and Piemonte (Decision n. 19/2971 of 29 February 2016) has been adopted and applies in conjunction with this Decision for the period 2016 to 2019.

(7) The designated vulnerable zones to which the action programmes apply cover about 80 % of the UAA of Lombardia and 44 % of the UAA of Piemonte.

([1]) OJ L 375, 31.12.1991, p. 1.

([2]) Commission Implementing Decision 2011/721/EU of 3 November 2011 on granting a derogation requested by Italy with regard to the Regions of Emilia Romagna, Lombardia, Piemonte and Veneto pursuant to Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources (OJ L 287, 4.11.2011, p. 36).

(8) Water quality data submitted show that for groundwater in the Regions of Lombardia and Piemonte 87 % of groundwater bodies have mean nitrate concentrations below 50 mg/l nitrate and 55 % have mean nitrate concentrations below 25 mg/l nitrate. For surface waters, more than 90 % of monitoring sites have mean nitrate concentrations below 25 mg/l and no points have nitrate concentrations over 50 mg/l nitrate.

(9) The Regions Lombardia and Piemonte account for more than 35 % of livestock in Italy: in particular, 38 % of dairy cattle, 60 % of pigs and 15 % of poultry. Livestock numbers show a decreasing trend in the period 2007-2013.

(10) In the period 2003-2013, chemical nitrogen consumption declined about 27 %, as well as utilisation of mineral phosphorus fertilisers; the latter has been reduced by 57 %.

(11) Grassland, maize grain, maize silage and winter cereals occupy about 65 % of the total agricultural area in Lombardia and Piemonte.

(12) The supporting documents presented in the request for the derogation show that the proposed amount of 250 kg nitrogen per hectare per year from cattle manure and treated pig manure is justified on the basis of objective criteria such as high net precipitation, long growing seasons and high yields of crops with high nitrogen uptake.

(13) After examining the request, the Commission considers that the proposed amount of 250 kg per hectare from cattle manure and treated pig manure will not prejudice the achievement of the objectives of Directive 91/676/EEC, subject to certain strict conditions being met.

(14) Directive 2000/60/EC of the European Parliament and the Council ([1]) provides for a comprehensive, cross-border approach to water protection organised around river basin districts, with the objective of achieving a good status for European bodies of water by 2015. Reducing nutrients is an integral part of that objective. Granting of a derogation under this Decision is without prejudice to the provisions pursuant to Directive 2000/60/EC and does not exclude that additional measures may be needed to fulfil obligations derived from it.

(15) Directive 2007/2/EC of the European Parliament and of the Council ([2]) lays down general rules aimed at the establishment of the Infrastructure for Spatial Information in the Union for the purposes of environmental policies of the Union and policies or activities which may have an impact on the environment. Where applicable, the spatial information collected in the context of this Decision should be in line with the provisions set out in that Directive. In order to reduce administrative burden and enhance data coherence, Italy, when collecting the necessary data under this Decision should, where appropriate, make use of the information generated under the Integrated Administration and Control System established pursuant to Chapter II of Title V of Regulation (EU) No 1306/2013 of the European Parliament and of the Council ([3]).

(16) 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

Derogation

The derogation requested by Italy, with regard to Regions of Lombardia and Piemonte 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.

([1]) Directive 2000/60/EC of the European Parliament and the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ L 327, 22.12.2000, p. 1).

([2]) Directive 2007/2/EC of the European Parliament and of the Council of 14 March 2007 establishing an Infrastructure for Spatial Information in the European Community (INSPIRE) (OJ L 108, 25.4.2007, p. 1).

([3]) Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 (OJ L 347, 20.12.2013, p. 549).

Article 2

Scope

This Decision applies on an individual basis and subject to the conditions set out in Articles 4 to 7 to farms, where 70 % or more of the acreage of the farm is cultivated with crops with high nitrogen demand and long growing season.

