Commission Implementing Decision (EU) 2019/1205 of 12 July 2019 granting a derogation requested by Belgium with regard to the region of Flanders pursuant to Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources (notified under document C(2019) 5180) (Only the Dutch and the French texts are authentic)

COMMISSION IMPLEMENTING DECISION (EU) 2019/1205

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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 point 2 of Annex III thereof,

Whereas:

(1) By Commission Implementing Decision (EU) 2015/1499[(2)] Belgium was granted a derogation allowing it to authorise in the region of Flanders, under certain conditions, the land application of up to 250 kg nitrogen per hectare per year from livestock manure on parcels cultivated with grassland and maize undersown with grassland, with cut grassland followed by maize and with cut rye followed by maize and up to 200 kg nitrogen per hectare per year from livestock manure on parcels cultivated with winter wheat and triticale followed by a catch crop and with sugar or fodder beets.

(2) The derogation granted by Implementing Decision (EU) 2015/1499 concerned approximately 2 870 farmers and 94 280 ha of land and expired on 31 December 2018.

(3) On 21 December 2018, Belgium submitted to the Commission a request for a new derogation under the third subparagraph of point 2 of Annex III to Directive 91/676/EEC with regard to the region of Flanders.

(4) The requested derogation concerns the intention of Belgium to allow the land application in Flanders, in specific holdings, of up to 250 kg nitrogen per hectare per year from grazing livestock manure and treated manure on parcels cultivated with grassland, grassland mixed with clover, maize undersown with grassland and cut grassland or cut rye followed by maize and up to 200 kg nitrogen per hectare per year from livestock manure and treated manure on parcels cultivated with winter wheat or triticale followed by a catch crop and with beet.

(5) The information provided by Belgium in the context of the derogation granted by Implementing Decision (EU) 2015/1499, indicates that the derogation has not led to a deterioration of water quality. The Report from the Commission to the Council and the European Parliament on the implementation of Directive 91/676/EEC for the period 2012 to 2015[(3)], shows that in the region of Flanders, around 81 % of the groundwater monitoring stations reported mean nitrate concentrations below 50 mg/l and 63 % of groundwater monitoring stations reported mean nitrate concentrations below 25 mg/l. Monitoring data showed a downward trend in nitrate concentration in groundwater as compared to the previous reporting period (2008 to 2011). For surface water, 95 % of the monitoring stations have reported mean nitrate concentrations below 50 mg/l and 75 % of monitoring stations have reported mean nitrate concentrations below 25 mg/l. The majority of monitoring points in surface waters showed a decreasing trend in nitrate concentrations. In the reporting period 2012 to 2015, around 76 % of rivers were classified as either eutrophic or hypertrophic, which is similar to the previous reporting period (2008 to 2011).

(6) More recent data provided by Belgium for the region of Flanders demonstrate that the quality of ground and surface water in Flanders as regards contamination by nitrates did not improve since 2015.

(7) Flanders intends to reach the following water quality goals over the action programme for the period 2019 to 2022 for all catchment areas. For surface water, a reduction of the average target distance with 4 mg nitrate per litre with an average concentration above the target distance of 20 mg nitrate per litre; for shallow groundwater, which has a slower recovery rate, a global downward trend of at least 3 mg nitrate per litre has to be reached in all catchments that have an average concentration above 50 mg nitrate per litre or between 40 and 50 mg nitrate per litre with increasing trend.

(8) In order to reach these goals, Flanders has established a reinforced action programme for the period 2019 to 2022. A review of the designation of area types where strengthened measures are in place is envisaged for the end of 2020 based upon the monitoring results of surface water quality during the winters of the years 2018-2019 and 2019-2020 and groundwater quality during the years 2018 and 2019. The legislation transposing Directive 91/676/EEC for the region of Flanders, the 'Decree for the protection of water against pollution by nitrates from agricultural sources'[(4)] (the 'Manure Decree') has been amended in accordance with the action programme for the period 2019 to 2022 on 24 May 2019 and applies in conjunction with this Decision.

(9) The Manure Decree applies through the whole territory of the region of Flanders.

(10) The Manure Decree includes limits for the land application of both nitrogen and phosphorus.

(11) Solid fractions resulting from manure treatment should be delivered to authorised installations for recycling, with the aim of reducing odours and other emissions, improving agronomic and hygienic properties, facilitating handling and enhancing recovery of nitrogen and phosphate.

(12) The supporting documents presented by Belgium concerning the region of Flanders show that the proposed amount of nitrogen from livestock manure of respectively 250 and 200 kg per hectare per year is justified on the basis of objective criteria such as long growing seasons and crops with high nitrogen uptake.

