COMMISSION IMPLEMENTING DECISION (EU) 2020/1074

of 17 July 2020

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

(Only the Danish version 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 thereof,

Whereas:

(1) By Decision 2002/915/EC ([2]), the Commission granted a derogation requested by Denmark pursuant to Directive 91/676/EEC, allowing the application of livestock manure containing up to 230 kg nitrogen per hectare per year on certain cattle holdings. That derogation was extended by Commission Decisions 2005/294/EC ([3]) and 2008/664/EC ([4]), and by Commission Implementing Decisions 2012/659/EU ([5]), (EU) 2017/847 ([6]) and (EU) 2018/1928 ([7]).

(2) The derogation granted by Implementing Decision (EU) 2018/1928 for the period 2017/2018 concerned 1 312 cattle holdings, 396 000 livestock units (equivalent to 39,6 million kg N in livestock manure) and 198 195 hectares of arable land, corresponding respectively to 3,9 % of the total number of holdings, 18,1 % of the total nitrogen (N) in livestock manure applied and 8,2 % of the total net agricultural area.

(3) By letter of 20 March 2020, Denmark submitted a request to the Commission for renewal of the derogation under the third subparagraph of paragraph 2 of Annex III to Directive 91/676/EEC.

(4) Denmark has an action programme in conformity with Article 5 of Directive 91/676/EEC, by means of parts of Executive Order No 760 of 30 June 2019 on Environmental Regulation of Animal Husbandry and the Storage and Use of Fertilisers, Act No 338 of 2 April 2019 on Agricultural Use of Fertilisers and on Nutrient-Reducing Measures as amended, Executive Order No 762 of 29 July 2019 on Agricultural Use of Fertilisers in the planning period 2019/2020, and Executive Order No 66 of 28 January 2020 on Nutrient-Reducing Measures and Agricultural-Related Measures in Agriculture for the planning period 2020/2021. As a supplement to those measures, Denmark performs a targeted regulation from 2019 pursuant to Act No 338 of 2 April 2019 on Agricultural Use of Fertilisers and on

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

([2]) Commission Decision 2002/915/EC of 18 November 2002 concerning a request for derogation under paragraph 2(b) of Annex III to and Article 9 of Council Directive 91/676/EEC concerning protection of waters against pollution caused by nitrates from agricultural sources (OJ L 319, 23.11.2002, p. 24).

([3]) Commission Decision 2005/294/EC of 5 April 2005 concerning a request for derogation under point 2(b) of Annex III to and Article 9 of Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources (OJ L 94, 13.4.2005, p. 34).

([4]) Commission Decision 2008/664/EC of 8 August 2008 amending Decision 2005/294/EC concerning a request for derogation under point 2(b) of Annex III to and Article 9 of Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources (OJ L 217, 13.8.2008, p. 16).

([5]) Commission Implementing Decision 2012/659/EU 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 (OJ L 295, 25.10.2012, p. 20).

([6]) Commission Implementing Decision (EU) 2017/847 of 16 May 2017 granting a derogation requested by Denmark pursuant to Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources (OJ L 125, 18.5.2017, p. 35).

([7]) Commission Implementing Decision (EU) 2018/1928 of 6 December 2018 granting a derogation requested by Denmark pursuant to Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources (OJ L 313, 10.12.2018, p. 45).

Nutrient-Reducing Measures as amended. In addition, the Danish legislation includes a general phosphorus regulation, according to Act No 256 of 21 March 2017 on Livestock Husbandry and Use of Fertilizers, and Order No 865 of 23 June 2017 on Commercial Livestock, Livestock Manure, Silage etc., now Order No 760 of 30 July 2019.

(5) The Danish legislation implementing Directive 91/676/EEC includes limits for the application of nitrogen. Legislation limiting the application of phosphorus entered into force in August 2017.

(6) The Danish legislation includes a combined targeted scheme for voluntary and mandatory catch crops for the period covered by this Decision. Under that scheme, the obligatory provisions for catch crops are to enter into force automatically if the voluntary agreements for catch crops fail to fulfil the environmental objectives. The areas under catch crops are in addition to the national requirement for mandatory catch crops pursuant to Act No 338 of 2 April 2019, as amended. The scheme is necessary to ensure that the application of the current derogation would not lead to deterioration of water quality.

