

**LIST OF DOCUMENTS IDENTIFIED BY THE UNIT E.3 OF DG AGRI FOR THE
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1	Proposal for necessary revision of the Danish Rural Development Programme caused by the CAP Health Check / cover letter received in SFC	Morten Lautrup-Larsen / Managing Authority of the Danish RDP	13 July 2009	Consult MS	
2	MODIFICATION SUBMISSION TEMPLATE / explanatory note	Managing Authority of the Danish RDP	13 July 2009	Consult MS	
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6	Notification of amendment to the Danish Rural Development Programme / cover	Steen Bonde / Managing Authority of the Danish RDP	22 December 2011	Consult MS	

	letter				
7	5.2.2.1b. Mandatory establishment of cultivation-free buffer zones (Code 213b) / proposed programme text	Managing Authority of the Danish RDP	22 December 2011	Consult MS	
8	Modification of the Rural Development Programme for Denmark, notified to the Commission on 22 December 2011 in accordance with Article 6 (1) (c) and 9 of Regulation (EC) 1974/2006 / Commission comments letter	Mihail Dumitru / DG AGRI	22 March 2012	Give access	
9	Revised notification of amendment to the Danish Rural Development Programme / cover letter	Steen Bonde / Managing Authority of the Danish RDP	10 July 2012	Consult MS	
10	5.2.2.1. Mandatory establishment of cultivation-free buffer zones (Code 213) / revised version of proposed programme text	Managing Authority of the Danish RDP	10 July 2012	Consult MS	
11	Modification of the Rural Development Programme for Denmark, notified to the Commission on 22 December 2011 in accordance with Articles 6(1)(c) and 9 of Regulation (EC) 1974/2006 / Commission approval letter	J. M. Silva Rodriguez / DG AGRI	20 July 2012	Give access	
12	Notification of amendment to the Danish Rural Development	Steen Bonde / Managing Authority of the Danish	8 November 2012	Consult MS	

	Programme of November 8, 2012 (pursuant to Article 6 (1)(c) of Regulation 1974/2006) / Cover letter	RDP			
13	5.2.2.1a. Mandatory establishment of cultivation-free buffer zones (Code 213a) / proposed programme text	Managing Authority of the Danish RDP	8 November 2012	Consult MS	
14	Modification of the Rural Development Programme for Denmark, notified to the Commission on 8 November 2012 in accordance with Article 6 (1) (c) and 9 of Regulation (EC) 1974/2006 / Commission comments letter	Mihail Dumitru / DG AGRI	18 January 2013	Give access	
15	Annulment of the Danish river basin management plans and consequences for the implementation of the compensation scheme to mandatory buffer zones / letter	Steen Bonde / Managing Authority of the Danish RDP	15 January 2013	Consult MS	
16	Annulment of the Danish river basin management plans and consequences for the implementation of the compensation scheme for mandatory buffer zones / reply letter	J. M. Silva Rodriguez / DG AGRI	26 February 2013	Give access	

Ministry of Food, Agriculture and Fisheries

The Danish Food Industry Agency



European Commission
Director J. M. Sousa Uva
DG AGRI
Rue de la Loi 200
B-1049 Bruxelles

Coordinating Office for Rural Districts
and Business Development
ref. 3621-06-12
PHOF
13. July 2009

Proposal for necessary revision of the Danish Rural Development Programme caused by the CAP Health Check

Dear Mr. Uva,

I hereby forward official proposal for revision of the Danish Rural Development Programme 2007-2013 (CCI: 2007DK06RPO 001) and the National Strategy Plan that are necessary because of the CAP Health Check.

The programme modification is proposed pursuant to article 6(1) (a) of Regulation (EC) No 1974/2006 and is in compliance with the provisions of Council Regulation (EC) No 1698/2005 amended by Regulations (EC) No 74/2009 and 473/2009 and Commission Regulation (EC) No 1974/2006 amended by Regulations (EC) No 363/2009 and 482/2009 and with Council Decision 2006/144/EC on the Community strategic guidelines for rural development, amended by decision 2009/61/EC.

In 2009 a new National Green Growth plan was launched for Danish agriculture, nature and the environment that comprises plans for new actions for a. o. establishment of biogas facilities, establishment of un-cultivated border zones along streams and lakes, establishment of wetlands, periodically flooding of agricultural areas adjacent to streams in river valleys and restoration of hydrological conditions on farmland in Natura 2000 areas with the target year of 2015.

All of these activities will be introduced in the programme with this amendment and for the most of these activities payments are expected already in 2010.

Many of these activities are designed to contribute to implementing the EU Water Framework Directive in designated areas within a first planning period of 2010-2015. Other activities will contribute to implementing the Natura 2000 directives. These activities will be financed from the new modulated means.

We have corrected and adjusted the text and financial tables of the programme and the national strategy plan and added detailed fact sheet descriptions of new measures envisioned in the programme already from 2010.

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The following important modifications have been made;

- New fact sheets are introduced to implement the new objectives of the national Green Growth plan 2010-2020. Other fact sheets have been revised due to small changes and changes in the overall financial budget. A list of these fact sheets is enclosed.
- Cumulative figures on output and effect indicators under Axis 2 are presented. The table on accumulation of area support rates has been revised. Description on synergies and interrelationships between the newly introduced measures under Axis 2 and confirmation that no double funding is possible.
- The integrated design of the national application schemes is applied in many of the newly introduced measures, with multiple legal provisions of Regulation 1698/2005 applied within the framework of one national scheme. A table on combinations of support under the new fact sheets under Axis 2 has been included illustrating relationships between the new national schemes and the application of the multiple legal provisions
- Descriptions in chapter 5.1.1 of the baseline provisions pursuant to Regulation 73/2009 for additional area-support under the Axis 2 measures have been revised
- The balance of funding is reflected in the financing tables 6.2, 6.3 and 7. The application of new modulated means is reflected in table 5.3.6.
- Estimated costs under Technical assistance have been increased to 4 % of the total EAFRD appropriation.
- A strategic environmental assessment of proposal for revision of programme has been carried out by an external consultant pursuant to SEA Directive 2001/42/EF to identify and assess the significant environmental consequences of the proposal for revision of the programme. The main conclusions of the report (enclosed) are that the coherence between the revised programme and other relevant policies and international agreements on the environment and nature is good. It is assessed that the programme will have a considerable positive environmental effect, with additional positive effects compared to the original programme. A public hearing of the environmental assessment report is in process. The Ministry of Environment have a special opportunity to express their opinion on the report. In September the Danish Food Industry Agency will collect the incoming answers from the public. Hereafter any resulting revision of the programme will be presented to the Commission together with an evaluation of answers from the hearing.
- According to the Green Growth plan we expect to introduce via a separate proposal a new measure for Natura 2000 payments in forests (Code 224) with payments expected already in 2010. As this measure is pending notification according to State aid rules, the proposal will not be forwarded to DG AGRI until in the fall of 2009. We have thus two forest measures pending approval by DG COMP pursuant to State aid rules - the other being the measure First afforestation of agricultural land designated neutral areas (Code 221bis) introduced to

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DG AGRI by notification in December 2008.