Article 3

Definitions

For the purpose of this Decision, the following definitions shall apply:

(a) 'farms' means agricultural 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 (temporary lies less than five years);

(d) 'late maturing maize' means maize class FAO 600-700, planted from mid-March to the beginning of April, with a growing cycle of at least 145-150 days;

(e) 'maize or sorghum followed by winter herbage' means medium-late or early maturing maize, according to FAO international classification, or sorghum followed by winter herbage, such as Italian ryegrass, barley, triticale or winter rye;

(f) 'winter cereal followed by summer herbage' means winter wheat, winter barley or triticale, followed by summer herbage, such as maize, sorghum, Setaria or Panicum sp.;

(g) 'crops with high nitrogen demand and long growing season' means grassland, late maturing maize, maize or sorghum followed by winter herbage and winter cereal followed by summer herbage;

(h) 'cattle manure' means livestock manure excreted by cattle, including during grazing or in processed form;

(i) 'manure treatment' means the processing of pig manure into two fractions, a solid fraction and a liquid fraction, performed in order to improve land application and enhance nitrogen and phosphorus recovery;

(j) 'treated manure' means the liquid fraction resulting from pig manure treatment, with a minimum nitrogen to phosphate ratio (N/P_2O_5) of 2,5;

(k) 'treated manure with nitrogen removal' means treated manure with a nitrogen content of less than 30 % compared to nitrogen content of the raw pig manure;

(l) 'soils with low organic matter content' means soils with organic carbon content lower than 2 % in the top 30 centimetres of soil;

(m) 'non-saline and low salinity soils' means those soils with electrical conductivity on saturated soil paste extract ECe < 4 mS/cm or electrical conductivity on aqueous extract with 1:2 soil/water ratio EC 1:2 < 1 mS/cm, or areas defined as certainly not affected by risk of salinization, as indicated on the soil map defined at regional level;

(n) 'nitrogen use efficiency' means the percentage of total nitrogen applied in livestock manure form which is available to crops in the year of application.

Article 4

Annual application and commitment

1. Farmers who want to benefit from a derogation under this Decision shall submit an application for derogation to the competent authorities annually by 15 February. For the year 2016, the annual application shall be submitted by 30 June 2016.

2. Together with the annual application referred to in paragraph 1 farmers shall undertake in writing to fulfil the conditions provided for in Articles 5, 6 and 7.

Article 5

Manure treatment

1. Farmers benefiting from a derogation for the application of treated pig manure shall notify each year to the competent authorities the following information:

(a) the type of manure treatment;

(b) the capacity and main characteristics of the treatment plant, including its efficiency;

(c) the amount of manure sent to treatment;

(d) the amount, the composition, including a specification of the nitrogen and phosphorus content, and the destination of the solid fraction;

(e) the amount, the composition, including a specification of the nitrogen and phosphorus content, and the destination of the treated manure;

(f) the estimation of gaseous losses during treatment.

2. The solid fraction resulting from manure treatment shall be stabilized in order to reduce odours and other emissions, improving agronomic and hygienic properties, facilitating handling and enhancing nitrogen and phosphate availability to crops. The resulting product shall not be applied to derogated farms. The competent authorities shall adopt measures to encourage the use of stabilized solid fraction on soils with low organic matter content. Those soils are indicated in maps established at regional level and made available to farmers.

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

4. Ammonia and other emissions deriving from manure treatment shall be monitored by the competent authorities in representative locations for each treatment technique. On the basis of the monitoring results, competent authorities shall establish an inventory of emissions.

Article 6

Application of manure and other fertilisers

1. Subject to the conditions laid down in paragraphs 2 to 12, the amount of cattle manure, including manure excreted by the animals themselves, and treated manure applied to the land each year on farms benefiting from a derogation shall not exceed the amount of manure containing 250 kg nitrogen per hectare.

2. The total nitrogen inputs shall not exceed the foreseeable nutrient demand of the considered crop. It shall take into account the supply from the soil and the increased manure nitrogen availability due to manure treatment. It shall not exceed maximum application standards, as established in the action programmes applicable to the farm in Lombardia (Decision n. X/5171 of 16 May 2016) and Piemonte (Decision n. 19/2971 of 29 February 2016).

3. The total phosphorus inputs shall not exceed the foreseeable nutrient demand of the considered crop and take into account the phosphorus supply from the soil. Phosphorus in chemical fertilisers shall not be applied in derogated farms.