(7) The information provided by Denmark in the context of the derogation granted by Implementing Decision (EU) 2018/1928 shows that the derogation is not leading to a deterioration of water quality as compared to areas not encompassed by the derogation. Data on the implementation of Directive 91/676/EEC for the period 2012 to 2015 ([8]) show that for groundwater 83,4 % of the monitoring sites have mean nitrate concentrations below 50 mg/l, and 27,5 % below 25 mg/l. For fresh surface water, 99,4 % of the monitoring sites have mean nitrate concentrations below 50 mg/l and 85,8 % of monitoring sites below 25 mg/l. Monitoring data show an overall stable trend in nitrate concentration in groundwater and fresh surface water as compared to the previous reporting period (2008 to 2011). Data on eutrophication show that 25 % of monitored lakes were classified as high/good status and 75 % as less than good status and that 2 out of 119 monitored estuarine/coastal water bodies were classified as good status.

(8) The Commission, after examination of Denmark's request on the basis of the elements described in the third subparagraph of paragraph 2 of Annex III of Directive 91/676/EEC and in the light of the experience gained from the derogation as provided for in Decisions 2002/915/EC, 2005/294/EC and 2008/664/EC, and Implementing Decisions 2012/659/EU, (EU) 2017/847 and (EU) 2018/1928, considers that the amount of manure envisaged by Denmark, namely 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 as regards catch crops, phosphorus ceilings, crop rotation, application of manure and other fertilisers, soil sampling and analyses being met.

(9) In farms authorised to apply livestock manure containing up to 230 kg nitrogen per hectare per year, fertilisation plans should be updated in a timely manner to ensure consistency with actual agricultural practices, while permanent vegetal cover of arable area and catch crops should be used to ensure recovering subsoil autumn losses of nitrates and limit nitrogen winter losses.

(10) Directive 2007/2/EC of the European Parliament and of the Council ([9]) 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 the administrative burden and enhance data coherence, Denmark, when collecting the necessary data under this Decision, should 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 ([10]).

([8]) SWD(2018) 246 final- Commission Staff Working Document accompanying the document Report from the Commission to the Council and the European Parliament on the implementation of Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources based on Member State reports for the period 2012–2015.

([9]) 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).

([10]) 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).

(11) The measures provided for in this Decision are in accordance with the opinion of the Nitrates Committee set up pursuant to Article 9 of Directive 91/676/EEC,

HAS ADOPTED THIS DECISION:

Article 1

Derogation

The derogation requested by Denmark by letter of 20 March 2020, for the purpose of allowing application to the land of a higher amount of nitrogen from 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 ('the derogation'), is granted subject to the conditions laid down in Article 4 to 12.

Article 2

Scope

The derogation applies to cattle farms on which at least 80 % of the acreage available for manure application are cultivated with crops with high nitrogen uptake and long growing season and for which an authorisation has been granted in accordance with Article 6.

Article 3

Definitions

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

(1) 'cattle farm' means a holding with a yearly production of nitrogen in livestock manure above 300 kg of which at least two thirds are from cattle;

(2) 'crops being undersown by grass' means silage cereals, silage maize, spring cereals, winter cereals or spring barley and pea, to be undersown by grass before or after harvest;

(3) 'crops with high nitrogen uptake and long growing season' means any of the following:

  (a) grass;

  (b) grass catch crops;

  (c) forage beets;

  (d) crops being undersown by grass;

  (e) chicory;

(4) 'grass' means permanent or temporary grassland;

(5) 'soil profile' means the soil layer below ground level to a depth of 0,90 m or to the average highest groundwater level where that level is less than 0,90 m below ground level.

Article 4

Conditions for the derogation

The derogation is granted on the following conditions:

(1) As of 1 August 2017, Order No 865 of 23 June 2017 on commercial livestock, livestock manure, silage, etc. has entered into force establishing direct phosphorus ceilings at different levels throughout the country depending on fertiliser type. Ceilings cover application of phosphorus from all types of fertilisers: organic fertilisers, including manure, biogas digestate, degassed plant biomass, sludge from sewage water treatment as well as industrial fertilisers. Stricter phosphorus application ceilings shall be applied in certain catchments having a phosphorus vulnerable aquatic environment.

(2) An indicator and monitoring system shall be in place for the amount of phosphorus applied on agricultural fields in Denmark. Where either the indicator system or the monitoring system shows that the actual annual average phosphorus fertilisation rate on agricultural soils in Denmark might exceed or has actually exceeded the levels of average national phosphorus fertilisation allowed to be reached over the period 2018 to 2025, the ceilings for maximum phosphorus application shall be reduced accordingly.