From 2010, the unspent part of the Danish Pillar I-allocation amounting to 120 million DKK per year is expected to be applied for activities pursuant to art 68 of regulation (EC) No 73/2009. It is expected that these measures will be; Extensive production on agricultural land, Energy crops and Conservation through grazing or cutting on pasture and semi-natural areas. A separate article 68-programme will be submitted to the Commission by 1st August 2009. If this programme is accepted by Commission, these measures will be activated and the similar measures in the Rural Development Programme will be phased out in 2010.

The revisions have been discussed and approved by the monitoring committee for the programme.

We look forward to the dialogue and process for the approval of the programme revision. Do not hesitate to contact me or my colleagues if you have any questions.

Yours sincerely,

Morten Lautrup-Larsen
Deputy Director

Changed fact sheets and chapters

Chapter 3

Health Check update of chapter

Chapter 5.1

Changed

5.1 The action areas of the programme

5.1.1 Cross-compliance and nationally set minimum requirements

Chapter 5.2

Changed

111 Vocational training and information actions,

121 Modernisation of agricultural holdings

123 Adding value to agricultural and forestry products,

124 Cooperation for development of new proc.

132 Participation of farmers in food quality schemes,

133 Supporting producer groups for information and promotion activities for products under food quality schemes

5.2.2. The individual measures – axis 2

214a Conservation by grazing or cutting,

214b Conversion to organic farming,

214c Extensive production on agricultural land,

214e Management of wetlands,

214f Plant genetic resources

216a Non-productive investments protection of environment,

216b Non-productive investments - establishment of wetlands, periodical flooding restoration of natural conditions,

321 Basic services for the economy and rural population

New

213a N2000 payments,

213b WFD payments,

213c Mandatory cultivation free border zones,

214g Area payment permanent changes,

216c Land consolidation to adapt agriculture to requirements for environment and nature (NEW 5.2.2.9.a)

216d State acquisition of land for protection of environment (NEW 5.2.2.9.b)

Chapter 5.3

Changed

5.3 The national application schemes

5.3.1 Innovation and development in primary agriculture and forestry

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5.3.2 Innovation and development in the processing sector

5.3.3 Food product quality – development/advice/participation/marketing

5.3.5 Agri-environment schemes

5.3.5.3. Establishment and management of wetlands for N and P retention (P river valley flooding upstream lakes)

5.3.5.4. Establishment of set-aside border strips

New

5.3.1a Investments in biogas facilities

5.3.3a Support for network activities

5.3.5.5 Periodically flooding of farmland in river valleys through reduced maintenance

5.3.5.6 Reestablishment of natural hydrologic conditions and conversion to permanent grass in N2000 areas

Table 5.3.6 List of types of operations referred to in Article 16a (3)(a) of Regulation (EC) No 1698/2005

Chapter 6 and 7. Financial tables

Revised and new tables 6.1, 6.2, 6.3 and 7

Chapter 13 and 16. Communication and technical assistance

Changed

13. Communication

16.3 Total indicative budget for technical assistance

MODIFICATION SUBMISSION TEMPLATE

MEMBER STATE: Denmark

REGION: Denmark

1. Approved programme:

The Danish Rural Development Programme 2007-2013 (CCI: 2007DK06RP0001)

2. Legal basis for the modification

The Danish Managing Authority (Ministry of Food, Agriculture and Fisheries/ the Danish Food Industry Agency) has sent the HC amendment of the Danish Rural Development Programme the 13th July 2009 via SFC07 as a revision requiring Commission decision and approval of the Rural Development Committee pursuant to Article 6(1) (a) of Regulation (EC) No 1974/2006.

The submission template for the modification is hereby forwarded. However, no additional information is presented by this template compared to the proposal sent via SFC07 the 13th July 2009.

3. Reasons and any implementation problems justifying the amendment

According to Regulation (EC) 74/2009, from 1 January 2010, Member States shall provide in their rural development programmes, in accordance with their specific needs, for types of operations having the following priorities as agreed upon by the Council in the 2008 CAP Health Check agreement and as described in the Community strategic guidelines and specified further in the national strategy plans: (a) climate change, (b) renewable energies, (c) water management, (d) biodiversity, (e) measures accompanying restructuring of the dairy sector, (f) innovation linked to the other priorities mentioned.

This programme modification proposal includes the necessary revision of the programme for it to comprise the types of operations and the effects foreseen by the Health Check agreement of the CAP.

In addition, in 2009 a political agreement was reached on a Green Growth plan for Danish agriculture, nature and the environment that comprises plans for new actions for a. o. investments in environment and climate sustainable technologies in agriculture, establishment of biogas facilities, establishment of un-cultivated border zones along streams and lakes, establishment of wetlands, periodically flooding of agricultural areas adjacent to streams in river valleys and restoration of hydrological conditions on farmland in Natura 2000 areas with the target year of 2015. According to the agreement, more programme appropriations are to be allocated for conversion to organic farming and other activities concerning organic production, also contributing to protection of biodiversity etc.

All of these activities will be introduced in the programme with this proposal. For the most of these activities payments are expected already in 2010.

4. Description of the amendments proposed

Revision of the following fact sheets under Axis 1 to enable support for establishment of new investments in new green and sustainable technologies in agriculture, establishment of biogas facilities and to further promote organic agriculture:

111 Vocational training and information actions, 121 Modernisation of agricultural holdings, 123 Adding value to agricultural and forestry products, 124 Cooperation for development of new proc., 132 Participation of farmers in food quality schemes, 133 Supporting producer groups for information and promotion activities for products under food quality schemes.

Under Axis 2 the following fact sheets are revised or new: 213a N2000 payments, 213b WFD payments, 213c Mandatory cultivation free border zones, 214a Conservation by grazing or cutting, 214b Conversion to organic farming, 214c Extensive production on agricultural land, 214e Management of wetlands, 214f Plant genetic resources, 214g Area payment permanent changes, 216a Non-productive investments protection of environment, 216b Non-productive investments - establishment of wetlands, periodical flooding restoration of natural conditions, 216c Land consolidation to adapt agriculture to requirements for environment and nature, 216d State acquisition of land for protection of environment.

