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**COMMISSION IMPLEMENTING DECISION**

of **XXX**

**on 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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**on 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**

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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<sup>1</sup>, and in particular paragraph 2, third subparagraph, of Annex III thereto,

Whereas:

- (1) Directive 91/676/EEC lays down rules on the protection of waters against pollution caused by nitrates from agricultural sources.
- (2) Paragraph 2 of Annex III to Directive 91/676/EEC establishes that Member States intending to apply more livestock manure than 170 kg nitrogen per hectare (ha) are to fix amounts so as not to prejudice the achievement of the objectives specified in Article 1 of that Directive. If a Member State allows a different amount under point (b) of the second subparagraph, it shall inform the Commission, which shall examine the justification in accordance with the regulatory procedure referred to in Article 9(2).
- (3) By Decision 2005/880/EC<sup>2</sup>, the Commission granted 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.
- (4) By Decision 2010/65/EU<sup>3</sup>, the Commission, amending Decision 2005/880/EC, granted 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 until 31 December 2013.

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<sup>1</sup> OJ L 375, 31.12.1991, p. 1.

<sup>2</sup> 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).

<sup>3</sup> 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).

- (5) By Commission Implementing Decision 2014/291/EU<sup>4</sup>, which ceased to apply on 31 December 2017, 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.
- (6) By Commission Implementing Decision (EU) 2018/820<sup>5</sup>, which ceased to apply on 1 January 2020, 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 18818 farms in 2019, corresponding to 44.7 % of the total net agricultural area in the Netherlands.
- (7) By Commission Implementing Decision (EU) 2020/1073<sup>6</sup>, which ceased to apply on 31 December 2021, the Netherlands was granted a derogation 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 duration of that Implementing Decision was limited to 2 years in order to enable the Netherlands to fully implement an enhanced enforcement strategy to prevent fraud in the implementation of its manure policy. Furthermore, additional conditions were included to ensure that the amount of livestock did not increase and to reduce ammonia emissions in manure application.
- (8) On 25 February 2022, the Netherlands requested a new derogation pursuant to Directive 91/676/EEC paragraph 2, third subparagraph, of Annex III.
- (9) The Netherlands reported data<sup>7</sup> under Article 10 of Directive 91/676/EEC which showed that for the period 2016 to 2019, approximately 14 % of the groundwater monitoring stations in the Netherlands had mean nitrate concentrations above 50 mg/l, 5 % between 40 and 50 mg/l, and 73 % below 25 mg/l. The data also showed that for the period 2016 to 2019, 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. Nevertheless, in the reporting period 2016 to 2019, 58 % of freshwaters were eutrophic and 10 % could become eutrophic if no measures were taken.
- (10) This data as published in the Report on Article 10 of Directive 91/676/EEC<sup>8</sup> also showed significant variations between Dutch provinces and that pollution hotspots for nitrate concentrations in groundwater and eutrophication are found in a number of

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<sup>4</sup> 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 (OJ L 148, 20.5.2014, p. 88).

<sup>5</sup> 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 (OJ L 137, 4.6.2018, p. 27).

<sup>6</sup> Commission Implementing Decision (EU) 2020/1073 of 17 July 2020 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 234, 21.7.2022, p. 20).

<sup>7</sup> COM(2021) 1000 and SWD(2021) 1001 part 28.

<sup>8</sup> COM(2021) 1000 and SWD(2021) 1001 part 28.

Dutch provinces. In *Limburg*, 36 % of groundwater stations showed mean nitrate concentrations above 50 mg/l and 22 % showed negative trends, while 74 % of surface waters were eutrophic and 16 % at risk of becoming eutrophic if no measures were taken. In *Noord-Brabant*, 26 % of groundwater stations showed mean nitrate concentrations above 50 mg/l and 20 % showed negative trends, while 68 % of surface waters were eutrophic and 7 % at risk of becoming eutrophic if no measures were taken. In *Zeeland*, 14 % of groundwater stations showed mean nitrate concentrations above 50 mg/l and 47 % showed negative trends, while 80 % of surface waters were eutrophic and 11 % at risk of becoming eutrophic if no measures were taken. In *Zuid-Holland*, 54 % of surface waters were eutrophic and 17 % at risk of becoming eutrophic if no measures were taken. In *Noord-Holland*, 61 % of surface waters were eutrophic and 19 % at risk of becoming eutrophic if no measures were taken. In *Utrecht*, 24 % of groundwater stations showed negative trends in nitrate concentrations, while 43 % of surface waters were eutrophic and 10 % at risk of becoming eutrophic if no measures were taken. In *Gelderland*, 10 % of groundwater stations showed mean nitrate concentrations above 50 mg/l and 15 % showed negative trends. In *Overijssel*, 18 % of groundwater stations showed mean nitrate concentrations above 50 mg/l and 19 % showed negative trends, while 67 % of surface waters were eutrophic and 4 % at risk of becoming eutrophic if no measures were taken. In *Drenthe*, 15 % of groundwater stations showed mean nitrate concentrations above 50 mg/l, while 65 % of surface waters were eutrophic and 9 % at risk of becoming eutrophic if no measures were taken. In *Friesland*, 23 % of groundwater stations showed negative trends in nitrate concentrations, while, 85 % of surface waters were eutrophic. In *Groningen*, 52 % of surface waters were eutrophic and 11 % at risk of becoming eutrophic if no measures were taken. In *Flevoland*, 33% of surface waters were eutrophic.

