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<sup>(1)</sup> Text with EEA relevance.

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## II

(Non-legislative acts)

## REGULATIONS

## COMMISSION DELEGATED REGULATION (EU) 2020/1068

of 15 May 2020

amending Annexes I and V to Regulation (EU) No 649/2012 of the European Parliament and of the Council concerning the export and import of hazardous chemicals

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 649/2012 of the European Parliament and of the Council of 4 July 2012 concerning the export and import of hazardous chemicals <sup>(1)</sup>, and in particular points (a) and (c) of Article 23(4) thereof,

Whereas:

- (1) Regulation (EU) No 649/2012 implements the Rotterdam Convention on the Prior Informed Consent Procedure for certain hazardous chemicals and pesticides in international trade <sup>(2)</sup> ('the Rotterdam Convention').
- (2) By Implementing Regulations (EU) 2019/677 <sup>(3)</sup>, (EU) 2019/989 <sup>(4)</sup>, (EU) 2019/1100 <sup>(5)</sup>, (EU) 2019/1090 <sup>(6)</sup>,

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<sup>(1)</sup> OJ L 201, 27.7.2012, p. 60.

<sup>(2)</sup> OJ L 63, 6.3.2003, p. 29.

<sup>(3)</sup> Commission Implementing Regulation (EU) 2019/677 of 29 April 2019 concerning the non-renewal of the approval of the active substance chlorothalonil, in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending Commission Implementing Regulation (EU) No 540/2011 (OJ L 114, 30.4.2019, p. 15).

<sup>(4)</sup> Commission Implementing Regulation (EU) 2019/989 of 17 June 2019 concerning the non-renewal of approval of the active substance chlorpropham, in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending the Annex to Commission Implementing Regulation (EU) No 540/2011 (OJ L 160, 18.6.2019, p. 11).

<sup>(5)</sup> Commission Implementing Regulation (EU) 2019/1100 of 27 June 2019 concerning the non-renewal of approval of the active substance desmedipham, in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending the Annex to Commission Implementing Regulation (EU) No 540/2011 (OJ L 175, 28.6.2019, p. 17).

<sup>(6)</sup> Commission Implementing Regulation (EU) 2019/1090 of 26 June 2019 concerning the non-renewal of approval of the active substance dimethoate, in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending the Annex to Commission Implementing Regulation (EU) No 540/2011 (OJ L 173, 27.6.2019, p. 39).

(EU) 2018/1532 <sup>(7)</sup>, (EU) 2019/344 <sup>(8)</sup>, (EU) 2018/1043 <sup>(9)</sup>, (EU) 2018/1917 <sup>(10)</sup>, (EU) 2018/1019 <sup>(11)</sup>, (EU) 2018/309 <sup>(12)</sup>, (EU) 2018/1501 <sup>(13)</sup> and (EU) 2018/1914 <sup>(14)</sup>, the Commission decided not to renew the approval of the substances chlorothalonil, chlorpropham, desmedipham, dimethoate, diquat, ethoprophos, fenamidone, flurtamone, oxasulfuron, propineb, pymetrozine and quinoxyfen, respectively, as active substances under Regulation (EC) No 1107/2009 of the European Parliament and of the Council <sup>(15)</sup>, with the effect that those substances are banned from all uses in the category 'pesticide' due to the absence of any other use in that category. Therefore, those substances should be added to the lists of chemicals in Parts 1 and 2 of Annex I to Regulation (EU) No 649/2012.

- (3) By Implementing Regulation (EU) 2018/1500 <sup>(16)</sup>, the Commission decided not to renew the approval of the substance thiram as active substance under Regulation (EC) No 1107/2009, with the effect that that substance is banned from use in the subcategory 'pesticide in the group of plant protection products' as referred to in Regulation (EU) No 649/2012. Since thiram is only approved under Regulation (EU) No 528/2012 of the European Parliament and of the Council <sup>(17)</sup> for use in biocidal products for product-type 9, which fall in the subcategory 'other pesticide including biocides' as referred to in Regulation (EU) No 649/2012, virtually all use of that substance is prohibited at the level of the category 'pesticide'. Therefore, thiram is considered severely restricted at the level of the category 'pesticide' and thus should be added to the lists of chemicals in Parts 1 and 2 of Annex I to Regulation (EU) No 649/2012.

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<sup>(7)</sup> Commission Implementing Regulation (EU) 2018/1532 of 12 October 2018 concerning the non-renewal of approval of the active substance diquat, in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending Commission Implementing Regulation (EU) No 540/2011 (OJ L 257, 15.10.2018, p. 10).

<sup>(8)</sup> Commission Implementing Regulation (EU) 2019/344 of 28 February 2019 concerning the non-renewal of approval of the active substance ethoprophos, in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending the Annex to Commission Implementing Regulation (EU) No 540/2011 (OJ L 62, 1.3.2019, p. 7).

<sup>(9)</sup> Commission Implementing Regulation (EU) 2018/1043 of 24 July 2018 concerning the non-renewal of approval of the active substance fenamidone, in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending Commission Implementing Regulation (EU) No 540/2011 (OJ L 188, 25.7.2018, p. 9).

<sup>(10)</sup> Commission Implementing Regulation (EU) 2018/1917 of 6 December 2018 concerning the non-renewal of approval of the active substance flurtamone, in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending Commission Implementing Regulation (EU) No 540/2011 (OJ L 311, 7.12.2018, p. 27).

<sup>(11)</sup> Commission Implementing Regulation (EU) 2018/1019 of 18 July 2018 concerning the non-renewal of approval of the active substance oxasulfuron, in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending Commission Implementing Regulation (EU) No 540/2011 (OJ L 183, 19.7.2018, p. 14).

<sup>(12)</sup> Commission Implementing Regulation (EU) 2018/309 of 1 March 2018 concerning the non-renewal of approval of the active substance propineb, in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending the Annex to Commission Implementing Regulation (EU) No 540/2011 (OJ L 60, 2.3.2018, p. 16).

<sup>(13)</sup> Commission Implementing Regulation (EU) 2018/1501 of 9 October 2018 concerning the non-renewal of approval of the active substance pymetrozine, in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending Commission Implementing Regulation (EU) No 540/2011 (OJ L 254, 10.10.2018, p. 4).

<sup>(14)</sup> Commission Implementing Regulation (EU) 2018/1914 of 6 December 2018 concerning the non-renewal of approval of the active substance quinoxyfen, in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending Commission Implementing Regulation (EU) No 540/2011 (OJ L 311, 7.12.2018, p. 17).

<sup>(15)</sup> Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC (OJ L 309, 24.11.2009, p. 1).

<sup>(16)</sup> Commission Implementing Regulation (EU) 2018/1500 of 9 October 2018 concerning the non-renewal of approval of the active substance thiram, and prohibiting the use and sale of seeds treated with plant protection products containing thiram, in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending Commission Implementing Regulation (EU) No 540/2011 (OJ L 254, 10.10.2018, p. 1).

<sup>(17)</sup> Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products (OJ L 167, 27.6.2012, p. 1).

- (4) By Implementing Regulation (EU) 2018/1865<sup>(18)</sup>, the Commission decided not to renew the approval of the substance propiconazole as active substance under Regulation (EC) No 1107/2009, with the effect that that substance is banned from use in the subcategory 'pesticide in the group of plant protection products'. That ban does not amount to a severe restriction of the use of the substance at the level of the category 'pesticide', considering that propiconazole is approved for several uses in the subcategory 'other pesticide including biocides'. Propiconazole has been approved for use in biocidal products of product-types 7, 8 and 9 under Regulation (EU) No 528/2012. Therefore, propiconazole should be added to the list of chemicals in Part 1 of Annex I to Regulation (EU) No 649/2012.
- (5) An application for renewal of the approval of clothianidin and thiamethoxam had been submitted, but the applicants withdrew that application after the adoption of the Implementing Regulations (EU) 2018/784<sup>(19)</sup> and (EU) 2018/785<sup>(20)</sup>, by which the Commission decided to amend the conditions of approval of the active substances clothianidin and thiamethoxam, respectively, under Regulation (EC) No 1107/2009. Since those approvals of clothianidin and thiamethoxam expired, the use of those substances is banned in the subcategory 'pesticide in the group of plant protection products'. That ban amounts to a severe restriction of the use of the substances at the level of the category 'pesticide', since virtually all use of clothianidin and thiamethoxam is prohibited as clothianidin and thiamethoxam are only approved for use in biocidal products of product-type 18 under Regulation (EU) No 528/2012 in the subcategory 'other pesticide including biocides'. Therefore, clothianidin and thiamethoxam should be added to the lists of chemicals in Parts 1 and 2 of Annex I to Regulation (EU) No 649/2012.
- (6) By Implementing Regulation (EU) 2018/783<sup>(21)</sup>, the Commission decided to amend the conditions of approval of the active substance imidacloprid under Regulation (EC) No 1107/2009, with the effect that the use of that substance is severely restricted in the subcategory 'pesticide in the group of plant protection products'. That severe restriction does not amount to a severe restriction of the use of the substance at the level of the category 'pesticide', considering that imidacloprid is approved for several uses in the subcategory 'other pesticide including biocides'. Imidacloprid has been approved for use in biocidal products of product-type 18 under Regulation (EU) No 528/2012. In addition, imidacloprid is used in veterinary medicinal products in accordance with Directive 2001/82/EC of the European Parliament and of the Council<sup>(22)</sup>. Therefore, imidacloprid should be added to the list of chemicals in Part 1 of Annex I to Regulation (EU) No 649/2012.
- (7) By Implementing Regulation (EU) 2015/404<sup>(23)</sup>, the Commission decided to extend the approval period of the active substance glufosinate under Regulation (EC) No 1107/2009, following an application for renewal of the approval of that active substance. Since that application has been withdrawn, glufosinate is no longer approved as active substance under Regulation (EC) No 1107/2009, with the effect that that substance is banned from all uses in the category 'pesticide' due to the absence of any other use in that category. It should therefore be added to the lists of chemicals in Parts 1 and 2 of Annex I to Regulation (EU) No 649/2012.
- (8) At its ninth meeting in May 2019, the Conference of the Parties to the Rotterdam Convention decided to include the substances phorate and hexabromocyclododecane in Annex III to that Convention, with the effect that those substances became subject to the Prior Informed Consent procedure under that Convention. Phorate should therefore be added to the lists of chemicals in Parts 1 and 3 of Annex I to Regulation (EU) No 649/2012. Hexabromocyclododecane is already listed in Annex V to Regulation (EU) No 649/2012 and thus banned for export. Therefore, it should be added to the list of chemicals in Part 3 of Annex I to that Regulation.