The Axis 2-schemes that are changed or newly introduced are:

- Extensive production on agricultural land and conversion to organic farming
- Conservation by grazing or cutting on pasture and natural areas
- Establishment and management of wetlands for nitrate retention
- Establishment and management of wetlands for phosphorus retention (P-river valley flooding upstream lakes)
- Periodically flooding of agricultural area adjacent to streams through reduced maintenance of stream edges
- Restoration of natural hydrology and conversion of rotation areas to natural areas as well as clearing and fencing in Natura 2000 sites
- Establishment of cultivation-free border strips along streams and lakes

In addition, a few less important changes in the texts for other Axis 2-measures are introduced.

In Axis 3 the sub-measure for basic services (321) is revised to include new network activities aimed at marketing of quality products from local and regional food producers and other activities for establishing biogas plants.

In Axis 4 no changes are proposed.

The schemes introduced will contribute to the further fulfilment of obligations in:

- national Green Growth Plan 2010-2015
- national Action Plan for biological diversity and environmental protection in Denmark 2004-2009
- Water Framework Directive
- Natura 2000 Directives

- EU's 2010 objectives for arresting the decline in biodiversity
- Gothenburg sustainability goals
- Kyoto Protocol

Potential effects of those operations that are to be financed by the newly modulated means to the programme pursuant to the Health Check agreement are described in new table 5.3.6 in the programme.

5. The expected impacts of the amendment

The expected environmental and nature impacts of the amendment are illustrated in the revised version of chapter 5.2.2 of the programme. Where appropriate, quantification of input, output, result and impact indicators have been amended for each measure.

6 The relationship between the change and the national strategy plan

The Danish National Strategy Plan 2007-2013 has been revised with changes that are necessary because of the CAP Health Check. The analysis that is the basis of the strategy has been updated, especially on the financial situation in the agricultural sector, the state of implementation of the Water Frame Directive and coverage of IT broadband connections. The analysis shows a still unexploited potential for organic, local and regional quality products.

7 Financial implications of the modification

Revised and new financial tables are introduced in chapter 6.1, 6.2, 6.3 and 7, and the total indicative budget allocation for technical assistance is increased to now include 4 % of the EAFRD appropriations.

8 Monitoring Committee

The revisions have been discussed and approved as of the 29th June 2009 by the monitoring committee for the programme after consultation on a meeting the 15th June 2009 and through a following written procedure.

5.2.2.5.a. Mandatory establishment of cultivation-free border strips (Code 213c)

Article (and paragraph) which covers the measure

Articles 36(a)(iii) and 38 of Regulation (EC) No 1698/2005
Point 5.3.2.1.5 of Annex II to Regulation (EC) No 1974/2006

Code of the measure

213c

Rationale for intervention

The Danish government intends to compensate the extra cost incurred and income foregone by the farmer caused by mandatory establishment of cultivation free 10-m buffer zones adjacent to streams and lakes larger than 100 m². The measure will reduce further the impact of agriculture on the aquatic environment through a reduction in phosphorous and pesticides emissions and leaching of nitrate caused by agriculture.

Objectives of the measure

The purpose of the support scheme is to promote the establishment of non-cultivated border strips along lakes and open watercourses in order to reduce the leaching of Phosphorus, Nitrate and pesticides into surface water. The border strips will also contribute to safeguard biodiversity and improve ecological connectivity of the rural landscape.

It has been estimated that the mandatory border strip measure comprises approximately 53,400 hectares divided between approximately 20,000 beneficiaries. Gross impact with regard to a reduced P-discharge has been assessed at between 70 and 250 tonnes of P per year (160 tonnes per year on average) as a result of ceasing to fertilise the 53,400 hectares of rotation and permanent pasture in the border strip.

The requirement for no cultivation will not apply if permanent pasture or perennial energy crops are grown without the use of fertilisers and pesticides.

The impact with regard to reduced N-discharge is assessed at 2,500 tonnes of N per year of by ceasing to fertilise 53,400 hectares of rotation and natural areas in the border strip. The reduced N leaching is expected to be 13 kg N per hectare less than on cultivation-free border strips if perennial energy crops are grown in the border strip, and 5 kg N per hectare less if permanent pasture is grown.

Scope and actions

Area payment is offered as compensation for the mandatory establishment of cultivation-free border strips. The cultivation-free border strips must be established on farmable land along all open watercourses and lakes in excess of 100 m². Support is given as an annual area subsidy with fixed support rates.

The scheme will replace the existing voluntary area support scheme for the establishment of set-aside border strips (Code 214d) which will expire in 2010. The requirement for pesticide, fertiliser and cultivation-free border strips will be mandatory and statutory as part of the implementation of the Water Framework Directive. The order will then be compensated with support in accordance with Article 38 of Council Regulation (EC) No 1698/2005. Farmers can establish fertiliser and spray-free farming of perennial energy crops or permanent pasture in the border strip. This results in a need for two levels of support: a level for mandatory pesticide, fertiliser and cultivation-free border strips, and a lower level for fertiliser and pesticide-free border strips only. The second alternative will be compensated with a lower rate, since certain crops can still be grown.

The obligations extend beyond the national minimum rules concerning the management and conservation of pasture and natural areas. For land that is covered by support under the single farm payments scheme, the obligations will extend beyond the conditions concerning good agricultural and environmental condition, cf. Commission Regulation (EC) No 73/2009.

The cultivation-free strips will compliment an already existing un-cultivated strip of 2 metres along lakes and open water courses pursuant to the baseline under Regulation (EC) 73/2009. For the existing 2 metre border strips the additional requirement will only be for 8 additional metres and the compensation will only be given for the 8 metres up to the 10 metre requirement.

In accordance with section 69 of the Danish Watercourse Act, the provision on 2 metre non-cultivated borders along all natural or high priority watercourses as well as lakes larger than 100 m² applies. The opportunity to grow perennial energy crops in the border strip does not apply to these 2 metre borders, as no soil preparation or cultivation is allowed in these areas.

It is expected that the compensation can be applied for as of 2011 and that the establishment of all mandatory border strips will happen by the end of 2012 at the latest.

Priority criteria

All applicants shall be offered the support. No priority criteria are needed. Adequate funding will be allocated for at least 53,400 ha.

Beneficiaries

Support may be granted to farmers and to other land managers.

Administration

The support scheme will be offered by the FødevarerErhverv. On-the spot control of support commitments shall be implemented by the Plant Directorate under the Ministry for Food, Agriculture and Fisheries.

