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COMMISSION IMPLEMENTING DECISION

of XXX

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

(Only the Dutch version is authentic)

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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.

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;
1. 'grazing livestock' means cattle (with the exclusion of veal calves), sheep, goats, horses, donkeys, deer, and water buffalo;
2. '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;
3. 'grass' means permanent grassland or temporary grassland which lies less than five years;
4. 'fertilisation plan' means a calculation of the planned use and availability of nutrients;
5. 'fertilisation account' means the nutrient balance based on the real use and uptake of nutrients.

6. 'southern and central sandy soils' means soils indicated as southern and central sandy soils under the Dutch legislation implementing the Nitrates Directive
7. '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 fully implement 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;
 - (e) full implementation of the enforcement in high risk areas De Peel, Gelderse Vallei and Twente, in spring 2020;
 - (f) real time accountability of manure transport via automation by end 2020;
 - (g) Revision of the sanction policy by end of June 2020;
 - (h) Individual inspection of 5.5 % of the pig farms.
3. The enhanced enforcement strategy shall be revised, in the light of the experiences gained during its implementation, in particular if by December 2021 the number of irregularities found is not diminishing to include reinforced controls and measures. The revised strategy shall be notified the Commission.

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 mineralization, 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 flowers bulbs.

Article 9

Conditions as regards reduction of ammonia emissions to reduce nutrient depositions also in water

1. On grassland farms benefitting from an authorisation pursuant to Article 6 the following conditions shall apply:
 - (a) Manure shall not be applied grassland if the outside temperature is above 15 °C,
 - (b) Slurry shall be applied on grassland with shallow injection (WE KNOW THIS IS ALREADY OBLIGATORY)
 - (c) Slurry shall be applied on arable land with injection(WE KNOW THIS IS ALREADY OBLIGATORY)
 - (d) Solid manure shall be immediately worked in after application (WE KNOW THIS IS ALREADY OBLIGATORY)
2. All grassland farmers benefitting from an authorisation shall be coached on nitrogen emission reducing measures before 31 December 2020

Article 10

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 a reinforced water monitoring in agricultural catchments in sandy soils.

Article 11 ***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 12
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:
 - (1) Implementation and results of digital controls
 - (2) Physical controls per type of farm.
 - (3) the reduction in non-compliance cases
 - (4) administrative and juridical sanctions
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 13
Period of application

This Decision shall apply until 31 December 2021.

Article 13

Addressee

This Decision is addressed to the Kingdom of the Netherlands.

Done at Brussels,

For the Commission

[...]

Member of the Commission