<sup>(18)</sup> Commission Implementing Regulation (EU) 2018/1865 of 28 November 2018 concerning the non-renewal of the approval of the active substance propiconazole, in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending Commission Implementing Regulation (EU) No 540/2011 (OJ L 304, 29.11.2018, p. 6).

<sup>(19)</sup> Commission Implementing Regulation (EU) 2018/784 of 29 May 2018 amending Implementing Regulation (EU) No 540/2011 as regards the conditions of approval of the active substance clothianidin (OJ L 132, 30.5.2018, p. 35).

<sup>(20)</sup> Commission Implementing Regulation (EU) 2018/785 of 29 May 2018 amending Implementing Regulation (EU) No 540/2011 as regards the conditions of approval of the active substance thiamethoxam (OJ L 132, 30.5.2018, p. 40).

<sup>(21)</sup> Commission Implementing Regulation (EU) 2018/783 of 29 May 2018 amending Implementing Regulation (EU) No 540/2011 as regards the conditions of approval of the active substance imidacloprid (OJ L 132, 30.5.2018, p. 31).

<sup>(22)</sup> Directive 2001/82/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to veterinary medicinal products (OJ L 311, 28.11.2001, p. 1).

<sup>(23)</sup> Commission Implementing Regulation (EU) 2015/404 of 11 March 2015 amending Implementing Regulation (EU) No 540/2011 as regards the extension of the approval periods of the active substances beflubutamid, captan, dimethoate, dimethomorph, ethoprophos, fipronil, folpet, formetanate, glufosinate, methiocarb, metribuzin, phosmet, pirimiphos-methyl and propamocarb (OJ L 67, 12.3.2015, p. 6).

- (9) Regulation (EU) 2017/852 of the European Parliament and of the Council <sup>(24)</sup> prohibits the export of mercury, certain mixtures of metallic mercury with other substances, certain mercury compounds and certain mercury-added products. Those export bans should be reflected in Part 2 of Annex V to Regulation (EU) No 649/2012.
- (10) Regulation (EU) No 649/2012 should therefore be amended accordingly.
- (11) It is appropriate to provide for a reasonable period of time for interested parties to take the measures necessary to comply with this Regulation and for Member States to take the measures necessary for its implementation,

HAS ADOPTED THIS REGULATION:

*Article 1*

Regulation (EU) No 649/2012 is amended as follows:

- (a) Annex I is amended in accordance with Annex I to this Regulation;
- (b) Annex V is amended in accordance with Annex II to this Regulation.

*Article 2*

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 1 September 2020.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 15 May 2020.

*For the Commission*  
*The President*  
Ursula VON DER LEYEN

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<sup>(24)</sup> Regulation (EU) 2017/852 of the European Parliament and of the Council of 17 May 2017 on mercury, and repealing Regulation (EC) No 1102/2008 (OJ L 137, 24.5.2017, p. 1).

## ANNEX I

Annex I to Regulation (EU) No 649/2012 is amended as follows:

(1) in Part 1, in the table, the following entries are added:

Chemical	CAS No	Einecs No	CN code (***)	Subcategory (*)	Use limitation (**)	Countries for which no notification is required
Chlorothalonil (*)	1897-45-6	217-588-1	ex 2926 90 70	p(1)	b	
Chlorpropham (*)	101-21-3	202-925-7	ex 2924 29 70	p(1)	b	
Clothianidin (*)	210880-92-5	n.a.	ex 2934 10 00	p(1)	b	
Desmedipham (*)	13684-56-5	237-198-5	ex 2924 29 70	p(1)	b	
Dimethoate (*)	60-51-5	200-480-3	ex 2930 90 98	p(1)	b	
Diquat, including diquat dibromide (*)	2764-72-9 85-00-7	220-433-0 201-579-4	ex 2933 99 80	p(1)	b	
Ethoprophos (*)	13194-48-4	236-152-1	ex 2930 90 98	p(1)	b	
Fenamidone (*)	161326-34-7	n.a.	ex 2933 29 90	p(1)	b	
Flurtamone (*)	96525-23-4	n.a.	ex 2932 19 00	p(1)	b	
Glufosinate, including glufosinate-ammonium (*)	51276-47-2 77182-82-2	257-102-5 278-636-6	ex 2931 39 90	p(1)	b	
Imidacloprid	138261-41-3	n.a.	ex 2933 39 99	p(1)	sr	
Oxasulfuron (*)	144651-06-9	n.a.	ex 2935 90 90	p(1)	b	
Phorate (#)	298-02-2	206-052-2	ex 2930 90 98	p(1)	b	
Propiconazole	60207-90-1	262-104-4	ex 2934 99 90	p(1)	b	
Propineb (*)	12071-83-9 9016-72-2	235-134-0	ex 2930 20 00	p(1)	b	
Pymetrozine (*)	123312-89-0	n.a.	ex 2933 69 80	p(1)	b	
Quinoxifen (*)	124495-18-7	n.a.	ex 2933 49 90	p(1)	b	
Thiamethoxam (*)	153719-23-4	n.a.	ex 2934 10 00	p(1)	b	
Thiram (*)	137-26-8	205-286-2	ex 2930 30 00	p(1)-p(2)	b-sr'	

(2) in Part 2, in the table, the following entries are added:

Chemical	CAS No	Einecs No	CN code (***)	Category (*)	Use limitation (**)
Chlorothalonil	1897-45-6	217-588-1	ex 2926 90 70	p	b
Chlorpropham	101-21-3	202-925-7	ex 2924 29 70	p	b
Clothianidin	210880-92-5	n.a.	ex 2934 10 00	p	sr
Desmedipham	13684-56-5	237-198-5	ex 2924 29 70	p	b
Dimethoate	60-51-5	200-480-3	ex 2930 90 98	p	b
Diquat, including diquat dibromide	2764-72-9 85-00-7	220-433-0 201-579-4	ex 2933 99 80	p	b
Ethoprophos	13194-48-4	236-152-1	ex 2930 90 98	p	b
Fenamidone	161326-34-7	n.a.	ex 2933 29 90	p	b
Flurtamone	96525-23-4	n.a.	ex 2932 19 00	p	b
Glufosinate, including glufosinate-ammonium	51276-47-2 77182-82-2	257-102-5 278-636-6	ex 2931 39 90	p	b
Oxasulfuron	144651-06-9	n.a.	ex 2935 90 90	p	b
Propineb	12071-83-9 9016-72-2	235-134-0	ex 2930 20 00	p	b
Pymetrozine	123312-89-0	n.a.	ex 2933 69 80	p	b
Quinoxifen	124495-18-7	n.a.	ex 2933 49 90	p	b
Thiamethoxam	153719-23-4	n.a.	ex 2934 10 00	p	sr
Thiram	137-26-8	205-286-2	ex 2930 30 00	p	sr'

(3) in Part 3, in the table, the following entries are added:

Chemical	Relevant CAS number (s)	HS code Pure substance (**)	HS code Mixtures containing substance (**)	Category
Hexabromocyclododecane	25637-99-4, 3194-55-6, 134237-50-6, 134237-51-7, 134237-52-8 and others	2903.89		Industrial
Phorate	298-02-2	2930.90	3808.50	Pesticide'



## ANNEX II

In Annex V to Regulation (EU) No 649/2012, the table of Part 2 is amended as follows:

(1) in entry 3, the following text is added:

Description of chemicals/article(s) subject to export ban	Additional details, where relevant (e.g. name of chemical, EC No, CAS No, etc.)
— Mercury (II) sulphate (HgSO <sub>4</sub> ); — Mercury (II) nitrate (Hg(NO <sub>3</sub> ) <sub>2</sub> ).	CAS RNs 7783-35-9, 10045-94-0 EC Nos 231-992-5, 233-152-3;

(2) the following entries are added:

No	Description of chemicals/article(s) subject to export ban	Additional details, where relevant (e.g. name of chemical, EC No, CAS No, etc.)
5	Compact fluorescent lamps (CFLs) for general lighting purposes: (a) CFL.i ≤ 30 watts with a mercury content exceeding 2,5 mg per lamp burner; (b) CFL.ni ≤ 30 watts with a mercury content exceeding 3,5 mg per lamp burner.	
6	The following linear fluorescent lamps for general lighting purposes: (a) Triband phosphor < 60 watts with a mercury content exceeding 5 mg per lamp; (b) Halophosphate phosphor ≤ 40 watts with a mercury content exceeding 10 mg per lamp.	
7	High pressure mercury vapour lamps for general lighting purposes.	
8	The following mercury-added cold cathode fluorescent lamps and external electrode fluorescent lamps for electronic displays: (a) short length (≤ 500 mm) with mercury content exceeding 3,5 mg per lamp; (b) medium length (> 500 mm and ≤ 1 500 mm) with mercury content exceeding 5 mg per lamp; (c) long length (> 1 500 mm) with mercury content exceeding 13 mg per lamp.	