4. A fertilisation plan describing the crop rotation of the farmland and the planned application of manure and mineral fertilisers shall be prepared for each farm annually by 15 February at the latest. For the year 2016, it shall be prepared by 30 June 2016.

The fertilisation plan shall include the following:

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

(b) a calculation of manure nitrogen and phosphorus produced in the farm;

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

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

(e) the crop rotation and acreage of parcels with crops with high nitrogen demand and long growing season and parcels with other crops;

(f) the expected yields for each cultivated crop, depending on nutrient and water availability, as well as local conditions, such as climate, soil type, etc.;

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

(h) a calculation of manure nitrogen and phosphorus to be applied over each parcel;

(i) a calculation of nitrogen from chemical fertilisers to be applied over each parcel;

(j) the estimation of the amount of water needed for irrigation and the precise indication of water source; the authorization for water abstraction or the contract for water use with the relevant 'water consortium' or the map indicating that the farm is located in areas where the shallow groundwater is in contact with the root zone shall be included in the plan.

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

5. Fertilisation accounts shall be prepared by each farm on a parcel basis. They shall include applied amounts and time of application of manure and chemical fertilisers.

6. The authorization for water abstraction or the contract for water use with the relevant 'water consortium' or the map indicating that the farm is located in areas where the shallow groundwater is in contact with the root zone shall be available at the farm. The amount of authorized or contracted amount of water, where applicable, shall be sufficient to reach crops yields obtained in conditions without water constraints.

7. Results of nitrogen and phosphorus analysis in soil shall be available for each farm benefiting from a derogation. Sampling and analysis shall be carried out before 1 June at least once every four years for phosphorus and for nitrogen 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 required.

8. Livestock manure applied on derogation farms shall have a nitrogen use efficiency of at least 65 % for slurry and 50 % for solid manure.

9. Livestock manure and chemical fertilisers applied on derogation farms cannot be spread after 1 November.

10. At least two thirds of the amount of nitrogen from manure, excluding nitrogen from manure from grazing livestock, shall be applied before 31 July each year. For this purposes, farms benefiting from a derogation shall have adequate storage capacity for livestock manure, which can cover at least periods during which manure application is not allowed.

11. Liquid manure, including treated manure and slurries, shall be applied through low emissions application techniques. Solid manure shall be incorporated within 24 hours.

12. In order to protect soils from risk of salinization, treated manure with nitrogen removal shall be allowed only on non-saline and low salinity soils. For that purpose, farmers intending to apply treated manure with nitrogen removal, shall measure electrical conductivity on parcels to be used for application at least every four years and shall include results in the application referred to Article 4(1). The competent authorities shall establish a protocol to be used by farmers to measure electrical conductivity. The competent authorities shall establish maps showing areas at risk of salinization.

Article 7

Land management

Farmers seeking to benefit from a derogation shall ensure that all the following conditions are met:

(a) 70 % or more of the acreage of the farm shall be cultivated with crops with high nitrogen demand and long growing season;

(b) temporary grassland shall be ploughed in spring;

(c) temporary and permanent grassland shall not include more than 50 % of leguminous or other plants fixing atmospheric nitrogen;

(d) late maturing maize shall be harvested, including the stalks;

(e) winter herbage, such as Italian ryegrass, barley, triticale or winter rye, shall be seeded within two weeks after harvest of maize or sorghum and shall be harvested no earlier than two weeks before maize or sorghum sowing;

(f) summer herbage, such as maize, sorghum, Setaria or Panicum sp., shall be seeded within two weeks after harvest of winter cereals and shall be harvested no earlier than two weeks before winter cereals sowing;

(g) a crop with high nitrogen demand shall be seeded within two weeks after ploughing grass and fertilisers shall not be applied in the year of ploughing of permanent grassland.

Article 8

Other measures

1. The competent authorities shall ensure that derogations granted for the application of treated manure are compatible with the capacity of manure treatment plants.

2. The competent authorities shall ensure that each granted derogation is compatible with the authorized water use in the farm benefitting from the derogation.