- (11) The data reported by the Netherlands in 2020 and 2021 in the context of the reports under Implementing Decision (EU) 2020/1073 showed increases in nitrate concentrations in groundwater in areas with loess, sandy and clay soils. In the south and the east of the sandy soil region, the average nitrate concentration in the upper metre of the groundwater was 67 mg/l in 2021. This exceeds the Union limit value of 50 mg/l. Since 2017, the nitrate concentration has doubled in this part of the sandy soil region. The average concentration in the north of the sandy soil region remained lower than the Union limit value, but increased to 37 mg/l in 2021. In the loess soil region, the average concentration decreased slightly to 57 mg/l in 2020, but is still above the Union limit value. In the clay soil region, nitrate concentrations consistently remained below the limit value, however they have increased. In the peat soil region, the lowest concentrations were measured at an average concentration of 14 mg/l in 2021. Data also showed that root zone water from farms in the derogation monitoring network often exceeded the nitrate concentration norms even if the mean value remained below 50 mg/l.
- (12) The Netherlands applies, in conformity with Article 3(5) of Directive 91/676/EEC, an action programme throughout its whole territory. On 26 December 2021, the Netherlands adopted a new action programme for the period 2022-2025<sup>9</sup> (the 7th Nitrates Action Programme), which includes additional measures to reduce nutrients (nitrogen and phosphorus) losses to the environment and is based on a regional differentiated approach depending on the level of nutrients pollution and on the soil type. However, the environment impact assessment, performed in preparation of the

<sup>9</sup> Original title '7e Nederlandse actieprogramma betreffende de Nitraatrichtlijn (2022-2025)'.

7<sup>th</sup> Nitrates Action Programme by the scientific advisory commission to the Dutch authorities (Commissie van Deskundigen Meststoffenwet), found that the potential effects of the action programme would not be sufficient to achieve the water quality objectives. On 25 February 2022, the Netherlands adopted an Addendum<sup>10</sup> to the 7<sup>th</sup> Nitrates Action Programme referring to the National Programme for Rural Areas<sup>11</sup> which sets out an integral approach to nature, water and climate, including nitrogen emissions, to meet Union environmental and climate requirements. Through the Addendum the Dutch Government seeks to translate its ambitions into concrete measures aiming at achieving the water quality targets for nutrients from agricultural sources.