**COMMISSION DELEGATED REGULATION (EU) 2020/1069****of 19 June 2020****amending Delegated Regulation (EU) No 877/2013 supplementing Regulation (EU) No 473/2013 of the European Parliament and of the Council on common provisions for monitoring and assessing draft budgetary plans and ensuring the correction of excessive deficit of the Member States in the euro area**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 473/2013 of the European Parliament and of the Council of 21 May 2013 on common provisions for monitoring and assessing draft budgetary plans and ensuring the correction of excessive deficits of the Member States in the euro area <sup>(1)</sup>, and in particular Article 10(3) thereof,

Whereas:

- (1) Pursuant to the statement of the Board of Governors of the European Stability Mechanism of 15 May 2020, Member States whose currency is the euro may receive financial assistance under the Pandemic Crisis Support, which is based on the Enhanced Conditions Credit Line of the European Stability Mechanism, adapted to the specific situation of the COVID-19 pandemic.
- (2) In particular, Member States benefitting from the Pandemic Crisis Support are not required to implement new policy measures. The only requirement is to use the credit line to finance direct and indirect healthcare, cure and prevention-related costs due to the COVID-19 pandemic.
- (3) In application of Article 2(3) and (4) of Regulation (EU) No 472/2013 of the European Parliament and of the Council <sup>(2)</sup>, a Member State drawing on Pandemic Crisis Support is to be subject to enhanced surveillance.
- (4) In accordance with Article 3(2) of that Regulation, the reporting requirements laid down in Article 10 of Regulation (EU) No 473/2013, and further detailed in Commission Delegated Regulation (EU) No 877/2013 <sup>(3)</sup>, are to apply.
- (5) Regulation (EU) No 472/2013 states that the intensity of economic and budgetary surveillance should be commensurate with, and proportionate to, the severity of the financial difficulties encountered and should take due account of the nature of the financial assistance received.
- (6) Delegated Regulation (EU) No 877/2013 should therefore be amended accordingly.
- (7) With a view to the very specific and limited scope of the Pandemic Crisis Support, it is hence appropriate to define the reporting requirements applicable in that case. The structure of reporting required where a Member State is subject to an excessive deficit procedure pursuant to Article 126 TFEU or where a Member State is under enhanced surveillance for reasons other than drawing on Pandemic Crisis Support should not be affected,

<sup>(1)</sup> OJ L 140, 27.5.2013, p. 11.

<sup>(2)</sup> Regulation (EU) No 472/2013 of the European Parliament and of the Council of 21 May 2013 on the strengthening of economic and budgetary surveillance of Member States in the euro area experiencing or threatened with serious difficulties with respect to their financial stability (OJ L 140, 27.5.2013, p. 1).

<sup>(3)</sup> Commission Delegated Regulation (EU) No 877/2013 of 27 June 2013 supplementing Regulation (EU) No 473/2013 of the European Parliament and of the Council on common provisions for monitoring and assessing draft budgetary plans and ensuring the correction of excessive deficit of the Member States in the euro area (OJ L 244, 13.9.2013, p. 23).



<i>In EUR million</i> <i>Time series of actual data ending at quarter of the</i> <i>respective report to be submitted</i>	Year 2020				Year 2021 (*)			
	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
<b>Other indirect costs related to healthcare, cure and prevention due to the COVID-19 crisis</b>								
[Item]								
[Further items as necessary]' (**)								

(\*) The last year of the availability period or of a possible disbursement of the Pandemic Crisis Support (whichever is earlier) is also the last year of the reporting, unless the Member State has not yet used all the funds drawn.

(\*\*) Items and sub-items, as necessary, accompanied with the relevant explanations to allow the Commission to perform a meaningful assessment.

(\*\*\*) This can include, inter alia, spending on hospitals; cure and rehabilitative care, ambulatory cure and rehabilitative care, diagnostics, pharmaceuticals, preventive care, health administrations, and health related long-term care.

### Article 2

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels, 19 June 2020.

*For the Commission*  
*The President*  
Ursula VON DER LEYEN

**COMMISSION IMPLEMENTING REGULATION (EU) 2020/1070****of 20 July 2020****on specifying the characteristics of small-area wireless access points pursuant to Article 57 paragraph 2 of Directive (EU) 2018/1972 of the European Parliament and the Council establishing the European Electronic Communications Code****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code <sup>(1)</sup>, and in particular Article 57(2) thereof,

Whereas:

- (1) As recognised by Directive (EU) 2018/1972, since low power small-area wireless access points are likely to have a positive impact on the use of radio spectrum and on the development of wireless communications in the Union, the deployment of small-area wireless access points should be facilitated through a permit-exempt deployment regime.
- (2) A small-area wireless access point comprises different operational elements, such as a signal processing unit, a radiofrequency unit, an antenna system, cable connections and casing. In some cases, the antenna system or portions thereof could be installed separately from the other elements of a small-area wireless access point and connected by one or more dedicated cables. This concept is used for distributed antenna systems or a distributed radio system used by one or multiple operators. A small-area wireless access point may be designed to serve two or more radio spectrum users.
- (3) In order to ensure public acceptance and sustainable deployment, small-area wireless access points subject to the second subparagraph of Article 57(1) of Directive (EU) 2018/1972 should have minimal visual impact. To achieve this, they should be either invisible to the general public or mounted in a visually non-obtrusive way onto their supporting structure. Their operation should also ensure a high level of protection of public health, as laid down in Council Recommendation 1999/519/EC <sup>(2)</sup>.
- (4) Directive 2014/53/EU of the European Parliament and of the Council <sup>(3)</sup> provides that radio equipment, including a small-area wireless access point, is to be constructed so as to ensure the protection of people's health and safety.
- (5) The physical and technical characteristics of small-area wireless access points subject to the second subparagraph of Article 57(1) of Directive (EU) 2018/1972 should therefore be defined in terms of maximum volume, restrictions on weight and maximum emission power. The choice of maximum volume to delimit the visual impact of a small-area wireless access point should allow design flexibility and adaptability to the physical and technical characteristics of the supporting structure.
- (6) The study for the Commission 'Light Deployment Regime for Small-Area Wireless Access Points (SAWAPs)' <sup>(4)</sup> demonstrates that a volume limit of 30 litres should be sufficient to contain the main elements of a small-area wireless access point, while ensuring its unobtrusive character. That maximum volume should apply to any deployment of a small-area wireless access point serving one or more radio spectrum users, as well as of multiple small-area wireless access points sharing an infrastructure site of small surface, such as a light pole, a traffic light, a billboard or a bus stop, which due to its physical dimensions or dense replication in a given area, or both, is likely to generate visual clutter.

<sup>(1)</sup> OJ L 321, 17.12.2018, p. 36.

<sup>(2)</sup> Council Recommendation 1999/519/EC of 12 July 1999 on the limitation of exposure of the general public to electromagnetic fields (0 Hz to 300 GHz) (OJ L 199, 30.7.1999, p. 59).

<sup>(3)</sup> Directive 2014/53/EU of the European Parliament and of the Council of 16 April 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of radio equipment and repealing Directive 1999/5/EC (OJ L 153, 22.5.2014, p. 62).

<sup>(4)</sup> Smart 2018/0017, <https://op.europa.eu/en/publication-detail/-/publication/463e2d3d-1d8f-11ea-95ab-01aa75ed71a1/language-en/format-PDF/source-112125706>