Confirmation that the cross-compliance requirements are identical to those provided for by Regulation (EC) No 1782/2003

The cross-compliance requirements, which set out the basic conditions for receiving single farm payment support under Council Regulation (EC) No 73/2009, form the basis for the establishment of further obligations for which compensation is paid.

Support is only given for obligations which extend beyond these mandatory obligations.

Description and justification of the different types of commitments, based on their expected environmental impact in relation to environmental needs and priorities

Beneficiaries can combine payments of support under this measure and single farm payment support in accordance with Council Regulation (EC) No 73/2009. The payments of support cover only those commitments going beyond the baseline standards established pursuant to that regulation.

The beneficiary must commit to not add plant protection products, fertilisers or soil improvement agents to the land during the commitment period. The area must be established as grass or natural area except where the area is cultivated with perennial energy crops. The area must not be irrigated.

The measure is expected to lead to improvement of the aquatic environment and natural conditions by reducing Phosphorus and Nitrogen leaching and erosion from the border strips to the aquatic environment and by banning the use of plant protection products in the border strips. The border strips will also help to safeguard biodiversity and improve ecological connectivity of the rural landscape.

Description of methodology, agronomic assumptions and parameters

The level of support has been established on the basis of calculated income losses accrued from the obligations.

The reference level for calculating income foregone and additional costs resulting from the commitments are the relevant standards and requirements referred to in Article 39(3) of Council Regulation (EC) No 1698/2005. The payments cover only those commitments going beyond the baseline standards established pursuant to Regulation (EC) No 73/2009.

The proposed support rates apply to all farms and are based on the average data for historic yields which can be differentiated by soil type (clay or sandy soil) and production type (grass, extensive pasture, crops, pigs, cattle). The support does not contain compensation for transaction costs. Further explanation of the calculation requirements is given in annex.

Baseline

According to Executive Order No 1362 of 19 December 2008 on cross-compliance, with changes pursuant to Order No 239 of 27 March 2009 and Order No 253 of 31 March 2009 on direct support for farmers according to the single farm payments scheme, the following mandatory obligations exist:

Plant cover on non-cultivated agricultural land: Uncultivated areas must be covered with plant cover. Conditions are made concerning timing for establishment, the use of seeds and after-sowing.

Maintenance of uncultivated areas: Permanent pasture and uncultivated agricultural land must be cut at least once every two years in July or August. In the case of permanent pasture, mowing can be replaced by grazing. The plant cover on uncultivated agricultural areas must not be cut in the period 1 May to 30 June. The areas must not be utilised in a way that destroys or removes the plant cover.. No plant protection products must be used on the area except for products used for selective prevention of certain aggressive weeds on the condition that the remaining plant cover is not damaged and is not given fertiliser or artificial irrigation.

The calculation of support is based on income-foregone related to establishing the cultivation-free border strips or for establishing the border strips with permanent grass or perennial energy crops without the use of fertilisers and plant protection products.

Support commitments and baseline

Support commitments	Baseline commitments
A 10 meter border strip along lakes and open water courses must be established and maintained as cultivation free and without any use of fertilisation or plant protection products.	The border strip areas will compliment an already existing un-cultivated strip of 2 metres along lakes and open water courses pursuant to the baseline under Regulation (EC) 73/2009.
Same	Obligations concerning the plant cover on border strip pursuant to Regulation 73/2009
Same	Border strips must be cut at least once every two years (Order No 1362 of 19 December 2008 on cross-compliance, with changes pursuant to Order No 239 of 27 March 2009 and Order No 253 of 31 March 2009 on direct support for farmers according to the single farm payments scheme)

Control

The respect of the support conditions shall be controlled through on-the-spot control by the Plant Directorate and through administrative control by the FødevarerErhverv.

Amounts of support

A fixed annual support rate is offered of up to euro 349 per ha per year as compensation for the mandatory requirements of establishing cultivation, spray and fertiliser-free border strips, or euro 215 per ha per year for maintaining the border strips with permanent grass or perennial energy crops without the use of fertilisers and plant protection products.

Combinations of support

Support under this measure can be combined with the following measures in the program.

- Non-productive investments in connection with protection of environment, nature and animal welfare
- Island support

It cannot be combined with other types of area support in the programme, and there will be controls to prevent double support regarding these schemes via the coordinated administrative control of common application forms for area payments under LDP and the single payment scheme.

Compatibility with CAP first pillar measures

The commitment may not be combined with commitments made for the same agricultural production pursuant to the measures implemented under common market organisations and the direct support schemes listed in Annex I to Regulation No 1974/2006. The payment can be combined with the single payment aid granted under Regulation (EC) No 73/2009.

Evidence as referred to in Article 48(2) of the implementing rules allowing the Commission to check consistency and plausibility of the calculations

The Institute of Food and Resource Economics at the University of Copenhagen has provided the data and calculations used as the basis for setting support rates. The research institution is functionally independent from the DFFE which is responsible for the calculations. The institution represents the necessary expertise to assist in this task.

Financing

Total cost: 25.8 million euro

Public expenditure: 25.8 million euro

Transition arrangements

This measure is not similar to activity co-financed under the Rural Development Programme 2000-2006. No transition arrangements are necessary.

Quantified targets for EU common indicators

Type of indicator	Indicator	Target 2007-2013
Output	Number of farm holdings and holdings of other land managers receiving support	20,000
	Total area under agri-environmental support	53,400 ha
	Total number of contracts	20,000
	Physical area under agri-environmental support	53,400 ha
	Number of actions related to genetic resources	None
Result	Areas under successful land management	53,400 ha
Impact	Reversal in biodiversity decline (farmland bird species population)	Maintain index level for breeding bird population (IRENA population index for 18 breeds of birds on agricultural land: 106.1 in 2001. Common objective)
	Changes in gross nutrient balance	Reduction of 160 t P and 2,500 t N per year
	Increase in production of renewable energy	Negligible

Additional programme-specific indicators and quantified targets

None.



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR AGRICULTURE AND RURAL DEVELOPMENT

Directorate E. Rural development programmes I
E.3. Denmark, Lithuania, Poland

05 NOV. 2009

Brussels,
SG/ad - agri.ddg3.e.3(2009)313117

Subject: ASSESSMENT OF THE PROPOSAL FOR RDP MODIFICATION

Reference: Rural Development Programme 2007-2013 (EAFRD) for Denmark
CCI: 2007 DK 06 RPO 001

Dear Mr Bonde,

I hereby refer to the receipt of a proposal for revision of the rural development programme received via SFC on 13 July 2009 for Denmark for 2007-2013 in accordance with Article 6 paragraph 1 (a) and 7 of Regulation (EC) No 1974 /2006.