(3) As of 5 April 2019, Danish Act No 338 of 2 April 2019 on Agricultural Use of Fertilisers and on Nutrient-Reducing Measures as amended has entered into force establishing a combined target scheme for voluntary and mandatory measures based on the need to reduce nitrates contents in groundwater bodies and in coastal waters. From 2020, the scheme is part of the Danish implementation of the obligations under Directive 2000/60/EC of the European Parliament and of the Council ([11]). Those measures provide for the establishment of catch crops or alternative measures provided in national legislation. Under the scheme, the obligatory provisions for nitrogen reduction shall enter into force automatically if the voluntary agreements for nitrogen reduction fail to deliver the sufficient environmental objectives.

(4) The catch crops established under that scheme shall be additional to the catch crops planted in order to fulfil the national mandatory requirement of 10,7 or 14,7 % catch crops on the cattle farm's crop ground area or the national mandatory requirement in corresponding Executive Orders for the subsequent planning periods, and may not be established in the same area as that used to meet the Ecological Focus Area requirement for catch crops.

Article 5

Applications for authorisation

1. Cattle farmers may submit an application to the competent authorities for an annual authorisation to apply livestock manure containing up to 230 kg nitrogen per hectare per planning period.

The time-limit for submitting the application shall be the same as the national time-limit for applying for Basic Payment of the CAP and shall include the fertiliser quota and catch crops plan.

2. The submission of an application as referred to in paragraph 1 shall be considered to imply a declaration by the applicant that the conditions in Articles 7, 8 and 9 are fulfilled.

Article 6

Granting of authorisations

Authorisations to apply an amount of manure from the cattle farm, including manure excreted by the animals themselves and treated manure, containing up to 230 kg nitrogen per hectare each planning period shall be granted subject to the conditions laid down in Articles 7, 8 and 9.

Article 7

Conditions regarding application of manure and other fertilisers

1. The total nitrogen input shall not exceed the foreseeable nutrient demand of the crop, taking into account the nutrient supply from the soil. It shall not exceed maximum application standards, as laid down in Executive Order No 762 of 29 July 2019 on Agricultural Use of Fertilisers in the planning period 2019/2020 and in corresponding orders in the following planning periods.

2. A fertilisation plan shall be prepared for the whole acreage of the cattle farm. The plan shall be kept on the farm. It shall cover the period from 1 August to 31 July of the following year. The fertilisation plan shall include the following:

(a) a crop rotation plan specifying the following:

(i) the acreage of parcels with crops with high nitrogen uptake and long growing season;

(ii) the acreage of parcels with other crops than those mentioned in point (i);

(iii) a sketch map indicating the location of the parcels referred to in points (i) and (ii) respectively;

([11]) Directive 2000/60/EC of the European Parliament and of 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).

(b) the number of livestock on the cattle farm;

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

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

(e) a description of manure treatment, where applicable, and expected characteristics of the treated manure;

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

(g) the foreseeable amount of nitrogen and phosphorus required for the crop in each parcel;

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

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

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

The fertilisation plan shall be revised no later than seven days following any change in agricultural practices at the cattle farm. The fertilisation plan shall be submitted to the competent authorities by 31 March each year at the latest.

3. Manure shall not be spread in the period from 31 August to 1 March on grassland which will be ploughed the following spring.

4. Nitrogen fertilisations application standards for crops following temporary grassland shall be reduced by the previous crop nitrogen value according to Executive Order No 762 of 29 July 2019 on Agricultural Use of Fertilisers in the planning period 2019/2020, and in corresponding orders in the subsequent planning periods regarding fertilisation standards, table on fertilisation norms for agricultural crops and vegetables, and subsequent changes.

Article 8

Conditions regarding soil sampling and analyses

1. Samples shall be taken from the upper 30 cm of the farmland soil and analysed for their content of nitrogen and phosphorus.

2. The sampling and analyses shall be carried out at least once every four years for each area of the cattle farm presenting homogeneous features with regard to crop rotation and soil characteristics.

3. At least one sampling and analysis shall be carried out for each five hectares of farmland.

4. The results of the analyses shall be available for inspection at the cattle farm.

Article 9

Conditions regarding land management

1. 80 % or more of the acreage available for manure application shall be cultivated with crops with high nitrogen uptake and long growing season.