Article 9

Measures on manure transport

1. The competent authorities shall ensure that transport of livestock manure to and from farms benefitting from a derogation is recorded through geographic positioning systems or is registered in accompanying documents, specifying the place of origin and destination. The recording through geographic positioning systems is obligatory for transports covering distances longer than 30 km.

2. The competent authorities shall ensure that a document specifying the amount of transported manure and its nitrogen and phosphorus content is available during transport.

3. The competent authorities shall ensure that treated manure and solid fractions resulting from manure treatment are analysed with regard to their nitrogen and phosphorus content. The analysis shall be performed by recognised laboratories. The results of the analysis shall be communicated to the competent authorities and to the receiving farmer. A certificate of the analysis shall be available in each transport.

Article 10

Monitoring

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

2. Data on crop rotations and agricultural practices in farms benefiting from derogations shall be collected and updated every year.

3. 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. The plan on monitoring network shall be submitted to the Commission. The amount of initial monitoring sites cannot be reduced and the location of the sites cannot be changed during the period of applicability of this Decision unless duly justified.

4. A reinforced water monitoring shall be conducted for agricultural catchments located in proximity to most vulnerable water bodies, to be identified by the competent authorities.

5. Monitoring sites 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 include main soil types, fertilisation practices and crops. The plan on monitoring network shall be submitted to the Commission. The amount of initial monitoring sites cannot be reduced and the location of the sites cannot be changed during the period of applicability of this Decision unless duly justified.

Article 11

Controls and verification

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, 6 and 7 are not fulfilled, the applicant shall be informed thereof. In this instance, the application shall be considered to be refused.

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

3. The competent authorities shall ensure on-the-spot controls of at least 2 % of manure transport operations, based on risk assessment and results of administrative controls referred to in paragraph 1. Controls shall include, at least, assessment of accompanying documents, verification of manure origin and destination and availability of analysis of transported manure.

4. Where verification indicates non-compliance with this Decision, the competent authorities shall take the necessary action for redress. In particular, farmers which do not comply with Articles 5, 6 and 7 shall be excluded from derogation the following year.

Article 12

Reporting

The competent authorities shall submit to the Commission every year by 31 December, and for the year 2019 by 30 September, a report containing the following information:

(a) evaluation of the implementation of the derogation, on the basis of controls at farm level, as well as controls on manure transport, and information on non-compliant farms, on the basis of the results of the administrative and field inspections;

(b) information on manure treatment, including further processing and utilisation of the solid fractions, and provide detailed data on characteristics of treatment systems, their efficiency and composition of treated manure, as well as final destination of solid fractions;

(c) maps showing areas with low organic matter content, as well as the measures taken in order to encourage the use of the stabilized solid fraction on soils with low organic matter content, as referred to in Article 5(2);

(d) the methodologies to assess the composition of treated manure, the variations in composition and treatment efficiency for each farm benefiting from individual derogation, referred to in Article 5(3);

(e) the inventory of ammonia and other emissions from manure treatment, referred to in Article 5(4);

(f) the established protocol to measure electrical conductivity and maps showing areas affected by salinization, referred to in Article 6(12);

(g) the methodologies to verify the compatibility of granted derogations with the capacity of manure treatment plants, referred to in Article 8(1);

(h) the methodologies to verify the compatibility of each granted derogation with the authorized water use in the farm benefitting from the derogation, referred to in Article 8(2);

(i) maps showing the percentage of farms, percentage of livestock, percentage of agricultural land covered by individual derogations and maps showing local land use, as well as data on crop rotations and agricultural practices in derogation farms, referred to in Article 10(1) and (2)

(j) the results of water monitoring, including information on water quality trends for ground and surface waters, including coastal waters, as well as the impact on derogation on water quality as referred to in Article 10(3);

(k) the list of most vulnerable water bodies, referred to in Article 10(4);

(l) summary and evaluation of data obtained from the monitoring sites referred to in Article 10(5);

Article 13

Period of application

This Decision shall expire on 31 December 2019.

Article 14

Addressee

This Decision is addressed to the Italian Republic.

Done at Brussels, 24 June 2016.

For the Commission
Karmenu VELLA
Member of the Commission