- (7) Small-area wireless access points should comply with the European standard EN 62232:2017 <sup>(5)</sup> 'Determination of RF field strength, power density and specific absorption rate (SAR) in the vicinity of radiocommunication base stations for the purpose of evaluating human exposure'. That standard provides a methodology for the installation of base stations taking into account their emission power for the purpose of evaluating human exposure to the electro-magnetic fields ('EMF') and is in compliance with the limits set in Recommendation 1999/519/EC. That standard is also referenced in Section 6.1 of the European harmonised standard EN 50401:2017 'Product standard to demonstrate the compliance of base station equipment with radiofrequency electromagnetic field exposure limits (110 MHz–100 GHz), when put into service', in relation to the assessment of the compliance of wireless access point put into service in its operational environment with the EMF exposure limits set in Recommendation 1999/519/EC.
- (8) Standard EN 62232:2017 applies to all type of base stations divided into five installation classes corresponding to different limits of their equivalent isotropical radiated power (EIRP) of a few milliwatt (Class E0), 2 Watt (Class E2), 10 Watt (Class E10), 100 Watt (Class E100) and above 100 Watt (Class E+) respectively. Out of those classes, considering the installation safety distances to be respected under that standard and since Directive (EU) 2018/1972 provides that small-area wireless access points should be low power equipment, this Regulation should only apply to the installation classes E0, E2 and E10. Table 2 of clause 6.2.4 of EN 62232:2017 requires that the lowest radiating part of the antenna of a Class E10 has a height of at least 2,2 metres above the general public walkway to ensure a distance of at least 20 cm between the main antenna lobe and the human body of a 2 m tall person <sup>(6)</sup>.
- (9) For aesthetic reasons, the indoor installation of small-area wireless access points of Class E10, which are likely to utilise the maximum volume limit of 30 litres, should be allowed only in large indoor spaces with a ceiling height of at least 4 metres, such as museums, stadiums, convention centres, airports, metro-transport stations, railway stations, or shopping centres.
- (10) A small-area wireless access point should not endanger the stability of the whole support structure it is installed on, and therefore not impose, due to its weight or shape, any structural reinforcement of the support structure used.
- (11) In order to allow supervision and monitoring by the competent authorities, in particular in cases of multiple adjacent or co-located small-area wireless access points, any operator which deploys small-area wireless access points of Classes E2 or E10 in compliance with the characteristics laid down in this Regulation, should inform the competent authority about the installation in a timely manner. To this end, the operator should submit, no later than two weeks after the installation, a notification to the competent authority about the installation, which includes the location and the technical characteristics of those access points as well as a statement of compliance of the installation with the provisions of this Regulation. In order to ensure an easy process in all Member States, this notification should be submitted to a single information point, such as the one established pursuant to Directive 2014/61/EU of the European Parliament and of the Council <sup>(7)</sup>.
- (12) This Regulation should be without prejudice to the powers of the Member States to determine the aggregate levels of EMF resulting from the colocation or the aggregation in a local area of small-area wireless access points covered by the second subparagraph of Article 57(1) of Directive (EU) 2018/1972, as well as other types of base stations, in order to ensure their compliance with applicable aggregate exposure limits in accordance with Union law by means other than individual permits related to the deployment of small-area wireless access points.
- (13) As further development of the relevant standards is foreseen, if they are to cover small-area wireless access points employing active antenna systems, such access points should not fall in the scope of the permit-exempt deployment regime at this stage.
- (14) The application of this Regulation should be regularly monitored in order to facilitate its review taking into account any update of the European standard EN 62232 or other relevant developments in standardisation, in particular with regard to the use of active antenna systems, the technological evolution with regard to the state-of-the-art technology of the small-area wireless access points, the needs to support multiple bands and shared (multi-operator) solutions, as well as any update of Recommendation 1999/519/EC.

<sup>(5)</sup> Applicable to the frequency range 110 MHz–100 GHz.

<sup>(6)</sup> Annex C.3 to EN 62232:2017.

<sup>(7)</sup> Directive 2014/61/EU of the European Parliament and of the Council of 15 May 2014 on measures to reduce the cost of deploying high-speed electronic communications networks (OJ L 155, 23.5.2014, p. 1).

- (15) This Regulation should be without prejudice to national measures regarding safety, utility supply, respect of private property including the right of owners to determine the use of their property, as well as regarding the rights of way related to the connection of the small-area wireless access point with wide-area network in compliance with Union law.
- (16) This Regulation should be without prejudice to the application of any less restrictive regimes at national level for the deployment of small-area wireless access points.
- (17) As Directive (EU) 2018/1972 becomes applicable from 21 December 2020, this Regulation should apply from the same date.
- (18) The measures provided for in this Regulation are in accordance with the opinion of the Communications Committee,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

This Regulation lays down the physical and technical characteristics of small-area wireless access points referred to in the second subparagraph of Article 57(1) of Directive (EU) 2018/1972.

This Regulation shall not apply to small-area wireless access points with an active antenna system.

#### *Article 2*

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

- (1) 'equivalent isotropically radiated power (EIRP)' means the product of the power supplied to the antenna and the antenna gain in a given direction relative to an isotropic antenna (absolute or isotropic gain);
- (2) 'antenna system' means a hardware part of a small-area wireless access point that radiates radio frequency energy for the purpose of providing wireless connectivity to end users;
- (3) 'active antenna system (AAS)' means an antenna system where the amplitude or phase, or both, between antenna elements is continually adjusted resulting in an antenna pattern that varies in response to short term changes in the radio environment; this excludes long-term beam shaping such as fixed electrical down tilt; in a small-area wireless access point equipped with an AAS, the latter is integrated as part of the small-area wireless access point;
- (4) 'indoor' means any space, including transportation vehicles, that has a ceiling or roof or any fixed or moveable structure or device which is capable of covering all that space, and except for doors, windows and passageways, is wholly enclosed by walls or sides, either permanently or temporarily, regardless of the type of material used for the roof, wall or sides, and regardless of whether the structure is permanent or temporary;
- (5) 'outdoor' means any space which is not indoor.

#### *Article 3*

1. Small-area wireless access points referred to in the second subparagraph of Article 57(1) of Directive (EU) 2018/1972 shall comply with the requirements of the European standard laid down in point B of the Annex to this Regulation and shall either:

- (a) be fully and safely integrated in their supporting structure and therefore invisible to the general public; or
- (b) meet the conditions set out in point A of the Annex to this Regulation.

2. Paragraph 1 is without prejudice to powers of the Member States to determine the aggregate levels of electro-magnetic fields resulting from the collocation or the aggregation in a local area of small-area wireless access points, and to ensure compliance with applicable aggregate electro-magnetic fields exposure limits in accordance with Union law by means other than individual permits related to the deployment of small-area wireless access points.

3. Operators which have deployed small-area wireless access points of Classes E2 or E10 complying with the conditions laid down in paragraph 1, shall notify the national competent authority within two weeks from the deployment of each such point about the installation and location of those access points as well as the requirements they meet in accordance with that paragraph.

*Article 4*

Member States shall regularly monitor and report to the Commission, the first time by 31 December 2021, and each year thereafter, on the application of this Regulation, in particular on the application of Article 3(1), including on the technologies used by the small-area wireless access points deployed.

*Article 5*

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 21 December 2020.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 20 July 2020.

*For the Commission*  
*The President*  
Ursula VON DER LEYEN

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## ANNEX

**A. Conditions referred to in point (b) of Article 3(1)**

1. The total volume of the part visible to the general public of a small-area wireless access point serving one or more radio spectrum users shall not exceed 30 litres.
2. The total volume of the parts visible to the general public of multiple separate small-area wireless access points sharing the same infrastructure site of an individual delimited surface such as a light pole, a traffic light, a billboard or a bus stop, shall not exceed 30 litres.
3. In the cases where the antenna system and other elements, such as a radiofrequency unit, a digital processor, a storage unit, a cooling system, power supply, cabling connections, backhaul elements or elements for earthing and fixation, of the small-area wireless access point are installed separately, any portion thereof in excess of 30 litres shall be invisible to the general public.
4. The small-area wireless access point shall have visual consistency with the supporting structure and have a proportionate size relative to the overall size of the supporting structure, coherent shape, neutral colours to match or to blend with the supporting structure, and concealed cables, and shall not, together with other small-area wireless access points that are already installed in the same site or in adjacent sites, create aggregate visual clutter.
5. The weight of a small-area wireless access point and its shape shall not impose a structural reinforcement of the supporting structure.
6. A small-area wireless access point of the installation class E10 shall be only deployed in outdoor or in large indoor spaces, which have a ceiling height of at least 4 m.

**B. Requirements of European standard referred to in Article 3(1)**

1. Deployment of small-area wireless access points shall be in accordance with the installation classes E0, E2 and E10 of Table 2 of clause 6.2.4 of the European standard EN 62232:2017 'Determination of RF field strength, power density and specific absorption rate (SAR) in the vicinity of radiocommunication base stations for the purpose of evaluating human exposure'.
  2. In the case of multiple co-located antenna systems (or portions thereof) of one or more small-area wireless access points subject to this Regulation, the criteria for the EIRP contained in the standard referred to in point 1 shall apply to the sum of EIRP of all co-located antenna systems (or portions thereof).
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# DECISIONS

## COMMISSION DELEGATED DECISION (EU) 2020/1071

of 18 May 2020

**amending Directive 2003/87/EC of the European Parliament and of the Council, as regards the exclusion of incoming flights from Switzerland from the EU emissions trading system**

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a system for greenhouse gas emissions allowance trading within the Union and amending Council Directive 96/61/EC <sup>(1)</sup>, and in particular Article 25a(1) thereof,

Whereas:

- (1) Article 25a of Directive 2003/87/EC empowers the Commission to adopt provisions to exclude flights arriving from a third country from the EU emissions trading system (EU ETS). Such provisions should provide for optimal interaction between the EU ETS and a third country's measures for reducing the climate change impact of aviation.
- (2) Agreement between the European Union and the Swiss Confederation on the linking of their greenhouse gas emissions trading systems <sup>(2)</sup> (the 'Agreement') was signed on 23 November 2017 and entered into force on 1 January 2020. The Agreement provides that flights from aerodromes situated in the territory of Switzerland to aerodromes situated in the European Economic Area (EEA) are to be excluded from the EU ETS.
- (3) Directive 2003/87/EC should therefore be amended in order to exclude flights from aerodromes situated in Switzerland to aerodromes situated in the EEA from the EU ETS. In order to maintain stability as regards the coverage of operators, that exclusion should not affect the provisions that exclude certain aviation activities from the EU ETS based on specified thresholds in terms of number of flights or emissions per operator.
- (4) Directive 2003/87/EC should therefore be amended accordingly.
- (5) As the Agreement entered into force on 1 January 2020, this Decision should apply from that date,

HAS ADOPTED THIS DECISION:

### Article 1

The second paragraph of the entry 'Aviation' of column 'Activities' of the table of Annex I to Directive 2003/87/EC is amended as follows:

- (1) the second paragraph of point (j) is replaced by the following:

'Flights referred to in point (l) or performed exclusively for the transport, on official mission, of a reigning Monarch and his immediate family; Heads of State, Heads of Government and Government Ministers, of a Member State may not be excluded under this point;';

<sup>(1)</sup> OJ L 275, 25.10.2003, p. 32.