2. Grass catch crops shall not be ploughed before 1 March the year after they have been established.

3. Grasslands shall be ploughed in spring. A crop with high nitrogen uptake and long growing season shall be seeded as soon as possible, and no later than 3 weeks, after grass has been ploughed.

4. Crops used in crop rotation shall not include leguminous plants or other plants fixing atmospheric nitrogen, except for the following:

(a) clover and alfalfa in grassland together amounting to less than 50 %;

(b) barley and pea undersown with grass.

Article 10

Monitoring

1. The competent authorities shall ensure that maps are drawn up showing the following:

(a) the percentage of the cattle farms in each municipality which are covered by authorisations;

(b) the percentage of the livestock in each municipality which is covered by authorisations;

(c) the percentage of the agricultural land in each municipality which is covered by authorisations.

Those maps shall be updated every year.

The competent authorities shall collect and shall update every year data on crop rotations and agricultural practices on cattle farms covered by authorisations under this Decision.

2. The competent authorities shall monitor root zone water, surface waters and ground water and shall provide the Commission with data on nitrogen and phosphorus in the soil profile and nitrates concentrations in surface and groundwater, both under derogation and non-derogation conditions.

The monitoring shall be carried out at farm field scale in the agricultural catchment national monitoring programme. The monitoring sites shall be representative of the main soil types, the prevalent fertilisation practices and the main crops.

Reinforced monitoring of water quality shall be carried out in areas with sandy soils. In addition, nitrates concentrations in surface and groundwater shall be monitored in at least 3 % of all holdings covered by an authorisation.

3. The competent authorities shall carry out surveys and continuous nutrient analyses 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 authorisation.

Information and data collected from nutrient analysis as referred to in Article 7 and from monitoring as referred to in paragraph 2 of this Article shall be used for model-based calculations of nitrogen and phosphorus losses from cattle farms benefitting from an authorisation based on scientific principles.

4. The competent authorities shall quantify and record the percentages of the land under the derogation which is covered by:

(a) clover or alfalfa in grassland;

(b) barley and pea undersown with grass.

Article 11

Verification

1. The competent authorities shall ensure that applications for authorisation are submitted to administrative control. Where the control demonstrates that the conditions laid down in Articles 7, 8 and 9 are not fulfilled by the applicant, the application shall be refused, and the applicant shall be informed of the reasons for refusal.

2. The competent authorities shall establish a programme for inspections of farms benefiting from authorisations.

The programme shall be based on risk analysis having regard to the results of controls of the previous years concerning the conditions laid down in Articles 7, 8 and 9 and the results of controls of compliance with national legislation transposing Directive 91/676/EEC.

3. The inspections shall consist of field inspections and on the spot control for compliance with the conditions set out in Articles 7, 8 and 9 and shall cover annually at least 7 % of the cattle farms benefitting from an authorisation. Where a cattle farm is found not to comply with those conditions, the holder of the authorisation shall be fined in accordance with national law and shall not be eligible for an authorisation the planning period in the year after the finding.

4. 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 12

Reporting

The competent authorities shall, every year by 31 December at the latest, submit a report to the Commission 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 10(1);

(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 10(2);

(c) the results of soil monitoring as regards nitrate and phosphorus concentrations in the root zone water as well as regards nitrogen and phosphorus in the soil, both under derogation and non-derogation conditions, as referred to in Article 10(2);

(d) results of the surveys on local land use, crop rotations and agricultural practices, referred to in Article 10(3);

(e) results of model-based calculations of the magnitude of nitrogen and phosphorus losses from cattle farms benefitting from an authorisation, referred to in Article 10(3);

(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 10(4);

(g) evaluation of the implementation of the derogation conditions, on the basis of controls at farm level and information on non-compliant cattle farms, on the basis of the results of the administrative control and inspections, referred to in Article 11;

(h) trends in livestock numbers and manure production for each livestock category in Denmark and in cattle farms benefitting from the derogation;

(i) the implementation of the conditions for the derogation set in Article 4.

The spatial data contained in the report shall, where applicable, comply with Directive 2007/2/EC. In collecting the necessary data, Denmark shall make use, where appropriate, of the information generated under the Integrated Administration and Control System set up in accordance with Article 67(1) of Regulation (EU) No 1306/2013.

Article 13

Period of application

This Decision shall apply until 31 July 2024.

Article 14

Addressee

This Decision is addressed to the Kingdom of Denmark.

Done at Brussels, 17 July 2020.

For the Commission
Virginijus SINKEVIČIUS
Member of the Commission