

COMMISSION IMPLEMENTING DECISION (EU) 2018/820**of 31 May 2018****granting a derogation requested by the Netherlands pursuant to Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources***(notified under document C(2018) 3222)***(Only the Dutch 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) Directive 91/676/EEC aims to protect waters against pollution caused by nitrates from agricultural sources by, among other measures, limiting the application of livestock manure to land. If a Member State intends to allow an amount of manure per hectare that is different from the amount specified in the first sentence of the second subparagraph of paragraph 2 of Annex III to Directive 91/676/EEC, that amount is to be fixed so as not to prejudice the achievement of the objectives of the Directive and is to be justified on the basis of objective criteria, such as long growing seasons and crops with high nitrogen uptake. The justification is to be examined by the Commission.
- (2) On 8 December 2005, the Commission adopted Decision 2005/880/EC ⁽²⁾ granting a derogation requested by the Netherlands pursuant to Directive 91/676/EEC for the purpose of allowing the application of grazing livestock manure up to a limit of 250 kg nitrogen per hectare per year on farms with at least 70 % grassland.
- (3) On 5 February 2010, the Commission adopted Decision 2010/65/EU ⁽³⁾, amending Decision 2005/880/EC and extending the derogation until 31 December 2013.
- (4) On 16 May 2014, the Commission adopted Implementing Decision 2014/291/EU ⁽⁴⁾. In that Decision the Netherlands was granted a derogation pursuant to Directive 91/676/EEC to allow the application of grazing livestock manure on farms with at least 80 % grassland up to a limit of 230 kg nitrogen per hectare per year for farms on southern and central sandy soils and on loess soils and up to a limit of 250 kg nitrogen per hectare per year for farms on other soils. The derogation concerned 19 564 farms in 2016, corresponding to 47 % of the total net agricultural area in the Netherlands.
- (5) On 31 January 2018, the Netherlands submitted to the Commission a request, under the third subparagraph of paragraph 2 of Annex III to Directive 91/676/EEC, for a renewal of the derogation for the period 2018 to 2021.
- (6) The Netherlands applies, in conformity with Article 3(5) of Directive 91/676/EEC, an action programme throughout its whole territory.
- (7) The Dutch legislation implementing Directive 91/676/EEC includes application standards both for nitrogen and phosphate.
- (8) According to the data provided by the Dutch authorities, in the period 2012 to 2015, the number of cattle and pigs in the Netherlands increased by 2,3 % and 0,8 % respectively as compared to the period 2008 to 2011.

⁽¹⁾ OJ L 375, 31.12.1991, p. 1.

⁽²⁾ Commission Decision 2005/880/EC of 8 December 2005 granting a derogation requested by the Netherlands pursuant to Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources (OJ L 324, 10.12.2005, p. 89).

⁽³⁾ Commission Decision 2010/65/EU of 5 February 2010 amending Decision 2005/880/EC granting a derogation requested by the Netherlands pursuant to Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources (OJ L 35, 6.2.2010, p. 18).

⁽⁴⁾ Commission Implementing Decision 2014/291/EU of 16 May 2014 granting a derogation requested by the Netherlands pursuant to Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources (OJ L 148, 20.5.2014, p. 88).

The number of poultry in the Netherlands increased by 2,4 % for the same period. Since 2006, Dutch legislation ⁽¹⁾ sets limitations on the number of pigs and poultry. Moreover, since January 2015, Dutch legislation ⁽²⁾ requires that an appropriate share of surplus manure from the dairy sector is processed. In addition, a system of phosphate production rights for dairy cattle has just been introduced ⁽³⁾ in the Netherlands. All of those measures aim at preventing pollution of water bodies.