<sup>(2)</sup> OJ L 322, 7.12.2017, p. 3.

(2) point (k) is replaced by the following:

'(k) from 1 January 2013 to 31 December 2030, flights which, but for this point, would fall within this activity, performed by a non-commercial aircraft operator operating flights with total annual emissions lower than 1 000 tonnes per year (including emissions from flights referred to in point (l));';

(3) the following point (l) is added:

'(l) flights from aerodromes situated in Switzerland to aerodromes situated in the EEA.'.

*Article 2*

This Decision shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2020.

Done at Brussels, 18 May 2020.

*For the Commission*  
*The President*  
Ursula VON DER LEYEN

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**POLITICAL AND SECURITY COMMITTEE DECISION (CFSP) 2020/1072****of 16 July 2020****on the appointment of the EU Mission Force Commander of the European Union military mission to contribute to the training of Somali security forces (EUTM Somalia) and repealing Decision (CFSP) 2019/1264 (EUTM Somalia/1/2020)**

THE POLITICAL AND SECURITY COMMITTEE,

Having regard to the Treaty on European Union, and in particular Article 38 thereof,

Having regard to Council Decision 2010/96/CFSP of 15 February 2010 on a European Union military mission to contribute to the training of Somali security forces <sup>(1)</sup>, and in particular Article 5 thereof,

Whereas:

- (1) Pursuant to Article 5(1) of Decision 2010/96/CFSP, the Council authorised the Political and Security Committee (PSC), in accordance with Article 38 of the Treaty on European Union, to take the relevant decisions concerning the political control and strategic direction of the European Union military mission to contribute to the training of Somali security forces (EUTM Somalia), including the decisions to appoint the subsequent EU Mission Force Commanders.
- (2) Council Decision (CFSP) 2017/971 <sup>(2)</sup> amended the chain of command of EUTM Somalia.
- (3) On 23 July 2019, the PSC adopted Decision (CFSP) 2019/1264 <sup>(3)</sup> appointing Brigadier General Antonello DE SIO as the EU Mission Force Commander of EUTM Somalia.
- (4) On 26 June 2020, the Director of the Military Planning and Conduct Capability proposed the appointment of Brigadier General Fabiano ZINZONE to succeed Brigadier General Antonello DE SIO as the EU Mission Force Commander of EUTM Somalia as from 9 August 2020.
- (5) On 1 July 2020, the EU Military Committee agreed to recommend that the PSC approve this proposal.
- (6) A decision on the appointment of Brigadier General Fabiano ZINZONE should be taken. Decision (CFSP) 2019/1264 should be repealed.
- (7) In accordance with Article 5 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark does not participate in the elaboration and the implementation of decisions and actions of the Union which have defence implications. Consequently, Denmark is not participating in the adoption of this Decision and is neither bound by it nor subject to its application,

HAS ADOPTED THIS DECISION:

*Article 1*

Brigadier General Fabiano ZINZONE is hereby appointed as the EU Mission Force Commander of the European Union military mission to contribute to the training of Somali security forces (EUTM Somalia) as from 9 August 2020.

*Article 2*

Decision (CFSP) 2019/1264 is repealed as from 9 August 2020.

<sup>(1)</sup> OJ L 44, 19.2.2010, p. 16.

<sup>(2)</sup> Council Decision (CFSP) 2017/971 of 8 June 2017 determining the planning and conduct arrangements for EU non-executive military CSDP missions and amending Decisions 2010/96/CFSP on a European Union military mission to contribute to the training of Somali security forces, 2013/34/CFSP on a European Union military mission to contribute to the training of the Malian armed forces (EUTM Mali) and (CFSP) 2016/610 on a European Union CSDP military training mission in the Central African Republic (EUTM RCA) (OJ L 146, 9.6.2017, p. 133).

<sup>(3)</sup> Political and Security Committee Decision (CFSP) 2019/1264 of 23 July 2019 on the appointment of the EU Mission Force Commander of the European Union military mission to contribute to the training of Somali security forces (EUTM Somalia) (EUTM Somalia/1/2019) (OJ L 199, 26.7.2019, p. 6).

*Article 3*

This Decision shall enter into force on the date of its adoption.

Done at Brussels, 16 July 2020.

*For the Political and Security Committee*

*The Chairperson*

S. FROM-EMMESBERGER

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**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****(Only the Dutch version is authentic)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources <sup>(1)</sup>, and in particular the third subparagraph of paragraph 2 of Annex III thereto,

Whereas:

- (1) 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.
- (2) By Decision 2010/65/EU <sup>(3)</sup>, the Commission amended Decision 2005/880/EC and extended the derogation until 31 December 2013.
- (3) By Commission Implementing Decision 2014/291/EU <sup>(4)</sup>, which expired 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.
- (4) 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 18 818 farms in 2019, corresponding to 44,7 % of the total net agricultural area in the Netherlands.
- (5) As recognised in Implementing Decision (EU) 2018/820, over the recent years the implementation by the Netherlands of its manure management policy suffered some set-backs leading to a situation where there were concerns over possible fraud. This situation required the Netherlands to step up its efforts in preventing fraud in the implementation of its manure policy. While the 6th Dutch Action Programme, already provides for measures aimed at reinforcing the control and inspections with a view to improving overall compliance with the rules of the Dutch manure policy, additional efforts were needed to be deployed to foster effective implementation and full compliance. Those efforts included the establishment of an enhanced enforcement strategy, taking into account also

<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).

<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 sources (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).

the provisions of Directive 2008/99/EC of the European Parliament and of the Council <sup>(6)</sup>. The strategy was to be based on an independent assessment of compliance with the rules on Dutch manure policy and contain specific measures aiming at further strengthening inspections and controls and a clear methodology to establish sufficiently dissuasive penalties and sanctions. It was therefore justified to limit the period of validity of Implementing Decision (EU) 2018/820 in order to enable the Netherlands to fully implement the enhanced enforcement strategy.

- (6) By letter of 4 February 2020, the Netherlands submitted to the Commission a request, under the third subparagraph of paragraph 2 of Annex III to Directive 91/676/EEC, for a renewal of the derogation for the period 2020 to 2021 ('the Dutch request').
- (7) The Netherlands applies, in conformity with Article 3(5) of Directive 91/676/EEC, an action programme throughout its whole territory. The Dutch legislation implementing Directive 91/676/EEC includes application standards both for nitrogen and phosphate.
- (8) According to the data provided by the Netherlands, in the period 2016 to 2019, the number of cattle in the country decreased by 0,2 % as compared to the period 2012 to 2015. The number of pigs and poultry in the Netherlands increased by 0,6 % and 3,4 %, respectively, for the same period. Since 2006, Dutch legislation <sup>(7)</sup> sets limitations on the number of pigs and poultry. Moreover, since January 2015, Dutch legislation <sup>(8)</sup> requires that an appropriate share of surplus manure from the dairy sector be processed. In addition, a system of phosphate production rights for dairy cattle has been introduced <sup>(9)</sup> in the Netherlands since 1 January 2018. All of those measures aim at preventing pollution of water bodies.
- (9) The Netherlands reported that, in the period 2014 to 2017, nitrogen use from livestock manure in the Netherlands was 417 000 tonnes, which was an increase of 4,04 % as compared to the period 2010 to 2013. The use of Chemical N fertiliser in the Netherlands increased by approximately 3,3 % in the period 2014 to 2017 compared to the period 2010 to 2013.
- (10) According to the scientific data underpinning provided by the Dutch authorities, the climate in the Netherlands, characterised by an annual rainfall evenly distributed throughout the year and a relatively narrow annual temperature range, promotes a long grass-growing season of 250 days per year.
- (11) Moreover, the information provided by the Netherlands in the context of the previous derogation granted by Implementing Decision 2014/291/EU indicates that that derogation has not led to a deterioration of the Dutch water bodies. For instance, the nitrate concentration in the water leaving the root zone on monitored holdings covered by authorisations has decreased since 2006 and was on average below 50 mg/l in 2017 and 2018. However, provisional data indicate an increase in nitrates concentrations in 2019 in southern sandy and loess soils because of the effects of drought in 2018.
- (12) The data reported by the Netherlands under Article 10 of Directive 91/676/EEC shows that for the period 2012 to 2015, approximately 88 % of the groundwater monitoring stations in the Netherlands had mean nitrate concentrations below 50 mg/l and that 79 % of those monitoring stations had mean nitrate concentrations below 25 mg/l. The data also shows that for the period 2012 to 2015, 99 % of the surface water monitoring stations in the Netherlands had mean nitrate concentrations below 50 mg/l and that 96 % of those monitoring stations had mean nitrate concentrations below 25 mg/l. The data indicates a stable or decreasing trend in nitrate concentration in groundwater and surface water compared to the period 2008 to 2011. Nevertheless, in the reporting period 2012 to 2015, 60 % of the freshwaters were eutrophic, 13 % potentially eutrophic and 27 % not eutrophic.

<sup>(6)</sup> Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law (OJ L 328, 6.12.2008, p. 28).

<sup>(7)</sup> Dutch Fertilizer Act (Meststoffenwet), Articles 19 and 20.

<sup>(8)</sup> Dutch Fertilizer Act (Meststoffenwet), Articles 33a-33d.

<sup>(9)</sup> Dutch Fertilizer Act (Meststoffenwet), Article 21b.

