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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 taken into account the effect on physical controls because of measures to prevent the risk of spreading the Corona virus;
 - (f) real time accountability of manure transport via automation by end 2020;
 - (g) Decision on revision of the sanction policy by end of June 2020;
 - (h) Individual inspection of 5.5 % of the pig farms, taken into account the effect on physical controls because of measures to prevent the risk of spreading the Corona virus.
3. The enhanced enforcement strategy shall be revised, in the light of the experiences gained during its implementation, in particular if by December 2021 results which shows that compliance is not improving, which point to the number of non-

compliance found is not diminishing, to include reinforced controls and measures. The revised strategy shall be notified to the Commission.

Remarks

- General and sub e and sub h:
To prevent spreading of the Coronavirus in the Netherlands national measures have been taken. Therefore the NVWA is not allowed to perform farm-inspections since March 2020. This has an effect on the programming of the physicals control and also on the results of it in 2020. This will also have an effect on the implementation of the enhanced strategy, for example on the joint enforcement in the high risk areas De Peel, Gelderse Vallei and Twente which are therefore delayed.
- Sub g: Revision of the sanction policy by end of June 2020:
As stated in our Letter of 14 February 2020 a decision our government has announced it will explore whether manure fines can be differentiated according the size of the company and recidivism. Decision-making will take place in the Spring of 2020. Therefore we suggest to add to this paragraph that a decision will be made. And this decision can lead to a revision of the sanction policy. The conclusion can also be that the current sanction policy is sufficient.
- Sub h:
Individual inspection of 5.5 % of the pig farms in 2020, taken into account the effect on physical controls because of measures to prevent the risk of spreading the Corona virus.
- Paragraph 3:
The results of enforcement measures and measurements in 2020 informs us more on the level of compliance. Moreover, the enhanced enforcement strategy is also targeting big offenders, which takes more time and effort to pursue than minor offences, for which reason the non-compliance does not show the complete picture of the results of the enhanced enforcement strategy.

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)
 - i) Slurry shall be applied on grassland on sandy and loessial soils with shallow injection,
 - ii) Slurry shall be applied on grassland on clay and peat soils with shallow injection, a trailing shoe slurry applicator with a 1:2 dilution of slurry with water or pulse track injector.
 - b) Slurry shall be applied on arable land with (shallow) injection or immediately worked in after application in one pass.
 - c) Solid manure shall be immediately worked in after application in at most two passes.
 - d) Changes in these conditions on a national level shall be notified to the Commission.
2. Participants in the regulation containing the exemption ‘[surface spreading of cattle slurry on grassland](#)’ are excluded from the condition in paragraph 1 of this Article.
3. All grassland farmers benefitting from an authorisation shall be coached on nitrogen emission reducing measures before 31 December 2020.

Remarks:

First of all we cannot trace back a scientific underpinning with respect to applying manure above an outside temperature of 15 °C.

The Royal Netherlands Meteorological Institute reports that over the last 100 years, the daily average temperature has on average been above 15 degrees from the end of May to half of September (<https://www.knmi.nl/nederland-nu/klimatologie/grafieken/jaar>). Average maximum temperature has been above 15 degrees from the end of March to half of October. As the manure application period starts on the 15th of February, this would leave the period in which manure can be applied in a short time period, even if manure would be applied at nighttime. Applying the required amount of manure in such a short period of time would not be possible and would not be in line with the general aim to use animal manure throughout the year according to the need of the crop.

Naturally, the Netherlands aims to use only those application techniques with the lowest emission factor. However, unfortunately not every technique is applicable on every soil type and in all crops. For example, peat soils and most clay soils cannot carry the heavy equipment required for deep injection and soil is damaged by its tracks, significantly reducing yields. Furthermore, injection results in more tracks due to the required draught force (and thus smaller working widths as a result). This would lead to soil compaction and desiccation, accompanied by lower yields even further, less N uptake by the crop and increasing nitrate fluxes. We strive to maintain an integral view, minimizing emissions on all fronts and optimizing N uptake. Furthermore, crop yield (quality) during harvest may be reduced by clot forming (especially on clay soils).

We suggest to include the specific Dutch legislation where the obligatory conditions for the application of emission techniques are laid down. Therefore we add these conditions to this Article. Of course in this Article a general reference to the applicable Dutch legislation can be made.

Furthermore, a group of approximately 200 dairy farmers (out of the 17.000 derogated farms) has an exemption since the 5th Action Program (2014) for the surface spreading of cattle slurry on grassland from their own company. This exemption is a result of the wish of a majority of parliament to grant an exemption for surface spreading to certified farmers of the Association for the Preservation of Farmer and the Environment (VBBM) and the Association of Northern Frisian Woods (NFW). These farmers have a smaller and more extensive operational management than the average in the Netherlands and have agreements about the way in which the operational management (certificate) is implemented. These farmers believe that the use of slurry in the relevant characteristics of the certificate of the two associations as a condition to use this exemption. This means that the area of grassland on the farm must be at least 85% and the business operations must not be intensive (less than 14,000 kg of milk per hectare and less than 100 kg of fertilizer nitrogen per hectare). The nitrogen surplus of the farm cannot be higher than 100 kg per hectare. In addition, the grazing animals must be grazed on the farm and only animal manure from these grazing animals may be supplied to the grassland of the farm.

Taking into account the different soil types, kind of crops farmers cultivate and good agricultural practice, and given the low-emission technologies permitted by regulation, farmers can use the technique most-optimal for reducing general emissions fitting to their situation.

- Paragraph 2:

Considering only a small group of farmers is participating in the exemption for surface spreading of cattle slurry on grassland, we propose that the conditions for the application of slurry on grassland (as laid down in paragraph 1 of this Article) do not apply for participants in this exemption.

- Sub d:

If changes in these conditions are made, we suggest to add the condition to notify these changes in national regulation to the Commission.

- Paragraph 3:

We propose to fulfil this condition as follows. In 2020 all grassland farms participating in derogation will be informed by a special newsletter from RVO.nl on the measures our Government is taken with respect to reduce ammonia emissions in agriculture. Also a special website will be set up. Further enrolment will take place by the introduced coaches for farmers on the issue of ammonia emissions. It will however not be possible to have personal, physical coaching at each individual farm this year.

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).

7. 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.
8. 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 10(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 10(2);
 - (h) the results from the reinforced water monitoring referred to in Article 10(5);
 - (i) the results of the surveys on local land use, crop rotations and agricultural practices referred to in Article 10(4);
 - (j) the results of the model-based calculations referred to in Article 10(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 on manure transport
 - (2) Physical controls per type of farm.
 - (3) the reduction in non-compliance cases
 - (4) administrative 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.

Remarks

- General

References in this article are made to Article 9 instead of Article 10

- Sub 1-4

Submitting information on juridical sanctions can suggest influence by our Ministry/executive services or even your Commission. However it concerns decisions by the Public Prosecution Service and a final decision by an independent judge. To avoid this impression we suggest to take out this item.

- Paragraph 1, sub I

With respect to reporting on digital controls we suggest to be specific that this concerns manure transport, therefore it is added to this subparagraph.

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