- (9) In the period 2012 to 2015, nitrogen use from livestock manure in the Netherlands was 416 000 tonnes, which was a decrease of 4,4 % as compared to the period 2008 to 2011 ⁽⁴⁾. The use of chemical N fertiliser in the Netherlands increased by approximately 4,3 % in the period 2012 to 2015 compared to the period 2008-2011 ⁽⁵⁾.
- (10) According to the scientific underpinning provided by the Dutch authorities, the climate in the Netherlands, characterised by an annual rainfall evenly distributed throughout the year and a relatively narrow annual temperature range, promotes a long grass-growing season of 250 days per year.
- (11) Moreover, the information provided by the Dutch authorities in the context of the previous derogation granted by Implementing Decision 2014/291/EU indicates that derogation has not led to a deterioration of the Dutch water bodies. For instance, the nitrate concentration in the water leaving the root zone on monitored holdings covered by authorisations has decreased since 2006 and was in average in 2015 and 2016 below 50 mg/l.
- (12) The data reported by the Netherlands under Article 10 of Directive 91/676/EEC shows that for the period 2012 to 2015, approximately 88 % of the groundwater monitoring stations in the Netherlands had mean nitrate concentrations below 50 mg/l and that 79 % of those monitoring stations had mean nitrate concentrations below 25 mg/l. The data also shows that for the period 2012 to 2015, 99 % of the surface water monitoring stations in the Netherlands had mean nitrate concentrations below 50 mg/l and that 96 % of those monitoring stations had mean nitrate concentrations below 25 mg/l. The data indicates a stable or decreasing trend in nitrate concentration in groundwater and surface water compared to the period 2008 to 2011. Nevertheless, in the reporting period 2012 to 2015, 60 % of the freshwaters were eutrophic, 13 % potentially eutrophic and 27 % not eutrophic.
- (13) After examination of the request from the Netherlands in accordance with the third subparagraph of paragraph 2 of Annex III to Directive 91/676/EEC and in the light of the 6th Dutch Action Programme and the experience gained from the derogation provided for in Implementing Decision 2014/291/EU, the Commission considers that the amount of grazing livestock manure proposed by the Netherlands, corresponding to 230 kg nitrogen per hectare per year on farms with at least 80 % grassland on southern and central sandy soils and on loess soils and 250 kg nitrogen per hectare per year on farms with at least 80 % grassland on other soils, will not prejudice the achievement of the objectives of Directive 91/676/EEC, subject to certain strict conditions being met by the Netherlands, and is justified on the basis of objective criteria.
- (14) The Netherlands should ensure that the pressure on water bodies as a consequence of growing livestock numbers and the associated manure production does not increase. To that end the Netherlands should ensure that total manure production, both in terms of nitrogen and phosphorus, does not increase beyond the level of the year 2002. New legislation implementing the 6th Dutch Action Programme should therefore provide for a binding manure production ceiling which is not to be exceeded and which can be invoked against individual farmers where needed.
- (15) The authorisations to individual farmers is subject to certain conditions that are aimed at ensuring fertilisation at farm level based on crop needs and reduction and prevention of nitrogen and phosphorus losses to water. Those conditions should therefore include requirements that a fertiliser plan has been established at farm level, that fertiliser practices are recorded through fertiliser accounts, that periodic soil analysis are carried out, that green cover is applied in winter after maize, that specific provisions on grass ploughing are complied with, that no manure is applied before grass ploughing, that the fertilisation takes into account the contribution of leguminous crops, and that no phosphate from chemical fertilisers is applied to the land.
- (16) Over the recent years the implementation by the Netherlands of their manure management policy, including compliance with Implementing Decision 2014/291/EU, has suffered some setbacks leading to a situation where there are concerns over possible fraud. This exceptional situation requires the Netherlands to step up its efforts in preventing fraud in the implementation of its manure policy. While the 6th Action Programme already provides for measures aimed at reinforcing the control and inspections with a view to improving overall compliance with

⁽¹⁾ Dutch Fertiliser Act (*Meststoffenwet*), Articles 19 and 20

⁽²⁾ Dutch Fertiliser Act (*Meststoffenwet*), Articles 33a-33d.

⁽³⁾ Dutch Fertiliser Act (*Meststoffenwet*), Article 21b.

⁽⁴⁾ Eurostat, June 2017

⁽⁵⁾ Eurostat, June 2017

the rules of the Dutch manure policy, additional efforts need to be deployed to foster effective implementation and full compliance. Those efforts should include the establishment of an enhanced enforcement strategy, taking into account also the provisions of Directive 2008/99/EC of the European Parliament and of the Council ⁽¹⁾. The strategy should be based on an independent assessment of compliance with the rules on Dutch manure policy and contain specific measures aiming at further strengthening inspections and controls and a clear methodology to establish sufficiently dissuasive penalties and sanctions. It is therefore justified to limit the duration of the derogation so that it expires on 31 December 2019 in order to enable the Netherlands to fully implement the enhanced enforcement strategy. The Netherlands may submit, in accordance with the second subparagraph of paragraph 2 of Annex III to Directive 91/676/EEC, a request for a new derogation for a subsequent period.