- (13) The 2022-2025 7<sup>th</sup> Nitrates Action Programme and its Addendum set efforts needed per region to reach water quality objectives regarding nitrates and phosphorus from agricultural sources as specified by Directive 91/676/EEC and the Dutch river basin management plan adopted in the context of Directive 2000/60/EC of the European Parliament and of the Council<sup>12</sup>. For nitrates concentrations in groundwater, the *Zand Noord*, *Zand Oost*, *Westelijk Noord-Brabant*, *Centraal zeelei*, *Zuidwestelijk zeeleigebied*, *Westelijk zandgebied* regions need *some* effort to reach the targets, while the *Gelderse Vallei*, *Oostelijk Noord-Brabant en Limburg Zand*, *Lössgebied* regions need a *significant* effort to reach them. For phosphorus concentrations in surface water (eutrophication), the *Zand Noord*, *Zand Oost*, *Westelijk Noord-Brabant*, *Oostelijk Noord-Brabant en Limburg Zand*, *Noordelijk zeeleigebied*, *Centraal zeelei* *Zuidwestelijk zeeleigebied* regions need *some* effort to reach the targets, whilewhile the *Gelderse Vallei*, *Lössgebied*, *Westelijk Zeelei*, *Westelijk veengebied*, *Westelijk zandgebied* regions need a *significant* effort to reach them. This is consistent with the data reported by the Netherlands under Article 10 of Directive 91/676/EEC.
- (14) The Netherlands will adopt a new designation of areas polluted by nitrates and phosphorus from agricultural sources (*nutrients polluted areas*), which should include all catchment areas for monitoring points for groundwater and surface water exhibiting mean nitrates pollution or occasional nitrates pollution events, at risk of being polluted and increasing trends, as well as monitoring points exhibiting eutrophication or at risk of becoming eutrophic. The designation should also take into account relevant case-law of the Court of Justice of the European Union, in particular, the rulings in cases C-221/03<sup>13</sup> and C-543/16<sup>14</sup>. If no new designation is in place on 1 January 2024, all areas where some or significant efforts are required will be designated as nutrients polluted areas.
- (15) This derogation request should be considered within the broader EU policy context regarding nutrient management issues, in particular, the objectives and targets of Directives 2000/60/EC<sup>15</sup>, 2006/118/EC<sup>16</sup> and 2008/56/EC<sup>17</sup>, the increasing ambition of

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<sup>10</sup> Original title ‘Addendum op het 7e actieprogramma Nitraatrichtlijn’.

<sup>11</sup> Nationaal Programma Landelijk Gebied.

<sup>12</sup> 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).

<sup>13</sup> Judgment of the Court of Justice of 22 September 2005, C 221/03, Commission of the European Communities v Kingdom of Belgium, ECLI:EU:C:2005:573.

<sup>14</sup> Judgment of the Court of 21 June 2018, European Commission v Federal Republic of Germany, C-543/16, ECLI:EU:C:2018:481.

<sup>15</sup> 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.

<sup>16</sup> Directive 2006/118/EC of the European Parliament and of the Council of 12 December 2006 on the protection of groundwater against pollution and deterioration (OJ L 372, 27.12.2006, p. 19)

Effort Sharing Regulation<sup>18</sup> and the CAP Strategic Plan for the Netherlands<sup>19</sup>, as well as the objectives of the European Green Deal concerning nutrient pollution. The European Green Deal sets objectives for the Union to reduce nutrients losses, and to limit non-CO<sub>2</sub> greenhouse gases, namely methane and nitrous oxide, of which fertilisation and livestock are a major source. In particular, the Union has committed, in the Farm to Fork Strategy<sup>20</sup> and the Zero Pollution Action Plan<sup>21</sup>, to reducing nutrients losses by 50 % in 2030, leading to a reduction of 20 % in fertilisers, and preserving soil fertility, and reducing by 25 % the EU ecosystems areas, measured as areas above ‘critical loads’ of nitrogen deposition, where air pollution threatens biodiversity.

- (16) In the ‘initial proposal for the National Programme for Rural Areas’ of 10 June 2022<sup>22</sup>, the Dutch Government notes ‘In peatland areas, Natura 2000 areas, groundwater protection areas, vulnerable watercourses, and buffer zones around Natura 2000 sites are the greatest challenges. In those areas, farmers will have more business restrictions or less development opportunities. Extensification of agriculture is then the most appropriate route’. There is also a ‘commitment to create transitional areas around Natura 2000 sites’. ‘Transitional areas (buffer zones) around Natura 2000 areas are areas adjacent to Natura 2000 sites which contribute to system restoration to maintain and restore the biodiversity in the Natura 2000 site concerned’.
- (17) The Commission has examined the Dutch request for derogation taking into account the requirements and objectives of Directive 91/676/EEC and the experience from the previous derogation decisions and in the light of the 7th Nitrates Action Programme and its Addendum. It has also examined the trends in water quality and taken into account the European Green Deal objectives. Based on the above, the Commission considers it is necessary to ensure a predictable transition derogation period of maximum 4 years for grassland farmers until the planned reforms as set out in the Addendum are fully incorporated in Dutch law and to accompany the gradual implementation of the new reforms. The Commission further considers that achieving the objectives of Directive 91/676/EEC requires strict additional conditions to be met by the Netherlands, in particular, but not only, in the nutrients polluted areas. The requested derogation should support the reform path defined in the Addendum and in the National Programme for Rural Areas.
- (18) The derogation granted by this Decision is without prejudice to the Netherlands’ obligations to apply Council Directive 92/43/EEC<sup>23</sup> and the ruling of the Court of Justice of the European Union in Case C-293/17<sup>24</sup>, in particular on the interpretation of

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<sup>17</sup> Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive) (OJ L 164, 25.6.2008, p. 19).