- (13) After examination of the Dutch request and in the light of the 6th Dutch Action Programme and the experience gained from the derogation granted by Implementing Decision 2014/291/EU, the Commission considers that the amount of grazing livestock manure proposed by the Netherlands, corresponding to 230 kg nitrogen per hectare per year on farms with at least 80 % grassland on southern and central sandy soils and on loess soils, and 250 kg nitrogen per hectare per year on farms with at least 80 % grassland on other soils, will not prejudice the achievement of the objectives of Directive 91/676/EEC, subject to certain strict conditions being met by the Netherlands, and is justified on the basis of objective criteria.
- (14) The Netherlands should ensure that the pressure on water bodies as a consequence of growing livestock numbers and the associated manure production does not increase. To that end the Netherlands should ensure that total manure production, both in terms of nitrogen and phosphorus, does not increase beyond the level of the year 2002. New legislation implementing the 6th Dutch Action Programme should therefore provide for a binding manure production ceiling which is not to be exceeded and which can be invoked against individual farmers where needed.
- (15) The authorisations to individual farmers are subject to certain conditions that are aimed at ensuring fertilisation at farm level based on crop needs and reduction and prevention of nitrogen and phosphorus losses to water. Those conditions should therefore include requirements that a fertiliser plan has been established at farm level, that fertiliser practices are recorded through fertiliser accounts, that periodic soil analysis are carried out, that green cover is applied in winter after maize, that specific provisions on grass ploughing are complied with, that no manure is applied before grass ploughing, that the fertilisation takes into account the contribution of leguminous crops, and that no phosphate from chemical fertilisers is applied to the land.
- (16) The report on the impact of Directive 91/676/EEC on gaseous N emissions <sup>(10)</sup> concluded that in some regions with high livestock densities, the derogation may result in higher gaseous emissions. That possible consequence of the derogation on ammonia-emission was confirmed in a report of 12 February 2020, prepared by the 'Commissie Deskundigen Meststoffenwet' of the Netherlands, that was provided to the Commission. Those emissions result in extra nitrogen deposition adversely impacting the Natura 2000 sites and affecting the quality of the waters, leading to eutrophication. Therefore, appropriate measures should be taken to reduce ammonia emissions, including low emission spreading techniques, where necessary in combination with a maximum temperature at which manure can be applied.
- (17) In line with the requirements of Implementing Decision (EU) 2018/820, the Netherlands notified its enhanced enforcement strategy on 28 September 2018. A first progress report on the implementation of that strategy was submitted on 28 June 2019. A further update of that progress report was submitted on 18 November 2019. The progress report showed that, despite some efforts taken, there were delays in the implementation of the strategy and the Netherlands was not in a position to demonstrate a reduction in the cases of non compliance or irregularities.
- (18) Additional safeguards and reassurances that the strategy would really deliver on minimising fraud are therefore needed. These should include the setting of deadlines for the full implementation of the strategy and of targets which allow to judge its effectiveness. It is also necessary to provide for the revision of the strategy before the end of 2021, which should include further reinforcement of the controls if necessary in the light of the experience gained during its implementation.
- (19) An update report on the further implementation of the enhanced enforcement strategy should be submitted every year, including the possible impact of the measures to prevent the risk of spreading of the COVID-19 virus on the implementation of the strategy.
- (20) Directive 2000/60/EC of the European Parliament and of the Council <sup>(11)</sup> provides for a comprehensive, cross-border approach to water protection organised around river basin districts (RBDs), with the objective of achieving good status for European bodies of water. Reducing nutrients is an integral part of that objective. Granting of a derogation under this Decision is without prejudice to the provisions of Directive 2000/60/EC and does not exclude that additional measures may be needed to fulfill obligations derived from that Directive.

<sup>(10)</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

<sup>(11)</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).



- (21) Directive 2007/2/EC of the European Parliament and of the Council <sup>(12)</sup> lays down general rules aimed at the establishment of the Infrastructure for Spatial Information in the Union for the purposes of environmental policies of the Union and policies or activities of the Union which may have an impact on the environment. Where applicable, the spatial information collected in the context of this Decision should be in line with the provisions set out in that Directive. In order to reduce the administrative burden and enhance data coherence, the Netherlands, when collecting the necessary data under this Decision, should, where appropriate, make use of the information generated under the Integrated Administration and Control System established pursuant to Chapter II of Title V of Regulation (EU) No 1306/2013 of the European Parliament and of the Council <sup>(13)</sup>.
- (22) Considering that the Dutch request concerns a renewal of the derogation granted by Implementing Decision (EU) 2018/820 for the period 2020 to 2021, this Decision should apply for two years as from 1 January 2020.
- (23) The measures provided for in this Decision are in accordance with the opinion of the Nitrates Committee set up pursuant to Article 9 of Directive 91/676/EEC,

HAS ADOPTED THIS DECISION:

#### *Article 1*

#### **Derogation**

The derogation requested by the Netherlands by letter of 4 February 2020, 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 ('the derogation'), 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**

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) 'grass' means permanent grassland or temporary grassland which lies less than five years;
- (5) 'fertilisation plan' means a calculation of the planned use and availability of nutrients;
- (6) 'fertilisation account' means the nutrient balance based on the real use and uptake of nutrients;
- (7) 'southern and central sandy soils' means soils indicated as southern and central sandy soils under the Dutch legislation implementing Directive 91/676/EEC;
- (8) 'loess soils' means soils indicated as loess soils under the Dutch legislation implementing Directive 91/676/EEC

<sup>(12)</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>(13)</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).

*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 a higher risk of deliberate non-compliance with the national rules on manure;
  - (c) a 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;
  - (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) decision on revision of the sanction policy by end of June 2020;
  - (h) individual inspection of 5,5 % of the pig farms. Measures to prevent the risk of spreading of the COVID-19 virus may have an impact on the feasibility of this percentage.
- (3) The enhanced enforcement strategy shall be revised, in the light of the experience gained during its implementation, in particular if, by December 2021, the number of irregularities or cases of non-compliance found is not diminishing, to include reinforced controls and measures. The revised strategy shall be notified to the Commission.

*Article 5***Applications for authorisation**

1. Grassland farmers may submit to the competent authority 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.
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 manure excreted 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 and shall not exceed the maximum application standards established in the 6<sup>th</sup> 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;
- (b) a description of the housing and manure storage system, including the volume of manure storage available;
- (c) a calculation of the manure nitrogen (less losses in housing and storage) and phosphorus produced on the grassland farm;
- (d) 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;
- (e) the foreseeable nitrogen and phosphorus crop requirements;
- (f) the amount and the type of manure delivered to contractors and therefore not used on the grassland farm;
- (g) the amount of imported manure used on the grassland farm;
- (h) a calculation of the contribution from organic matter mineralisation, leguminous crops and atmospheric deposition and of the amount of nitrogen present in the soil at the moment when the crop starts to use it to a significant degree;
- (i) a calculation of nitrogen and phosphorus application from manure for each parcel;
- (j) a calculation of nitrogen application from chemical and other fertilisers for each parcel;
- (k) calculations for assessment of compliance with the maximum application standards for nitrogen and phosphorus established in the 6<sup>th</sup> 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 loess soils after 31 May of each calendar year. In case grassland is ploughed for the cultivation of maize on sandy or loess 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 loess soils shall only be ploughed in spring, except for ploughing grassland for grassland renewal, which may be done until 31 August at the latest.
4. Ploughed grass on all soil types shall be followed immediately by a crop with high nitrogen demand and fertilisation shall be based on soil analysis concerning mineral nitrogen and other parameters providing references for estimate of nitrogen release from soil organic matter mineralisation.
5. Where crop rotation includes leguminous or other plants fixing atmospheric nitrogen, fertiliser application shall be reduced accordingly.
6. By way of derogation from paragraph 3, grass ploughing is permitted in autumn for planting flower bulbs.

#### *Article 9*

##### **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) 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 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. Paragraph 1 shall be applicable as of 1 January 2021 for farmers benefitting from a derogation and for which the provisions of paragraph 1 do not for the moment apply under national law <sup>(14)</sup>.
3. 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;

<sup>(14)</sup> Regeling van de Minister van Landbouw, Natuur en Voedselkwaliteit van 28 januari 2019, nr. WJZ/19009285, tot tijdelijke vrijstelling van artikel 5, eerste lid, van het Besluit gebruik meststoffen (Vrijstellingsregeling bovengronds aanwenden runderdrijfmest 2019–2023).

- (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 loess 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 transposing Directive 91/676/EEC and any other information that might indicate non-compliance with the conditions set out in Articles 7 and 8 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 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 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) 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 of the derogation on water quality;
- (g) the data 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 11;
- (l) an update on the implementation of the enhanced enforcement strategy referred to in Article 4 in particular as regards:
  - the implementation of the enforcement in the high risk areas De Peel, Gelderse Vallei and Twente,
  - real time accountability of manure transport via automation by end 2020,
  - the decision on the revision of the sanction policy by end of June 2020,;
  - impact of the measures to prevent the risk of spreading of the COVID-19 virus on the implementation of the strategy;
- (m) the results of the enhanced enforcement strategy referred to in Article 4, in particular as regards:
  - physical controls per type of farm,
  - any reduction in non-compliance cases,
  - administrative sanctions;
- (n) information about judicial sanctions that have been applied.

2. The spatial data contained in the report 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 from 1 January 2020 until 31 December 2021.

#### *Article 14*

#### **Addressee**

This Decision is addressed to the Kingdom of the Netherlands.

Done at Brussels, 17 July 2020.