- (17) Directive 2000/60/EC of the European Parliament and of the Council ⁽²⁾ provides for a comprehensive, cross-border approach to water protection organised around river basin districts (RBDs), with the objective of achieving good status for European bodies of water. Reducing nutrients is an integral part of that objective. Granting of a derogation under this Decision is without prejudice to the provisions of Directive 2000/60/EC and does not exclude that additional measures may be needed to fulfil obligations derived from that Directive.
- (18) Directive 2007/2/EC of the European Parliament and of the Council ⁽³⁾ 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 of the Union 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, the Netherlands, 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 ⁽⁴⁾.
- (19) 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 the Netherlands by letter of 31 January 2018, for the purpose of allowing application to the land of a higher amount of nitrogen from grazing 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, is granted, subject to the conditions laid down in this Decision.

Granting of a derogation under this Decision is without prejudice to the provisions of Directive 2000/60/EC.

Article 2

Scope

This derogation applies to grassland farms for which an authorisation has been granted in accordance with Article 6.

⁽¹⁾ Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law (OJ L 328, 6.12.2008, p. 28).

⁽²⁾ 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).

⁽³⁾ 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).

⁽⁴⁾ 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 3***Definitions**

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

- (1) 'grassland farm' means any holding where at least 80 % of the acreage available for manure application is grass;
- (2) 'grazing livestock' means cattle (with the exclusion of veal calves), sheep, goats, horses, donkeys, deer, and water buffalo;
- (3) 'farm land' means the acreage owned, rented or managed by the farmer under a written individual contract and on which the farmer has a direct management responsibility;
- (4) 'grass' means permanent grassland or temporary grassland which lies less than five years;
- (5) 'fertilisation plan' means a calculation of the planned use and availability of nutrients;
- (6) 'fertilisation account' means the nutrient balance based on the real use and uptake of nutrients.
- (7) 'southern and central sandy soils' means soils indicated as southern and central sandy soils under the Dutch legislation implementing the Nitrates Directive
- (8) 'loess soils' means soils indicated as loess soils under the Dutch legislation implementing the Nitrates Directive

*Article 4***General conditions for the derogation**

The derogation is granted on the following conditions:

- (1) The Netherlands shall monitor the amount of manure produced and shall ensure that manure production at national level both in terms of nitrogen and phosphorus will not increase beyond the level of the year 2002 corresponding to 504,4 million kg of nitrogen and 172,9 million kg of phosphate.
- (2) The Netherlands shall establish an enhanced enforcement strategy aiming at strengthening the compliance with the rules on Dutch manure policy and at ensuring that any information pointing at situations of non-compliance is followed up effectively.

The enhanced enforcement strategy shall, as a minimum, include the following elements:

- (a) an independent assessment of the scale and scope of cases of deliberate non-compliance with the national rules on manure. This assessment should be carried out by the competent national authorities responsible for inspections of the national manure rules together with the competent national authorities responsible for investigating and prosecuting offences of a criminal nature;
- (b) an identification of the areas of manure handling and management with higher risk of deliberate non-compliance with the national rules on manure;
- (c) a strengthening of the capacity for inspections and controls, which is at least equal to 40 % of the capacity required for the field inspections of grassland farms covered by authorisations referred to in Article 10(2), including random, and a better targeting of that capacity to risk areas of manure handling and management;
- (d) a clear methodology for establishing sufficiently effective, proportionate and dissuasive penalties and sanctions.

The enhanced enforcement strategy shall be put in place and notified to the Commission by 30 September 2018 at the latest and shall be revised, if needed, on the basis of the findings made in the context of the measures referred to in points (a) to (d).

*Article 5***Applications for authorisation**

1. Grassland farmers may submit an application for an annual authorisation to apply grazing livestock manure containing up to 230 kg nitrogen per hectare per year for southern and central sandy soils and loess soils or up to 250 kg nitrogen per hectare per year for other soils to the competent authorities.
2. Together with the application referred to in paragraph 1, the applicant shall submit a written declaration that he fulfils the conditions laid down in Articles 7 and 8 and that he accepts that the fertiliser application as well as the fertilisation plan and the fertilisation account referred to in Article 7, may be subject to control.