<sup>18</sup> Regulation (EU) 2018/842 - Binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement and amending Regulation (EU) No 525/2013

<sup>19</sup> SWD(2020) 93 final - Analysis of links between CAP Reform and Green Deal; SWD(2020) 388 final - Commission recommendations for Netherland’s CAP strategic plan. SWD(2020) 388 final.

<sup>20</sup> A Farm to Fork Strategy for a fair, healthy and environmentally-friendly food system. COM(2020) 381 final.

<sup>21</sup> COM(2021) 400 final

<sup>22</sup> Original title ‘Startnotitie Nationaal Programma Landelijk Gebied – 10 Juni 2022’.

<sup>23</sup> Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L 206, 22.7.1992, p. 7).

<sup>24</sup> Case C-293/17 Coöperatie Mobilisation for the Environment and Vereniging Leefmilieu (ECLI:EU:C:2018:882).

Article 6(3) of that Directive; and to apply Directive 2000/60/EC and Directive 2008/56/EC and does not exclude that additional measures may be needed to fulfil obligations derived from these Directives.

- (19) It is essential to ensure that authorising additional amounts of manure per hectare per year does not delay or put at risk the requirements of other Union legislation for which nitrogen and phosphorous pollution could be an obstacle in achieving its objectives. Therefore, national authorisations for derogations to individual farmers should not be allowed in groundwater protection areas and in Natura 2000 areas, or within the buffer zones around Natura 2000 areas as defined in the Dutch National Programme for Rural Areas, and the size of which will be specified in 2023.
- (20) The livestock density in the Netherlands remains very high; in 2016, it was the highest in the Union, nearly five times higher than the Union average. According to the data provided by the Netherlands, in the period 2019 to 2021 the total livestock decreased by 2.5 %, whereas the number of cattle increased.
- (21) The overall manure production of 2020 should not be exceeded. This ceiling of maximum manure production will be embedded in national legislation on 1 January 2024. Moreover, the implementation of the reforms planned under the National Programme for Rural Areas should lead to a gradual reduction of the manure production by the end of the validity of the current Decision.
- (22) In nutrients polluted areas in particular, it is necessary to complement the 7<sup>th</sup> Nitrates Action Programme and its Addendum with specific measures recognised for their effectiveness in sustainable nutrients management at farm level and in reducing nutrients losses in groundwater and freshwater.
- (23) The Netherlands established an enhanced enforcement strategy to step up the prevention of fraud in the implementation of its manure policy. That strategy was implemented in the years 2020-2021, but suffered some delays also due to the COVID pandemic. The implementation of the strategy along its main axes of action needs to be pursued effectively and extended to other regions where the independent assessment shows a significant risk of deliberate non-compliance with the rules on manure management. The transition period for the planned agricultural reforms could also lead to increased fraud, and therefore the controls should be intensified.
- (24) The authorisations to individual farmers are subject to certain conditions that are aimed at ensuring fertilisation at farm level based on crop needs and at preventing nitrogen and phosphate losses to water. The measures laid down in this Decision should be additional to the measures already being applied through the 7<sup>th</sup> Nitrates Action Programme and its Addendum.
- (25) The Netherlands is required to implement all measures set in Annex III to Directive (EU) 2016/2284 of the European Parliament and of the Council<sup>25</sup> for the reduction of ammonia emissions. The report on the impact of Directive 91/676/EEC on gaseous nitrogen emissions<sup>26</sup> concluded that in some regions with high livestock densities, the derogation may result in higher gaseous emissions. Therefore, appropriate measures should be taken to reduce ammonia emissions, including low emission spreading

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<sup>25</sup> Directive (EU) 2016/2284 of the European Parliament and of the Council of 14 December 2016 on the reduction of national emissions of certain atmospheric pollutants, amending Directive 2003/35/EC and repealing Directive 2001/81/EC (OJ L 344, 17.12.2016, p. 1).

<sup>26</sup> The impact of the Nitrates Directive on gaseous N emissions, Effects of measures in nitrates action programme on gaseous N emissions, Contract ENV.B.1/ETU/2010/0009.

techniques, where necessary in combination with a maximum temperature at which manure can be applied and a strict obligation of immediate incorporation into the soil of manure/slurry when applied on fields.