The Commission services have assessed the modifications proposed for the revision of the rural development programme and consider that some elements needed for the assessment of the revision are missing or to be better clarified. These elements are presented in annex I.

I would like to receive a revised version of the rural development programme revision that takes into account these elements.

My services are at your disposal for any further clarifications.

Sincerely,

(signed)

Pedro TARNO
Acting Director

Ministeriet for Fødevarer, Landbrug og Fiskeri
FødevareErhverv
Att.: Kontorchef Steen BONDE
Nyropsgade 30
1780 KØBENHAVN V
DANEMARK

Annex I

Commission observations to the modification of the RDP Denmark 2007-2013

Chapter 3 - SWOT analysis, the national strategy and the ex-ante evaluation

The financial weight between the Axes, in terms of EAFRD contribution following the additional Health Check/Recovery Package financing, should be corrected and in compliance with the National Strategy Plan.

Information on the environmental impact of the loss of market set-aside should be provided; the programme needs to provide a clear picture on set-aside in Denmark, the effects of the removal of obligatory set-aside in terms of surface and environmental consequences.

Chapter 5 - Description of measures and axes

5.2 The individual measures

All modifications to the measures, including additional or reduced financial allocation, should be clearly justified in the light of the health Check and Recovery Package objectives.

Quantified targets for EU indicators (output, result and impacts) should identify separately the targets ante and post HC and should be more clearly revised.

Measure 111 - Vocational training and information actions

The link to the HC/RP modification to address the new challenges should be better explained. The reason to delete the reference to EU agricultural quality products should be explained. The beneficiaries of the new sub-measure should be more clearly identified. The financing part of the measure fiche should indicate the measurement unit (i.e. million euros). Indicators should be checked.

Measure 121 - Modernisation of agricultural holdings

It should be clarified if the energy produced by biogas plants is used only for on-farm consumption as the measure supports on-farm production/consumption of biomass and bioenergy. In addition, the eligible plant size should be better described. The modifications should be better justified in order explain what part of the new funds will be used to support farming practices genuinely beneficial to biodiversity and water protection and genuine climate change mitigation to avoid negative impacts for biodiversity and other environmental concerns resulting from this increase in energy crops.

The reference to investments only in annex I products and that "establishment of energy crops is not supported" seems in contrast with the eligible kinds of investment that include "the investment in planting of perennial energy crops".

Measure 123 – Adding value to agricultural and forestry products

The increased financing to take account of the HC/RP modification should be better justified. Indicators should be checked.

Measure 132 – Participation of farmers in food quality schemes

The link to the HC/RP should be better explained. Indicators should be checked.

Measure 133 – supporting producer groups for information and promotion activities for products under food quality schemes

The link to the HC/RP should be better explained.

Measure 213a –Natura 2000 payments

The obligations for Natura 2000 are not established yet and the approval of these plans is a necessary condition for the approval of the RDP measure. Meanwhile, similar operations could be supported under measure 214 as voluntarily commitments.

Operations to be supported and relevant requirements and conditions should be better explained. Owners or tenants of the land can only be beneficiaries of the measure if they are farmers (this comment is also relevant for 213 b and 213c). Description of the methodology and agronomic assumption used as reference point for the calculation justifying additional cost and income foregone is missing. Annex 5a for the average costs due to commitments seem not updated. Reference to legal basis in the measure fiche (point 5.3.2.1.5 of annex II of Reg. 1974/2006) is incorrect.

Measure 213b – WFD payments

The obligations for farmers resulting from national/regional management provision of designated areas are missing; action plans for WFD will be available in 2010 and it is stated that by that time specifications in the measure description will be provided. The approval of the measure requires the implementing rules of article 38 of Reg. 1698/2005 to be adopted and programmes of measures at local level to be established. Meanwhile, similar operations could be supported under measure 214 as voluntarily commitments. Description of the methodology and agronomic assumption used as reference point for the calculation justifying additional cost and income foregone is missing. Reference to legal basis in the measure fiche (point 5.3.2.1.5 of annex II of Reg. 1974/2006) is incorrect.

Measure 213c – Mandatory establishment of cultivation free-border strips

It should be clarified to which legislation these obligations stem from. Only obligations resulting from Natura 2000 Directives and the WFD can be supported under measure 213. Action plans for WFD will be available in 2010 and implementing rules for article 38 of Reg. 1698/2005 are not yet available, therefore the measure cannot be approved yet. In addition, it should be more clearly differentiated from measure 213b. Description of the methodology and agronomic assumption used as reference point for the calculation justifying additional cost and income foregone is missing. Reference to legal basis in the measure fiche (point 5.3.2.1.5 of annex II of Reg. 1974/2006) is incorrect. Although the will to introduce WFD and Natura 2000 measures in the Rural Development Programme is strongly encouraged it seems that these three measures should be better specified in the light of the future management plans.

Measure 214: Owners or tenants of the land can only be beneficiaries of measure 214 if they are also the managers of the land. The possibility to grant agri-environment payments to land managers other than farmers must be duly justified to achieve environmental objectives (Article 39.2 of Reg 1698/2005).

Measure 214a - Conservation by grazing or cutting on pasture and natural areas

Please justify the increase of the support level and the decrease of the expenditures linked to the sub measure. Quantified common indicators should be revised.

Measure 214e - Management of wetlands

The increased level of support for the commitment to maintaining changed drainage of agricultural land (from 114 to 160 Euro per ha per year) should be justified.

Measure 214g - Area payment to compensate for permanent changes in management conditions on farmland

The level of the annual payment should correspond to the actual loss of income and additional costs in that respective year and the measure cannot support investments costs (Article 39(4) of Regulation (EC) n°1698/2005). Therefore, a first high payment which exceeds the actual loss of income and additional costs in that year is not admissible (option 1 of the measure proposal). Art. 39.4 is neither compatible with option 2 which proposes to support the current value of yearly additional costs and income foregone on the land for a permanent period of time over a 5 year period. Indeed, it leads to grant an annual support which exceeds the actual loss of income and additional costs in that

respective year. Payments with an annual uniform support rate for 5 years higher than the maximum amount of annex of Reg. 1698/2005 should be approved in exceptional cases taking account of specific circumstances to be duly justified.

Please, also refer to the comments letter sent by DG Agriculture (annex II) for further details; as indicated in the letter, the conversion of agricultural land into wetlands that will no longer be agricultural land should preferably be supported under article 57 of Regulation (EC) n°1698/2005.