*Article 6***Granting of authorisations**

Authorisations to apply an amount of grazing livestock manure on grassland farms, including manure excreted by the animals themselves, containing up to 230 kg nitrogen per hectare per year for southern and central sandy soils and loess soils or up to 250 kg nitrogen per hectare per year for other soils, shall be granted subject to the conditions laid down in Articles 7 and 8.

*Article 7***Conditions regarding application of manure and other fertilisers**

1. The amount of manure from grazing livestock applied to the land each year on grassland farms, including by the animals themselves, shall not exceed the amount of manure containing 230 kg nitrogen per hectare per year on southern and central sandy soils and on loess soils and 250 kg nitrogen per hectare per year on other soils, subject to the conditions laid down in paragraphs 2 to 8. The total nitrogen and phosphate inputs shall comply with the nutrient demand of the crop and the supply from the soil. They shall not exceed the maximum application standards established in the 6th Dutch Action Programme.

2. Phosphate from chemical fertilisers shall not be used.

3. A fertilisation plan shall be prepared and kept at the grassland farm. The fertilisation plan shall describe the crop rotation of the farmland and the planned application of manure and other nitrogen and phosphate fertilisers. The fertilisation plan for the first calendar year shall be available at the grassland farm by 30 June at the latest. The fertilisation plan for the subsequent calendar years shall be available at the grassland farm by 28 February at the latest.

4. The fertilisation plan shall include the following elements:

- (a) the number of livestock on the grassland farm, a description of the housing and manure storage system, including the volume of manure storage available;
- (b) a calculation of the manure nitrogen (less losses in housing and storage) and phosphorus produced on the grassland farm;
- (c) the crop rotation plan, which must specify the acreage of individual fields with grass and other crops, including a sketch map indicating the location of individual fields;
- (d) the foreseeable nitrogen and phosphorus crop requirements;
- (e) the amount and the type of manure delivered to contractors and therefore not used on the grassland farm;
- (f) the amount of imported manure used on the grassland farm;
- (g) a calculation of the contribution from organic matter mineralisation, leguminous crops and atmospheric deposition and amount of nitrogen present in the soil at the moment when the crop starts to use it to a significant degree;
- (h) a calculation of nitrogen and phosphorus application from manure for each field (parcels of the grassland farm that are homogeneous regarding cropping and soil type);
- (i) a calculation of nitrogen application from chemical and other fertilisers for each field;
- (j) calculations for assessment of compliance with the maximum application standards for nitrogen and phosphorus established in the 6th Dutch Action Programme.

The fertilisation plan shall be revised no later than seven days following any changes in agricultural practices at the grassland farm.

5. A fertilisation account for each calendar year shall be prepared and kept for each grassland farm. It shall be submitted to the competent authority by 31 March of the following calendar year.

6. The fertilisation account shall include the following elements:

- (a) the crop acreages;
- (b) the number and type of livestock;
- (c) the manure production per animal;

- (d) the amount of fertilisers imported by the grassland farm;
 - (e) the amount of manure delivered to contractors and therefore not used on the grassland farm and the name of those contractors.
7. Periodic nitrogen and phosphorus analysis in soil shall be performed at least every four years for each homogeneous area of the farm, with regard to crop rotation and soil characteristics. One analysis per five hectares of land shall be required as a minimum.

In case grassland is ploughed for grassland renewal, the statutory nitrogen application standard set in the 6th Dutch Action Programme shall be reduced by 50 kg N/ha on sandy and loessial soils after 31 May of each calendar year. In case grassland is ploughed for the cultivation of maize on sandy or loessial soil, the statutory nitrogen application standard set in the 6th Dutch Action Programme for maize shall be reduced by 65 kg N/ha.

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

Article 8

Conditions regarding land management

1. On sand and loess soil, grass or other crops ensuring soil coverage during the winter shall be cultivated after maize.
2. Catch crops shall not be ploughed before 1 February.
3. Grass on sandy and loessial soils shall only be ploughed in spring, except for ploughing grassland for grassland renewal, which may be done until 31 August at the latest.
4. Ploughed grass on all soil types shall be followed immediately by a crop with high nitrogen demand and fertilisation shall be based on soil analysis concerning mineral nitrogen and other parameters providing references for estimate of nitrogen release from soil organic matter mineralisation.
5. Where crop rotation includes leguminous or other plants fixing atmospheric nitrogen, fertiliser application shall be reduced accordingly.
6. By way of derogation from paragraph 3, grass ploughing is permitted in autumn for planting flower bulbs.