- (26) The conditions laid down in Article 4 of this Decision are considered as the version of the Statutory Management Requirements established in national law in the meaning of Article 12 and 13 of Regulation (EU) 2021/2115 of the European Parliament and of the Council<sup>27</sup>, and the conditions laid down in Articles 5 to 9 of this Decision are considered for the entities benefiting from derogations as the version of the Statutory Management Requirements established in national law in the meaning of Article 12 and 13 of Regulation (EU) 2021/2115 of the European Parliament and of the Council.
- (27) The Netherlands must comply with the objectives on greenhouse gas emissions and removals from land use, land use change and forestry in the 2030 climate and energy framework. A conversion of land use from grassland to arable land would induce an increase of emissions of soil carbon and hamper compliance with with Article 4 of Regulation (EU) 2018/841<sup>28</sup>.
- (28) Directive 2007/2/EC of the European Parliament and of the Council<sup>29</sup> lays down general rules aimed at establishing 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. Furthermore, 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 set up by the Netherlands pursuant to Article 67(1) of Regulation (EU) No 1306/2013 of the European Parliament and of the Council<sup>30</sup>.
- (29) This Decision will cease to apply on 31 December 2025.
- (30) 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,

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<sup>27</sup> Regulation (EU) 2021/2115 of the European Parliament and of the Council of 2 December 2021 establishing rules on support for strategic plans to be drawn up by Member States under the common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulations (EU) No 1305/2013 and (EU) No 1307/2013 (OJ L 435, 6.12.2021, p. 1).

<sup>28</sup> Regulation (EU) 2018/841 of the European Parliament and of the Council of 30 May 2018 on the inclusion of greenhouse gas emissions and removals from land use, land use change and forestry in the 2030 climate and energy framework, and amending Regulation (EU) No 525/2013 and Decision No 529/2013/EU (OJ L 156, 19.6.2018, p. 1).

<sup>29</sup> 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.

<sup>30</sup> 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.



HAS ADOPTED THIS DECISION:

### *Article 1*

#### ***Derogation***

The derogation requested by the Netherlands by letter of 25 February 2022, for the purpose of allowing application to the land of a higher amount of nitrogen from grazing livestock manure than that provided for in paragraph 2, second subparagraph, first sentence, of Annex III to Directive 91/676/EEC, is granted as a transitional measure to accompany reforms of the agriculture and livestock sector in the Netherlands in order to meet EU environmental and climate requirements in relation to nitrogen emissions (including ammonia) and nutrients in water (including Directive 91/676/EEC), and subject to the conditions set in this Decision.

### *Article 2*

#### ***Scope of Derogation***

The derogation applies to grassland farms 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) '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) 'farmland' 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) 'grassland' means permanent grassland or temporary grassland which lies less than 5 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) 'fertilisation register' means an electronic system by which farmers report on real nutrient uses and manure management;
- (8) 'southern and central sandy soils' means soils indicated as southern sandy soils and central sandy soils under the Dutch legislation Article 1 paragraph 1 of the Implementing Regulation on Fertilisers Act<sup>31</sup> ;

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<sup>31</sup> Original title 'Uitvoeringsregeling Meststoffenwet'.

- (9) 'loess soils' means soils indicated as loess soils under the Dutch legislation Article 1 paragraph 1 of the Implementing Regulation on Fertilisers Act;
- (10) 'nutrients' refer to nitrogen and phosphate.

#### Article 4

##### **General conditions for the derogation**

The derogation is granted on the following conditions:

- 1) The Netherlands shall develop a new designation and a new map of areas polluted by nitrates and phosphorous from agricultural sources (*nutrients polluted areas*) by 1 January 2024 at the latest, which includes all catchment areas for monitoring points for groundwater and surface water exhibiting mean nitrates pollution or occasional nitrates pollution events, at risk of being polluted and increasing trends, as well as monitoring points exhibiting eutrophication or at risk of becoming eutrophic.

As a transitional measure and until the new designation is in place at the latest by 1 January 2024, nutrients polluted areas will cover southern and central sandy soils and loess soils areas, as well as, from 1 January 2023, the catchment areas defined from regional waterbodies and qualified as nutrients inadequate areas (bad, poor and moderate) in the national analysis of water quality (2020)<sup>32</sup> by the Netherlands Environmental Assessment Agency (PBL).