Measure 216b - Non-productive investments - establishment of wetlands, periodical flooding of farmland, nature conservation projects and restoration of natural hydrological conditions

The deletion of the priority given to areas designated for establishing wetlands should be justified as all measures related to drainage or other water actions which might have an impact on water should comply with art. 4.7 of WFD, the creation of wetlands should not lead to destroying of Natura 2000 areas and should not be detrimental of biodiversity conservation.

As regards the establishment of wetlands, it should be explained what is exactly supported and how the aid amount is calculated.

It should be clarified the demarcation with similar measure, e.g. 214g.

Measure 216c - Land consolidation to adapt agriculture to requirements for environment and nature

The proposed measure seems not admissible as supporting only management, operational costs related to land distribution and not investments. As indicated in the above mentioned letter, it was specified that the re-parcelling necessary in the framework to establish wetlands could be supported under Articles 30 of Regulation (EC) n° 1698/2005. In addition, costs of experts (project manager) temporarily employed with the specific task to implement and facilitate the wetland projects and technical studies for the establishment of wetlands could be supported under Articles 41 of Regulation (EC) n° 1698/2005 under certain conditions (see letter). Finally, "Communication actions related to wetland projects may be supported under Articles 21, 57, 58 or 66 of Regulation (EC) n° 1698/2005, depending on the nature of the communication operations and their target group".

Measure 216d - Non-productive investments in connection with protection of environment, nature and animal welfare (State acquisition of land)

The proposed measure has already been discussed with the Commission services.(see above) with the following comments: "the co-financing would only relate to the difference between the costs of the purchase and the lower price paid by the land managers even if based on standard costs as foreseen under article 53 of Regulation (EC) n°1974/2006; the procedure related to the selling operation shall be opened to all interested parties and the conditions attached to the land resold shall not be supported by another scheme; the purchase of the area may be supported either under article 41 or under article 57 of Regulation (EC) n°1698/2005 depending on the possibility to maintain an agricultural activity on the land after the conversion into wetland. According to Article 71(c) of Regulation (EC) n°1698/2005, the cost for the purchase of land may represent a percentage higher than 10% of all the eligible expenditure on the operation concerned in exceptional and duly justified cases for operations concerning environmental conservation. If duly justified, this percentage could go up to 100%.

Before starting such an operation, the competent Authority should assess that the participation rate of land owners is high enough to ensure the achievement of the environmental objective in the area concerned." The operation of purchase and resell (e.g. procedure of selling) should be described so as to allow the Commission services to assess the proposal.

In case the support for additional costs resulting from specific maintenance of farmland converted into wetland is to be granted for land concerned by the operation of purchase and resell as defined above, the specific conditions of maintenance supported under agri-environment payments should go beyond the additional permanent management requirements attached to the land in the framework of the operation of purchase-resell, in order to avoid double funding.

It should be clarified how if the revenue from re-selling could be re-used for future projects under this measure.

The articulation with other measures should be clarified.

The indicators should be revised.

Measure 321 - Basic services for the economy and rural population

Measure 321, sub-measure 4: the share of eligible general costs in total costs should be clarified.

Measure 321, sub-measure 5: it should be explained how the proposed sub-measure corresponds to basic services as there is little evidence for it given its current content. The focus of the sub-measure is primarily for a specific economic sector (agricultural and food products' marketing) and not opened in general for the rural population or rural economy. Marketing of agricultural products could be supported under different measures (e.g., measure 311, measure 121, Leader). In addition, exchange of information could be done under measure 331. It is also unclear what is meant by "services to support the sale, marketing and exchange of information". The description of the measure should be improved in order to clarify it.

New indicative table 5.3.6

Table 5.3.6 List of operations referred to in Article 16a (3)(a) of Regulation (EC) No 1698/2005, as submitted, seems incomplete and it should be completely revised and brought in line with Regulation 1698/2005 with regards to: the types of operations to be supported to meet the obligations resulting from Article 16a(3)(a) and Article 69(5a) of Reg. 1698/2005 at programme level; existing or new type of operation; types of operations and potential effects related to the new challenges (Annex II of Reg.1698/2005); indicative targets for output indicators, broken down by types of operations avoiding double-counting (output indicators concerning one or more type of operation should be attributed to the type of operation from which the biggest impact is expected).

Chapter 6: Financing plan

The tables in the financing plan should be revised to ensure that they are coherent with the tables submitted through SFC. In particular, table 6.1 should be revised to include the amounts resulting from the HC/RP. These amounts should be shown separately for the relevant years and a new line added for the total for each year.

In addition, the figures should be checked for rounding errors. It should be checked that the amount under measure 431 does not exceed 20 pct of the total allocation for axis 4. Although the total amounts correspond to the multi-annual financial programming, it is not clearly explained: 1) how the change in the relative weight of the four axes vis-à-vis the original financing plan has come about or 2) how this change can be justified with regard to the health Check and Recovery Package objectives.

In this regard, it would also be useful to explain in a footnote that the new financing plan includes an additional amount of 9.5 mill euros resulting from Decision 2009/14/EC, which has not previously been allocated to the axes.

Finally, it would be useful if the managing authority could include a separate table with a rough indication of the relative weight given to the new challenges mentioned in Art 16a of the Regulation when allocating the amount resulting from the HC/RP.

Chapter 7: Indicative breakdown by Rural Development Measure

In table 7 the amounts resulting from the HC/RP should be included in the total indicative amounts for each measure.

To allow a clear and transparent analysis, it would be preferable if the tables would indicate (through track changes) the overall change in the amount allocated for each measure when taking into account the additional amounts resulting from the HC/RD as well as all other changes made.

Finally, it is not clear how the figures in the financing plan correspond to the amounts set out for each measure in Chapter 5.2. It would be useful to have a detailed explanation of the changes made to the allocation for each measure in the modified financing plan.

Ministry of Food, Agriculture and Fisheries

The Danish Food Industry Agency



European Commission
 DG Agriculture - Unit E3
 Rue de la Loi 200
 B-1049 Bruxelles

Coordinating Office for Rural Districts
 and Business Development
 Ref. 3621-06-12
 22. December 2011

Notification of amendment to the Danish Rural Development Programme

The Danish Managing Authority hereby notifies certain amendments to the Danish RDP (CCI: 2007DK06RPO001) pursuant to article 6(1)(c) of Regulation (EC) No 1974/2006.