*For the Commission*  
Virginijus SINKEVIČIUS  
*Member of the Commission*

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**COMMISSION IMPLEMENTING DECISION (EU) 2020/1074****of 17 July 2020****granting a derogation requested by Denmark pursuant to Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources****(Only the Danish version is authentic)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources <sup>(1)</sup>, and in particular the third subparagraph of paragraph 2 of Annex III thereof,

Whereas:

- (1) By Decision 2002/915/EC <sup>(2)</sup>, the Commission granted a derogation requested by Denmark pursuant to Directive 91/676/EEC, allowing the application of livestock manure containing up to 230 kg nitrogen per hectare per year on certain cattle holdings. That derogation was extended by Commission Decisions 2005/294/EC <sup>(3)</sup> and 2008/664/EC <sup>(4)</sup>, and by Commission Implementing Decisions 2012/659/EU <sup>(5)</sup>, (EU) 2017/847 <sup>(6)</sup> and (EU) 2018/1928 <sup>(7)</sup>.
- (2) The derogation granted by Implementing Decision (EU) 2018/1928 for the period 2017/2018 concerned 1 312 cattle holdings, 396 000 livestock units (equivalent to 39,6 million kg N in livestock manure) and 198 195 hectares of arable land, corresponding respectively to 3,9 % of the total number of holdings, 18,1 % of the total nitrogen (N) in livestock manure applied and 8,2 % of the total net agricultural area.
- (3) By letter of 20 March 2020, Denmark submitted a request to the Commission for renewal of the derogation under the third subparagraph of paragraph 2 of Annex III to Directive 91/676/EEC.
- (4) Denmark has an action programme in conformity with Article 5 of Directive 91/676/EEC, by means of parts of Executive Order No 760 of 30 June 2019 on Environmental Regulation of Animal Husbandry and the Storage and Use of Fertilisers, Act No 338 of 2 April 2019 on Agricultural Use of Fertilisers and on Nutrient-Reducing Measures as amended, Executive Order No 762 of 29 July 2019 on Agricultural Use of Fertilisers in the planning period 2019/2020, and Executive Order No 66 of 28 January 2020 on Nutrient-Reducing Measures and Agricultural-Related Measures in Agriculture for the planning period 2020/2021. As a supplement to those measures, Denmark performs a targeted regulation from 2019 pursuant to Act No 338 of 2 April 2019 on Agricultural Use of Fertilisers and on

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

<sup>(2)</sup> Commission Decision 2002/915/EC of 18 November 2002 concerning a request for derogation under paragraph 2(b) of Annex III to and Article 9 of Council Directive 91/676/EEC concerning protection of waters against pollution caused by nitrates from agricultural sources (OJ L 319, 23.11.2002, p. 24).

<sup>(3)</sup> Commission Decision 2005/294/EC of 5 April 2005 concerning a request for derogation under point 2(b) of Annex III to and Article 9 of Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources (OJ L 94, 13.4.2005, p. 34).

<sup>(4)</sup> Commission Decision 2008/664/EC of 8 August 2008 amending Decision 2005/294/EC concerning a request for derogation under point 2(b) of Annex III to and Article 9 of Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources (OJ L 217, 13.8.2008, p. 16).

<sup>(5)</sup> Commission Implementing Decision 2012/659/EU of 23 October 2012 on granting a derogation requested by the Kingdom of Denmark pursuant to Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources (OJ L 295, 25.10.2012, p. 20).

<sup>(6)</sup> Commission Implementing Decision (EU) 2017/847 of 16 May 2017 granting a derogation requested by Denmark pursuant to Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources (OJ L 125, 18.5.2017, p. 35).

<sup>(7)</sup> Commission Implementing Decision (EU) 2018/1928 of 6 December 2018 granting a derogation requested by Denmark pursuant to Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources (OJ L 313, 10.12.2018, p. 45).

Nutrient-Reducing Measures as amended. In addition, the Danish legislation includes a general phosphorus regulation, according to Act No 256 of 21 March 2017 on Livestock Husbandry and Use of Fertilizers, and Order No 865 of 23 June 2017 on Commercial Livestock, Livestock Manure, Silage etc., now Order No 760 of 30 July 2019.

- (5) The Danish legislation implementing Directive 91/676/EEC includes limits for the application of nitrogen. Legislation limiting the application of phosphorus entered into force in August 2017.
- (6) The Danish legislation includes a combined targeted scheme for voluntary and mandatory catch crops for the period covered by this Decision. Under that scheme, the obligatory provisions for catch crops are to enter into force automatically if the voluntary agreements for catch crops fail to fulfil the environmental objectives. The areas under catch crops are in addition to the national requirement for mandatory catch crops pursuant to Act No 338 of 2 April 2019, as amended. The scheme is necessary to ensure that the application of the current derogation would not lead to deterioration of water quality.
- (7) The information provided by Denmark in the context of the derogation granted by Implementing Decision (EU) 2018/1928 shows that the derogation is not leading to a deterioration of water quality as compared to areas not encompassed by the derogation. Data on the implementation of Directive 91/676/EEC for the period 2012 to 2015 <sup>(8)</sup> show that for groundwater 83,4 % of the monitoring sites have mean nitrate concentrations below 50 mg/l, and 27,5 % below 25 mg/l. For fresh surface water, 99,4 % of the monitoring sites have mean nitrate concentrations below 50 mg/l and 85,8 % of monitoring sites below 25 mg/l. Monitoring data show an overall stable trend in nitrate concentration in groundwater and fresh surface water as compared to the previous reporting period (2008 to 2011). Data on eutrophication show that 25 % of monitored lakes were classified as high/good status and 75 % as less than good status and that 2 out of 119 monitored estuarine/coastal water bodies were classified as good status.
- (8) The Commission, after examination of Denmark's request on the basis of the elements described in the third subparagraph of paragraph 2 of Annex III of Directive 91/676/EEC and in the light of the experience gained from the derogation as provided for in Decisions 2002/915/EC, 2005/294/EC and 2008/664/EC, and Implementing Decisions 2012/659/EU, (EU) 2017/847 and (EU) 2018/1928, considers that the amount of manure envisaged by Denmark, namely 230 kg nitrogen per hectare per year, will not prejudice the achievement of the objectives of Directive 91/676/EEC, subject to certain strict conditions as regards catch crops, phosphorus ceilings, crop rotation, application of manure and other fertilisers, soil sampling and analyses being met.
- (9) In farms authorised to apply livestock manure containing up to 230 kg nitrogen per hectare per year, fertilisation plans should be updated in a timely manner to ensure consistency with actual agricultural practices, while permanent vegetal cover of arable area and catch crops should be used to ensure recovering subsoil autumn losses of nitrates and limit nitrogen winter losses.
- (10) Directive 2007/2/EC of the European Parliament and of the Council <sup>(9)</sup> lays down general rules aimed at the establishment of the Infrastructure for Spatial Information in the Union for the purposes of environmental policies of the Union and policies or activities which may have an impact on the environment. Where applicable, the spatial information collected in the context of this Decision should be in line with the provisions set out in that Directive. In order to reduce the administrative burden and enhance data coherence, Denmark, when collecting the necessary data under this Decision, should make use of the information generated under the Integrated Administration and Control System established pursuant to Chapter II of Title V of Regulation (EU) No 1306/2013 of the European Parliament and of the Council <sup>(10)</sup>.

<sup>(8)</sup> SWD(2018) 246 final- Commission Staff Working Document accompanying the document Report from the Commission to the Council and the European Parliament on the implementation of Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources based on Member State reports for the period 2012–2015.

<sup>(9)</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>(10)</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).



- (11) The measures provided for in this Decision are in accordance with the opinion of the Nitrates Committee set up pursuant to Article 9 of Directive 91/676/EEC,

HAS ADOPTED THIS DECISION:

*Article 1*

**Derogation**

The derogation requested by Denmark by letter of 20 March 2020, for the purpose of allowing application to the land of a higher amount of nitrogen from 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 ('the derogation'), is granted subject to the conditions laid down in Article 4 to 12.

*Article 2*

**Scope**

The derogation applies to cattle farms on which at least 80 % of the acreage available for manure application are cultivated with crops with high nitrogen uptake and long growing season and 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) 'cattle farm' means a holding with a yearly production of nitrogen in livestock manure above 300 kg of which at least two thirds are from cattle;
- (2) 'crops being undersown by grass' means silage cereals, silage maize, spring cereals, winter cereals or spring barley and pea, to be undersown by grass before or after harvest;
- (3) 'crops with high nitrogen uptake and long growing season' means any of the following:
  - (a) grass;
  - (b) grass catch crops;
  - (c) forage beets;
  - (d) crops being undersown by grass;
  - (e) chicory;
- (4) 'grass' means permanent or temporary grassland;
- (5) 'soil profile' means the soil layer below ground level to a depth of 0,90 m or to the average highest groundwater level where that level is less than 0,90 m below ground level.

*Article 4*

**Conditions for the derogation**

The derogation is granted on the following conditions:

- (1) As of 1 August 2017, Order No 865 of 23 June 2017 on commercial livestock, livestock manure, silage, etc. has entered into force establishing direct phosphorus ceilings at different levels throughout the country depending on fertiliser type. Ceilings cover application of phosphorus from all types of fertilisers: organic fertilisers, including manure, biogas digestate, degassed plant biomass, sludge from sewage water treatment as well as industrial fertilisers. Stricter phosphorus application ceilings shall be applied in certain catchments having a phosphorus vulnerable aquatic environment.