As of 1 January 2024, a final designation and map of nutrients polluted areas shall be in place and shall include at least the areas designated in 2023 as well as any other additional area where the contribution from agriculture to the nutrients pollution is significant i.e. more than 19 % of the total nutrients load.

Should the final designation and map of nutrients polluted areas not be in place on 1 January 2024, the designation provided in the 7th Nitrates Action Programme and its Addendum shall be used, which includes all areas where *some* or *significant* efforts are required to reach water quality objectives regarding nitrates and phosphorous concentrations as specified by Directive 91/676/EEC and the Dutch river basin management plan adopted in the context of Directive 2000/60/EC.

- 2) The Netherlands shall monitor the amount of manure produced and ensure that manure production at national level, both in terms of nitrogen and phosphate, does not exceed 489.4 million kg of nitrogen and 150.7 million kg of phosphate (amount produced in 2020), and that, as a result of the reforms set out in the Addendum being implemented, the amount of manure produced gradually decreases, and in 2025 does not exceed 440 million kg of nitrogen and 135 million kg of phosphate.
- 3) As of 1 January 2023, the Netherlands shall not grant authorisations for derogations as referred in Article 5 of this Decision within Natura 2000 sites established in accordance with Directive 2009/147/EC<sup>33</sup> and Directive 92/43/EEC<sup>34</sup>, and, from 1 January 2024, in

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<sup>32</sup> [https://www.pbl.nl/sites/default/files/downloads/pbl-2020-nationale-analyse-waterkwaliteit-4002\\_0.pdf](https://www.pbl.nl/sites/default/files/downloads/pbl-2020-nationale-analyse-waterkwaliteit-4002_0.pdf).

<sup>33</sup> Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (OJ L 20, 26.1.2010, p. 7).

<sup>34</sup> Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L 206, 22.7.1992, p. 7).

buffer zones near Natura 2000 sites as specified by the National Programme for Rural Areas, for which the critical nitrogen load for nitrogen deposition is exceeded.

- 4) As of 1 January 2023, the Netherlands shall not grant authorisations for derogations as referred in Article 5 of this Decision in groundwater protection areas. In areas where the groundwater is polluted by nitrates, a package of mandatory measures to reduce nutrient loads shall be applied in the groundwater protection areas by 1 January 2024.
- 5) The Netherlands shall put in place the following measures:
  - (a) as of January 2023, all farms shall draw up an annual fertilisation plan before the growing season. The fertilisation plan shall describe the crop rotation of the farmland and the planned application of manure and other nitrogen and phosphate fertilisers.
  - (b) an electronic fertiliser register shall be in place as of 1 January 2024 registering application of mineral fertilisers and manure production and application on the land. By 1 January 2025, all farms shall use the electronic register. The Dutch authorities shall monitor and analyse the fertilisers' application rates and provide advice to farmers on methods to reduce the overall application rates.
  - (c) buffer strips on agricultural land along water courses on which fertilisation is prohibited. This applies as of 1 January 2023 to all water courses on agricultural parcels located in the Netherlands. The buffer strips shall be set as follows:
    - (i) minimum 5 metres width buffer strips along ecological vulnerable brooks and surface water bodies as defined under Directive 2000/60/EC;
    - (ii) minimum 3 metres width buffer strip along all other watercourses in agricultural areas, including for ditches.

These minimum widths can be adjusted in areas with significant dewatering and irrigation ditches in the following way:

- 3 metres width buffer strip along surface water bodies as defined under Directive 2000/60/EC where the total area at parcel level of a buffer strip of 5 metres width would encompass more than 4 % of the agricultural parcel. Where the total area at parcel level of a buffer strip of 3 metres width along surface water bodies as defined under Directive 2000/60/EC that are not larger than 10 metres would encompass more than 4 % of the agricultural parcel, the buffer strip can be reduced to 1 metre.
  - 1 metre width buffer strip along all other water courses in agricultural areas where the total area at parcel level of a buffer strip of 3 metres width would encompass more than 4 % of the agricultural parcel. Where the total area at parcel level of a buffer strip of 1 metre width would encompass more than 4 % of the agricultural parcel, the buffer strip can be reduced to 0,5 metre.
- (iii) minimum 1 metre width buffer strip along water courses that dry up in the summer (those water courses will be dry at least during the period from 1 April to 1 October).