Enclosed are modification submission templates for;

- adjustment of text in measure 214a on grazing measure
- adjustment of text in measure 216b on wetlands for P and N
- introduction of measures 213a for reduced maintenance of stream edges and 213b for set aside border zones in order to implement the WFD
- introduction of measure 221c First afforestation of agricultural land to establish new public forests

As back ground information for measure 213a you will find enclosed two memos from the Ministry of Environment on impact assessments on the watercourse maintenance and administration of the measure for reduced watercourse maintenance.

As back ground information for measure 213b you will find enclosed a memo on area designation for the mandatory set aside border zones along all open streams and lakes pursuant to Danish Act no. 591 of 14th June 2011 (Law on Bufferzones).

The Danish river basin management plans implementing the EU Water framework directive have been in a public hearing and are expected to be approved before the end of 2011 by the new Danish government.

The amendments have been inserted into the RDP text enclosed with TCs visible.

The amendments will have no effect on the National Strategy Plan for support for development of rural areas in 2007-2013.

Best regards,

Steen Bonde
 Head of Unit

5.2.2.1b. Mandatory establishment of cultivation-free buffer zones (Code 213b)

Article (and paragraph) which covers the measure

Articles 36(a)(iii) and 38 of Regulation (EC) No 1698/2005
Point 5.3.2.1.5 of Annex II to Regulation (EC) No 1974/2006

Code of the measure

213b

Rationale for intervention

In order to implement the WFD successfully it has been decided also to apply mandatory obligations for management of farmland and to offer support to compensate for costs incurred and income foregone for farmers resulting from implementing the Water Framework Directive (2000/60/EC) pursuant to art 38 in REG 1698/2005.

As part of the Danish implementation of the Water framework directive and pursuant to Act no. 591 of 14th June 2011 (Law of Bufferzones) Denmark will implement, with binding effect from 1st of September 2012, an up to 10 m mandatory cultivation-free buffer zones along all open streams and ponds more than 100 m² in non-urban zones. It is foreseen to compensate the extra cost incurred and income foregone by a farmer caused by this measure. The measure is foreseen to have a positive impact on the aquatic environment by reducing the phosphorous and pesticides emissions and leaching of nitrate caused by agriculture.

Objectives of the measure

The purpose of the support scheme is to compensate the establishment of non-cultivated buffer zones along lakes and open watercourses in non-urban zones in order to reduce the leaching of Phosphorus, Nitrate and pesticides into surface water. The buffer zones will also contribute to safeguard biodiversity and improve ecological connectivity of the rural landscape.

It has been estimated that the mandatory buffer zone measure comprises approximately 50,000 hectares divided between approximately 30,000 beneficiaries. It has been assessed by the University of Aarhus that the gross impact with regard to a reduced P-discharge could contribute to a reduction up to 160 tonnes per year

The requirement of no cultivation within the buffer zone will not apply if permanent pasture or perennial energy crops are grown without the use of fertilisers and pesticides.

The University of Aarhus has assessed the impact with regard to reduced N-discharge at 2,500 tonnes of N. The reduced N leaching is expected to be up to 13 kg N per hectare less than on cultivation-free border zones if perennial energy crops are grown in the buffer zone, and 5 kg N per hectare less if permanent pasture is grown.

Scope and actions

Area payment is offered as compensation for the mandatory establishment of cultivation-free buffer zones. The cultivation-free buffer zones must be established on farmable land along all open watercourses and lakes in excess of 100 m² in non-urban zones. Support is given as an annual area subsidy with a fixed support rate.

The existing voluntary measure regarding bufferzones (code 214d) will end in 2011, The requirements of no use of pesticides, fertiliser and cultivation-free buffer zones will be mandatory and statutory as part of the Danish implementation of the Water framework directive. Farmers are expected to be compensated with support in accordance to Article 38 of Council Regulation (EC) No 1698/2005. As a exception to the general requirements farmers can establish fertiliser and spraying -free farming of perennial energy crops or permanent pasture in the buffer zone.

The obligations are well beyond the national minimum rules concerning the management and conservation of pasture and natural areas. For land covered by support under the single payment scheme, the obligations will extend beyond the conditions concerning good agricultural and environmental condition, cf. Commission Regulation (EC) No 73/2009.

The cultivation-free buffer zones will in some areas compliment an already existing un-cultivated strip of 2 metres along lakes and open water courses pursuant to the baseline under Regulation (EC) 73/2009. For the existing 2 metre border strips the additional requirement will only be for 8 additional metres and the compensation will only be given for the 8 metres up to the 10 metre requirement.

In accordance with section 69 of the Danish Watercourse Act, the provision on 2 metre non-cultivated strips along all natural or high priority watercourses as well as lakes larger than 100 m² applies. The opportunity to grow perennial energy crops in the border strip does not apply to these 2 metre strips, as no soil preparation or cultivation is allowed in these areas.

It is expected that the compensation to farmers can be applied for in 2013 for the establishment of mandatory buffer zones going back to September 1st 2012. In 2013 it is foreseen that the payment to farmers will cover the period 1st september 2012 to 31st december 2013.

Priority criteria

All applicants shall be offered the support. No priority criteria are needed. Adequate funding will be allocated for at least 50,000 ha.

Beneficiaries

Support may be granted to farmers and to other land managers.

Administration

The support scheme will be paid out by NaturErhvervstyrelsen (A new body replacing 3 previous Danish public bodies under the Ministry of Food, Agriculture and Fisheries; FødevarerErhverv, Plantedirektoratet and Fiskeridirektoratet). The on-the spot control will be carried-out by NaturErhvervstyrelsen.

Confirmation that the cross-compliance requirements are identical to those provided for by Regulation (EC) No 73/2009

The cross-compliance requirements, which set out the basic conditions for receiving single farm payment support under Council Regulation (EC) No 73/2009, form the basis for the establishment of further obligations for which compensation is paid.

Support is only given for obligations which extend beyond these mandatory obligations.

Description and justification of the different types of commitments, based on their expected environmental impact in relation to environmental needs and priorities

Beneficiaries can combine payments of support under this measure and single farm payment support in accordance with Council Regulation (EC) No 73/2009. The payments of support cover only those commitments going beyond the baseline standards established pursuant to that regulation.

The beneficiary must commit to not add plant protection products, fertilisers or soil improvement agents to the land during the commitment period. The area must be established as grass or natural area except where the area is cultivated with perennial energy crops or present other perennial crops. The area must not be irrigated.

If the bufferzone is used for grazing, the maximum grazing pressure is indirectly regulated through the measure as the grazing pressure must be adjusted according to the conditions and in order to prevent overgrazing of the area and loss or damage of plant cover.