(13) The latest data provided by Belgium for Flanders for the period 2015 to 2017 show a decrease in pig numbers of 4,7 %. The numbers of poultry show an increase of 14,3 % between 2014 and 2017. The numbers of cattle remained stable. In order to avoid that the application of the requested derogation leads to intensification of livestock rearing, the competent authorities will limit the number of livestock that can be kept in each farm (nutrient emission rights) in the region of Flanders according to the provisions set out in the Manure Decree.

(14) The data reported by Belgium concerning the region of Flanders for the period 2012 to 2015 showed a decrease of 4,9 % in the use of nitrogen from livestock manure in the period 2012 to 2014 as compared to the period 2004 to 2007. The latest available numbers for 2015, 2016 and 2017 show a further decrease in the use of nitrogen from livestock manure of 4,0 % between 2014 and 2017, up to a value of 90,6 thousand tonnes in 2017. During the reporting period 2012 to 2015, the use of mineral nitrogen was similar to the period 2008 to 2011. The latest available data for 2015, 2016 and 2017 show that mineral nitrogen use has increased to 48,6 thousand tonnes in 2017, which is an increase of 21 % compared to 2014.

(15) On parcels with soils with low P-availability (class I) and soils within the target zone (class II), there may be a need to apply additional phosphate from chemical fertiliser. Such fertilisers should not be used on parcels with soils with a moderate P-availability (class III) and soils with a high P-availability (class IV).

(16) Flanders has a dense network of water quality monitoring stations. That network can be used as an alternative to the current derogation monitoring network and should allow to observe the performance of farms benefitting from an authorisation in accordance with the derogation requested by Belgium in comparison to farms that do not benefit from such an authorisation, and to monitor whether the objectives of Directive 91/676/EEC are achieved. Further research should be done in order to better understand the connection between nitrate losses on parcel level and the nitrate concentration in surface water and ground water at the level of a (sub) catchment, in order to calibrate and validate the nutrient emission model.

(17) After examination of the request it can be considered that the proposed amounts of respectively 250 and 200 kg per hectare per year of nitrogen from grazing livestock manure and treated manure, will not prejudice the achievement of the objectives of Directive 91/676/EEC, subject to certain strict conditions being met, which should apply in addition to the reinforced measures taken in the action programme for the period 2019 to 2022.

(18) Directive 2007/2/EC of the European Parliament and of the Council[(5)] 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

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Decision (EU) 2019/1205. (See end of Document for details)*

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, Belgium, 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[6].

(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 Belgium, on behalf of the Flanders region, for the purpose of allowing the land application of a higher amount of nitrogen from livestock manure than that provided for in the first sentence of the second subparagraph of point 2 of Annex III to Directive 91/676/EEC, is granted, subject to the conditions laid down in Articles 4 to 12 of this Decision.

Article 2

Scope

The derogation granted pursuant to Article 1 shall apply to specified parcels of a farm on which crops with high nitrogen demand and long growing season are cultivated and for which an authorisation has been granted in accordance with Articles 4 to 7.

Article 3

Definitions

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

(a) ‘farms’ means agriculture 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 (generally temporary lies less than four years);

(d) ‘crops with high nitrogen demand and long growing season’ means any of the following:

  (i) grassland;

  (ii) grassland with less than 50 % of clover;

(iii) maize undersown, before or after harvest, with grass mowed and removed from the field acting as a catch crop;

(iv) cut grassland or cut rye followed by maize;

(v) winter wheat or triticale followed by a catch crop;

(vi) sugar or fodder beets;

(e) 'grazing livestock' means cattle (with the exclusion of veal calves), sheep, goats and horses;

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

(g) 'treated manure' means the liquid fraction resulting from manure treatment;

(h) 'effluent with low nitrogen and phosphate content' means treated manure with a maximum nitrogen content of 1 kg per ton effluent and a maximum phosphate content of 1 kg per ton effluent;

(i) 'soil profile' means the soil layer below ground level to a depth of 0,90 m, unless the average highest groundwater level is shallower; in this latter case it shall be to a depth of the average highest groundwater level.

(j) 'fertilisation plan' means an advance calculation about the planned use and availability of nutrients;

(k) 'fertilisation account' means the nutrient balance based on the real use and uptake of nutrients.

Article 4

Annual application and commitment

1 Farmers who want to benefit from derogation under this Decision shall submit an application to the competent authorities annually by 15 February. For the year 2019, the annual application shall be submitted by 31 July.

2 Together with the annual application referred to in paragraph 1, the farmers shall undertake in writing to fulfil the conditions provided for in Articles 6, 7 and 8.

Article 5

The granting of authorisations

Authorisations to apply a higher amount of nitrogen from livestock manure shall be granted subject to the conditions laid down in Articles 6, 7 and 8.