- (d) In nutrients polluted areas, the following condition shall apply: the overall fertilisation rate from organic and chemical fertilisers shall gradually be reduced so that the rates will be 20 % lower as of 1 January 2025 compared to the rates published in the Annex to the 7th Nitrates Action Programme. If the planned revision of the fertilisation norms sets lower values, the latter shall prevail.
- 6) The Netherlands shall pursue the implementation of the enhanced enforcement strategy, building on the experience pursuant to the implementation of Article 4(3) of Implementing Decision (EU) 2020/1073. The enhanced enforcement strategy shall, as a minimum, include the following elements:
- (a) continued independent risk assessment of fraud cases and identification of areas and actors of manure handling and management with a higher risk of deliberate non-compliance with the national rules on manure, specified by or pursuant to the Implementing Regulation on Fertilisers Act<sup>35</sup>, the Decree on the use of fertilisers<sup>36</sup>, and the Environmental Management Activities Decree<sup>37</sup> as far as it concerns crop-free zones;
  - (b) continued implementation of enhanced enforcement in De Peel, Gelderse Vallei and Twente, identified as high-risk areas of deliberate non-compliance with the national rules on manure; the enhanced enforcement strategy shall progressively be extended before the end of 2025 to all other regions where the assessment shows that they are in a high-risk area, taking into account the experience and best practices gained;
  - (c) specific focus of the enforcement strategy on high-risk actors in the manure value chain including intermediaries and co-digesters in all regions;
  - (d) the automated system for real-time accountability of manure transport starting 1 January 2023;
  - (e) continued strengthening of the capacity for inspections and controls, which shall be at least equal to 40 % of the capacity required for the field inspections of grassland farms covered by an authorisation as referred to in Article 11(2), including random controls, and a better targeting of that capacity to risk areas of manure handling and management;
  - (f) individual inspection of at least 5,5 % of pig farms yearly.

#### *Article 5*

#### ***Applications for authorisation***

- 1) Grassland farmers may submit to the competent authority an application for an annual authorisation to apply a higher amount of grazing livestock manure, including manure excreted by the animals themselves, to be the amount of manure per hectare per year containing:

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<sup>35</sup> Original title 'Uitvoeringsregeling Meststoffenwet'.

<sup>36</sup> Original title 'Besluit gebruik meststoffen'

<sup>37</sup> Original title 'Activiteitenbesluit milieubeheer'

- (a) for 2022, up to 230 kg of nitrogen per hectare and per year in nutrients polluted areas and up to 250 kg of nitrogen per hectare and per year in other areas;
  - (b) for 2023, up to 220 kg of nitrogen per hectare and per year in nutrients polluted areas and up to 240 kg of nitrogen per hectare in other areas;
  - (c) for 2024, up to 210 kg of nitrogen per hectare and per year in nutrients polluted areas and up to 230 kg of nitrogen per hectare in other areas;
  - (d) for 2025, up to 190 kg of nitrogen per hectare and per year in nutrients polluted areas and up to 200 kg of nitrogen per hectare in other areas;
  - (e) after 31 December 2025, up to 170 kg of nitrogen per hectare and per year in all areas.
- 2) Together with the application referred to in paragraph 1, applicants shall submit a written declaration that they fulfil the conditions laid down in Articles 7, 8 and 9 and that they accept that the application, as well as the fertilisation plan and the fertilisation account referred to in Article 7, may be subject to inspection as referred to in Article 11 of this Decision.

#### *Article 6*

##### ***Granting of authorisations***

Authorisations to grassland farms to apply a higher amount of grazing livestock manure on grassland farms, including manure excreted by the animals themselves, 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 in grassland farms benefiting from a derogation***

- 1) The amount of manure from grazing livestock applied to the land each year on grassland farms, including manure excreted by the animals themselves, shall not exceed the amounts specified in Article 5.
- 2) Phosphate from chemical fertilisers shall not be used on the grassland farm.
- 3) The grassland farm shall make a fertilisation plan by 28 February at the latest. The plan shall include at least the elements listed in Article 7(4) of Implementing Decision (EU) 2020/1073. The fertilisation plan shall be revised no later than 7 days following any changes in agricultural practices at the grassland farm.
- 4) The grassland farm shall keep a fertilisation account for each calendar year. It shall be submitted to the competent authority by 31 March of the next calendar year. 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.
- 5) The grassland farm shall perform nitrogen and phosphorous analysis in soil at least every 4 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. On the basis of that analysis, the fertilisation plan of the farm and corrective measures shall be applied.
  - 6) Where grassland is ploughed for grassland renewal, the nitrogen application standard shall be reduced by 50 kg nitrogen per hectare after 31 May of each calendar year. Where grassland is ploughed for the cultivation of maize, the nitrogen application standard for maize shall be reduced by 65 kg nitrogen per hectare.
  - 7) Where crop rotation includes leguminous or other plants fixing atmospheric nitrogen, fertiliser application shall be reduced accordingly.
  - 8) Manure shall not be spread in the autumn before grass cultivation.