- (2) An indicator and monitoring system shall be in place for the amount of phosphorus applied on agricultural fields in Denmark. Where either the indicator system or the monitoring system shows that the actual annual average phosphorus fertilisation rate on agricultural soils in Denmark might exceed or has actually exceeded the levels of average national phosphorus fertilisation allowed to be reached over the period 2018 to 2025, the ceilings for maximum phosphorus application shall be reduced accordingly.
- (3) As of 5 April 2019, Danish Act No 338 of 2 April 2019 on Agricultural Use of Fertilisers and on Nutrient-Reducing Measures as amended has entered into force establishing a combined target scheme for voluntary and mandatory measures based on the need to reduce nitrates contents in groundwater bodies and in coastal waters. From 2020, the scheme is part of the Danish implementation of the obligations under Directive 2000/60/EC of the European Parliament and of the Council <sup>(1)</sup>. Those measures provide for the establishment of catch crops or alternative measures provided in national legislation. Under the scheme, the obligatory provisions for nitrogen reduction shall enter into force automatically if the voluntary agreements for nitrogen reduction fail to deliver the sufficient environmental objectives.
- (4) The catch crops established under that scheme shall be additional to the catch crops planted in order to fulfil the national mandatory requirement of 10,7 or 14,7 % catch crops on the cattle farm's crop ground area or the national mandatory requirement in corresponding Executive Orders for the subsequent planning periods, and may not be established in the same area as that used to meet the Ecological Focus Area requirement for catch crops.

#### Article 5

### Applications for authorisation

1. Cattle farmers may submit an application to the competent authorities for an annual authorisation to apply livestock manure containing up to 230 kg nitrogen per hectare per planning period.

The time-limit for submitting the application shall be the same as the national time-limit for applying for Basic Payment of the CAP and shall include the fertiliser quota and catch crops plan.

2. The submission of an application as referred to in paragraph 1 shall be considered to imply a declaration by the applicant that the conditions in Articles 7, 8 and 9 are fulfilled.

#### Article 6

### Granting of authorisations

Authorisations to apply an amount of manure from the cattle farm, including manure excreted by the animals themselves and treated manure, containing up to 230 kg nitrogen per hectare each planning period 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

1. The total nitrogen input shall not exceed the foreseeable nutrient demand of the crop, taking into account the nutrient supply from the soil. It shall not exceed maximum application standards, as laid down in Executive Order No 762 of 29 July 2019 on Agricultural Use of Fertilisers in the planning period 2019/2020 and in corresponding orders in the following planning periods.
2. A fertilisation plan shall be prepared for the whole acreage of the cattle farm. The plan shall be kept on the farm. It shall cover the period from 1 August to 31 July of the following year. The fertilisation plan shall include the following:
  - (a) a crop rotation plan specifying the following:
    - (i) the acreage of parcels with crops with high nitrogen uptake and long growing season;
    - (ii) the acreage of parcels with other crops than those mentioned in point (i);
    - (iii) a sketch map indicating the location of the parcels referred to in points (i) and (ii) respectively;

<sup>(1)</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).

- (b) the number of livestock on the cattle farm;
- (c) a description of the housing and manure storage system, including the volume of manure storage available;
- (d) a calculation of the manure nitrogen and phosphorus produced on the cattle farm;
- (e) a description of manure treatment, where applicable, and expected characteristics of the treated manure;
- (f) the amount, type and characteristics of manure delivered outside the cattle farm or to the farm;
- (g) the foreseeable amount of nitrogen and phosphorus required for the crop in each parcel;
- (h) a calculation of nitrogen and phosphorus application from manure for each parcel;
- (i) a calculation of nitrogen and phosphorus application from chemical and other fertilisers for each parcel;
- (j) an indication of the time of application of manure and chemical fertilisers.

The fertilisation plan shall be revised no later than seven days following any change in agricultural practices at the cattle farm. The fertilisation plan shall be submitted to the competent authorities by 31 March each year at the latest.

3. Manure shall not be spread in the period from 31 August to 1 March on grassland which will be ploughed the following spring.

4. Nitrogen fertilisations application standards for crops following temporary grassland shall be reduced by the previous crop nitrogen value according to Executive Order No 762 of 29 July 2019 on Agricultural Use of Fertilisers in the planning period 2019/2020, and in corresponding orders in the subsequent planning periods regarding fertilisation standards, table on fertilisation norms for agricultural crops and vegetables, and subsequent changes.

#### *Article 8*

### **Conditions regarding soil sampling and analyses**

1. Samples shall be taken from the upper 30 cm of the farmland soil and analysed for their content of nitrogen and phosphorus.
2. The sampling and analyses shall be carried out at least once every four years for each area of the cattle farm presenting homogeneous features with regard to crop rotation and soil characteristics.
3. At least one sampling and analysis shall be carried out for each five hectares of farmland.
4. The results of the analyses shall be available for inspection at the cattle farm.

#### *Article 9*

### **Conditions regarding land management**

1. 80 % or more of the acreage available for manure application shall be cultivated with crops with high nitrogen uptake and long growing season.
2. Grass catch crops shall not be ploughed before 1 March the year after they have been established.
3. Grasslands shall be ploughed in spring. A crop with high nitrogen uptake and long growing season shall be seeded as soon as possible, and no later than 3 weeks, after grass has been ploughed.
4. Crops used in crop rotation shall not include leguminous plants or other plants fixing atmospheric nitrogen, except for the following:
  - (a) clover and alfalfa in grassland together amounting to less than 50 %;
  - (b) barley and pea undersown with grass.

*Article 10***Monitoring**

1. The competent authorities shall ensure that maps are drawn up showing the following:
  - (a) the percentage of the cattle 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.

The competent authorities shall collect and shall update every year data on crop rotations and agricultural practices on cattle farms covered by authorisations under this Decision.

2. The competent authorities shall monitor root zone water, surface waters and ground water and shall provide the Commission with data on nitrogen and phosphorus in the soil profile and nitrates concentrations in surface and groundwater, both under derogation and non-derogation conditions.

The monitoring shall be carried out at farm field scale in the agricultural catchment national monitoring programme. The monitoring sites shall be representative of the main soil types, the prevalent fertilisation practices and the main crops.

Reinforced monitoring of water quality shall be carried out in areas with sandy soils. In addition, nitrates concentrations in surface and groundwater shall be monitored in at least 3 % of all holdings covered by an authorisation.

3. The competent authorities shall carry out surveys and continuous nutrient analyses in the agricultural catchment national monitoring programme and shall provide data on local land use, crop rotations and agricultural practices on cattle farms benefiting from an authorisation.

Information and data collected from nutrient analysis as referred to in Article 7 and from monitoring as referred to in paragraph 2 of this Article shall be used for model-based calculations of nitrogen and phosphorus losses from cattle farms benefiting from an authorisation based on scientific principles.

4. The competent authorities shall quantify and record the percentages of the land under the derogation which is covered by:
  - (a) clover or alfalfa in grassland;
  - (b) barley and pea undersown with grass.

*Article 11***Verification**

1. The competent authorities shall ensure that applications for authorisation are submitted to administrative control. Where the control demonstrates that the conditions laid down in Articles 7, 8 and 9 are not fulfilled by the applicant, the application shall be refused, and the applicant shall be informed of the reasons for refusal.
2. The competent authorities shall establish a programme for inspections of farms benefiting from authorisations.

The programme shall be based on risk analysis having regard to the results of controls of the previous years concerning the conditions laid down in Articles 7, 8 and 9 and the results of controls of compliance with national legislation transposing Directive 91/676/EEC.

3. The inspections shall consist of field inspections and on the spot control for compliance with the conditions set out in Articles 7, 8 and 9 and shall cover annually at least 7 % of the cattle farms benefiting from an authorisation. Where a cattle farm is found not to comply with those conditions, the holder of the authorisation shall be fined in accordance with national law and shall not be eligible for an authorisation the planning period in the year after the finding.
4. The competent authorities shall be granted the necessary powers and means to verify compliance with the conditions of the derogation granted under this Decision.

*Article 12***Reporting**

The competent authorities shall, every year by 31 December at the latest, submit a report to the Commission containing the following information:

- (a) maps showing the percentage of cattle farms, percentage of livestock, percentage of agricultural land covered by individual derogations for each municipality, as well as maps on local land use, referred to in Article 10(1);
- (b) the results of ground and surface water monitoring, as regards nitrates and phosphorus concentrations, including information on water quality trends, both under derogation and non-derogation conditions, as well as the impact of derogation on water quality, as referred to in Article 10(2);
- (c) the results of soil monitoring as regards nitrate and phosphorus concentrations in the root zone water as well as regards nitrogen and phosphorus in the soil, both under derogation and non-derogation conditions, as referred to in Article 10(2);
- (d) results of the surveys on local land use, crop rotations and agricultural practices, referred to in Article 10(3);
- (e) results of model-based calculations of the magnitude of nitrogen and phosphorus losses from cattle farms benefitting from an authorisation, referred to in Article 10(3);
- (f) tables showing the percentage of agricultural land under derogation covered by clover or alfalfa in grassland and by barley/pea undersown with grass, referred to in Article 10(4);
- (g) evaluation of the implementation of the derogation conditions, on the basis of controls at farm level and information on non-compliant cattle farms, on the basis of the results of the administrative control and inspections, referred to in Article 11;
- (h) trends in livestock numbers and manure production for each livestock category in Denmark and in cattle farms benefitting from the derogation;
- (i) the implementation of the conditions for the derogation set in Article 4.

The spatial data contained in the report shall, where applicable, comply with Directive 2007/2/EC. In collecting the necessary data, Denmark 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 July 2024.

*Article 14***Addressee**

This Decision is addressed to the Kingdom of Denmark.

Done at Brussels, 17 July 2020.

*For the Commission*  
Virginijus SINKEVIČIUS  
*Member of the Commission*

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