Article 9

Monitoring

1. The competent authorities shall ensure that maps are drawn up showing the following:
 - (a) the percentage of the grassland 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.
2. The competent authorities shall establish and maintain a monitoring network for sampling of soil water, streams, shallow groundwater and drainage water at monitoring sites in grassland farms covered by an authorisation. That monitoring network shall provide data on nitrate and phosphorus concentration in water leaving the root zone and entering the groundwater and surface water system.
3. The monitoring network shall comprise at least 300 farms covered by authorisations and shall be representative of each soil type (clay, peat, sandy, and sandy loessial soils), the fertilisation practices and the crop rotation. The composition of the monitoring network shall not be modified during the period of applicability of this Decision.
4. The competent authorities shall carry out a survey and a continuous nutrient analysis that provide data on local land use, crop rotations and agricultural practices on grassland farms covered by authorisations. Those data may be used for model-based calculations of the magnitude of nitrate leaching and phosphorus losses from fields where up to 230 kg or up to 250 kg nitrogen per hectare per year of manure from grazing livestock is applied.
5. The competent authorities shall conduct reinforced water monitoring in agricultural catchments in sandy soils.

*Article 10***Controls and inspections**

1. The competent authorities shall carry out administrative controls in respect of all applications for authorisation for the assessment of compliance with the conditions set out in Articles 7 and 8. Where it is demonstrated that those conditions are not fulfilled, the application shall be refused and the applicant shall be informed of the reasons for the refusal.

The competent authorities shall carry out administrative controls for at least 5 % of the grassland farms covered by authorisations with regard to land use, livestock number and manure production.

2. The competent authorities shall establish a programme for field inspections of grassland farms covered by authorisations on a risk basis and with appropriate frequency, taking account of the results of controls of the previous years and the results of general random controls of legislation implementing Directive 91/676/EEC and any other information that might indicate non-compliance with the conditions set out in Articles 7 and 8.

Field inspections shall be carried out in at least 5 % of the grassland farms covered by authorisations to assess compliance with the conditions set out in Articles 7 and 8. Those inspections shall be complemented by the inspections and controls referred to in Article 4(2)(c).

3. Where it is established in any year that a grassland farm covered by an authorisation did not fulfil the conditions set out in Articles 7 and 8, the holder of the authorisation shall be sanctioned in accordance with national rules and shall not be eligible for an authorisation the following year.

4. The competent authorities shall be granted the necessary powers and means to verify compliance with the conditions for an authorisation granted under this Decision.

*Article 11***Reporting**

1. The competent authorities shall, every year by 30 June at the latest, submit a report to the Commission containing the following information:

- (a) data related to fertilisation in all grassland farms which are covered by authorisations, including information on yields and soil types;
- (b) trends in livestock numbers for each livestock category in the Netherlands and in grassland farms covered by an authorisation,
- (c) trends in national manure production as far as nitrogen and phosphate in manure are concerned;
- (d) a summary of the results of controls related to excretion coefficients for pig and poultry manure at national level;
- (e) the maps referred to in Article 9(1);
- (f) the results of water monitoring, including information on water quality trends for groundwater and surface water, as well as the impact on water quality of the derogation granted in this Decision;
- (g) the information on nitrate and phosphorus concentration referred to in Article 9(2);
- (h) the results from the reinforced water monitoring referred to in Article 9(5);
- (i) the results of the surveys on local land use, crop rotations and agricultural practices referred to in Article 9(4);
- (j) the results of the model-based calculations referred to in Article 9(4);
- (k) an evaluation of the implementation of the conditions for the authorisations set out in Articles 7 and 8 on the basis of controls carried out at farm level, and information on non-compliant farms, on the basis of the results of the administrative controls and inspections referred to in Article 10;
- (l) the results of the enhanced enforcement strategy referred to in Article 4, in particular as regards the reduction in non-compliance cases.

2. The spatial data contained in the report shall, where applicable, fulfil the provisions of Directive 2007/2/EC. In collecting the necessary data, the Netherlands 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 12***Period of application**

This Decision shall apply until 31 December 2019.

*Article 13***Addressee**

This Decision is addressed to the Kingdom of the Netherlands.

Done at Brussels, 31 May 2018.

For the Commission
Karmenu VELLA
Member of the Commission