#### *Article 8*

##### ***Conditions regarding land management in grassland farms benefiting from a derogation***

- 1) In nutrients polluted areas, 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) In nutrients polluted areas, grass shall only be ploughed in spring, except for:
  - (a) for grassland renewal, which may be done until 31 August at the latest;
  - (b) for planting flower bulbs, which may be done in autumn.
- 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 estimates of nitrogen release from soil organic matter mineralisation.

#### *Article 9*

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

- 1) On grassland farms benefiting from an authorisation pursuant to Article 6, the following conditions shall apply:
  - (a) slurry shall be applied on grassland on sandy and loess soils with shallow injection;

- (b) slurry shall be applied on grassland on clay and peat soils with shallow injection, with a trailing shoe slurry applicator with a 2:1 dilution of slurry with water or with a pulse track injector;
  - (c) slurry shall not be applied with a trailing shoe applicator where the outside temperature is 20 °C or higher;
  - (d) slurry shall be applied on arable land with injection or immediately worked in after application in one pass;
  - (e) solid manure shall be immediately worked in after application in at most two passes.
- 2) The Netherlands shall provide training on ammonia emission reduction measures to all grassland farmer benefiting from an authorisation. The first training shall be provided before 31 December 2023.

#### *Article 10*

#### **Monitoring**

- 1) The competent authorities shall ensure that maps are drawn up indicating the percentages of the following:
- (a) grassland farms in each municipality which are covered by authorisations;
  - (b) livestock in each municipality which is covered by authorisations;
  - (c) 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 phosphate 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 loess soils) and of the level of pollution, 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 monitor the following:
- (a) root zone water, surface waters and ground water;
  - (b) progress towards water quality objectives regarding nitrates and phosphate concentrations as specified by Directive 91/676/EEC and the Dutch river basin management plan adopted in the context of Directive 2000/60/EC in nutrients polluted areas.

- 5) The Netherlands shall provide the Commission with data on nitrates concentrations in surface and groundwater, and on phosphate concentration and trophic status for surface water, both under derogation and non-derogation conditions.

#### *Article 11*

##### ***Controls and inspections***

- 1) The competent authorities shall carry out administrative controls on all applications for authorisation, with the aim of assessing compliance with the conditions in Articles 7, 8 and 9. Where it is demonstrated that the conditions are not fulfilled, the competent authorities shall refuse the application and the applicant will 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 analysis basis and with appropriate frequency. The programme shall take into account the results of controls of the previous years, the results of general random controls of legislation transposing Directive 91/676/EEC and any other information that might indicate non-compliance with the conditions set out in Articles 7, 8 and 9 of this Decision.

Field inspections shall be carried out in at least 5 % of the grassland farms covered by authorisations to assess compliance with the conditions in Articles 7, 8 and 9. Those inspections shall be supplemented by the inspections and controls referred to in Article 4(6).

- 3) Where it is established in any year that a grassland farm covered by an authorisation did not fulfil the conditions in Articles 7, 8 and 9, 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 pursuant to Article 6, 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) the implementation of the general conditions laid down in Article 4;
  - (e) the maps referred to in Article 10(1);
  - (f) the results of ground and surface water monitoring as regards nitrates and phosphate concentrations and eutrophication, including information on water quality trends for groundwater and surface water, both under derogation and non-derogation conditions, as well as the impact of derogations on water quality, as referred to in Article 10(4) and (5);
  - (g) an evaluation, on the basis of controls carried out at farm level, of how the conditions for the authorisations set out in Articles 7, 8 and 9 are being implemented, and information on non-compliant farms, on the basis of the results of the administrative controls and inspections referred to in Article 11;
  - (h) the implementation of the enhanced enforcement strategy referred to in Article 4, with specific reporting on each of the elements referred to in Article 4(6).
- 2) The spatial data contained in the report referred to in paragraph 1 shall, where applicable, comply with 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 2025.

#### *Article 14*

#### ***Addressee***

This Decision is addressed to the Kingdom of the Netherlands.

Done at Brussels,

*For the Commission*

*Virginijus SINKEVIČIUS*

*Member of the Commission*