If there is an existing perennial crops as for example christmas trees, orchards etc in the buffer zone, it is possible to maintain this crop, but not to reestablish it. The beneficiary must commit to use no plant protection products, fertilisers or soil improvement agents to the land. In some special cases it is foreseen, that the minister can make an exemption from the general rule. If this is the case, there will be no support for the area in question.

The measure is expected to lead to improvement of the aquatic environment and natural conditions by reducing Phosphorus and Nitrogen leaching and erosion from the buffer zones to the aquatic environment and by banning the use of plant protection products in the bufferzones. The buffer zones will also help to safeguard biodiversity and improve ecological state of the rural landscape.

– **The areas designated to implement Directive 2000/60/EEC and the obligations for farmers resulting from the corresponding national/regional management provisions**

In order to implement the Water Framework directive, river basin management plans for 23 appointed river valley areas in Denmark will be adopted nationally by the end of 2011. Eligible areas for support under the measures are designated pursuant to these plans.

Description of the methodology and the agronomic assumptions used as reference point for the calculations justifying additional costs and income foregone resulting from the disadvantages in the area concerned related to the implementation of Directives 79/409/EEC and 92/43/EEC

The level of support has been established on the basis of calculated income losses accrued from the obligations.

The reference level for calculating income foregone and additional costs resulting from the commitments are the relevant standards and requirements referred to in Article 39(3)

of Council Regulation (EC) No 1698/2005. The payments cover only those commitments going beyond the baseline standards established pursuant to Regulation (EC) No 73/2009.

The proposed support rates apply to all farms and are based on the average data for historic yields which can be differentiated by soil type (clay or sandy soil) and production type (grass, extensive pasture, crops, pigs, cattle). The support does not contain compensation for transaction costs. Further explanation of the calculation requirements is given in annex 5i.

Baseline

According to Executive Order No 1362 of 19 December 2008 on cross-compliance, with changes pursuant to Order No 239 of 27 March 2009 and Order No 253 of 31 March 2009 on direct support for farmers according to the single farm payments scheme, the following mandatory obligations exist:

Plant cover on non-cultivated agricultural land: Uncultivated areas must be covered with plant cover. Conditions are made concerning timing for establishment, the use of seeds and after-sowing.

Maintenance of uncultivated areas: Uncultivated agricultural land must be cut at least once every two years in July or August, while permanent pasture must be cut at least once a year in July or August. In the case of permanent pasture, mowing can be replaced by grazing. The plant cover on uncultivated agricultural areas must not be cut in the period 1 May to 30 June. The areas must not be utilised in a way that destroys or removes the plant cover. No plant protection products must be used on the area except for products used for selective prevention of certain aggressive weeds on the condition that the remaining plant cover is not damaged and is not given fertiliser or artificial irrigation.

The calculation of support is based on income-foregone related to establishing the cultivation-free buffer zones or for establishing the buffer zones with permanent grass or perennial energy crops with no use of fertilisers and plant protection products.

Support commitments and baseline

Support commitments	Baseline commitments
An up to 10 meter buffer zone along lakes and open water courses in non-urban zones must be established and maintained as cultivation free and without any use of fertilisation or plant protection products.	The buffer zone areas will where relevant compliment an already existing un-cultivated strip of 2 metres along lakes and open water courses pursuant to the baseline under Regulation (EC) 73/2009.
Same	Obligations concerning the plant cover on border strip pursuant to Regulation 73/2009
Same	Border strips must be cut at least once every two years (Order No 1362 of 19 December

	2008 on cross-compliance, with changes pursuant to Order No 239 of 27 March 2009 and Order No 253 of 31 March 2009 on direct support for farmers according to the single farm payments scheme)
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Control

The respect of the support conditions shall be controlled through on-the-spot control and through administrative control by NaturErhvervstyrelsen.

Amounts of support

A fixed annual support rate is offered of up to euro 349 per ha per year as compensation for the mandatory requirements of establishing cultivation-, spraying- and fertiliser-free buffer zones. Support is only offered for areas eligible to the single payment aid granted under Regulation (EC) No 73/2009. While the measure is considered to be very significant and comparable with a permanent conservation, the support rate exceeds the normal maximum rate of euro 200 per ha per year. The annual support is expected to be paid out together with the single payment premium for the calendar year. The requirements regarding the buffer zones are applying from 1st September 2012, it is foreseen that the farmers apply for the support in 2013 including the period from 1st September 2012 to 31st December 2013.

Combinations of support

Support under this measure can be combined with the following measures in the program.

- Non-productive investments in connection with protection of environment, nature and animal welfare
- Island support
- The Article 68 measure: "Support for extensive maintenance of pasture areas"
- Conservation by grazing or cutting on pasture and natural areas (Code 214a)
- The Article 68 measure: "Support for establishment of perennial energy crops"

It cannot be combined with other types of area support in the programme, and there will be controls to prevent double support regarding these schemes via the coordinated administrative control of common application forms for area payments under LDP and the single payment scheme.

Compatibility with CAP first pillar measures

The commitment may not be combined with commitments made for the same agricultural production pursuant to the measures implemented under common market organisations and the direct support schemes listed in Annex I to Regulation No 1974/2006. The payment can be combined with the single payment aid granted under Regulation (EC) No 73/2009.

Evidence as referred to in Article 48(2) of the implementing rules allowing the Commission to check consistency and plausibility of the calculations

The Institute of Food and Resource Economics at the University of Copenhagen has provided the data and calculations used as the basis for setting support rates. The research

institution is functionally independent from NaturErhvervstyrelsen which is responsible for the calculations. The institution represents the necessary expertise to assist in this task.

Financing

Total cost: 24.8 million euro.

Public expenditure: 24.8 million euro.

Transition arrangements

This measure is not similar to activity co-financed under the Rural Development Programme 2000-2006. No transition arrangements are necessary.

Quantified targets for EU common indicators

Type of indicator	Indicator	Target 2007-2013
Output	Number of farm holdings and holdings of other land managers receiving support	30,000
	Total area under agri-environmental support	50,000 ha
	Total number of contracts	30,000
	Physical area under agri-environmental support	50,000 ha
	Number of actions related to genetic resources	None
Result	Areas under successful land management	50,000 ha
Impact	Reversal in biodiversity decline (farmland bird species population)	Maintain index level for breeding bird population (IRENA population index for 18 breeds of birds on agricultural land: 106.1 in 2001. Common objective)
	Changes in gross nutrient balance	Reduction of up to 160 t P and 2,500 t N per year
	Increase in production of renewable energy	Negligible

Additional programme-specific indicators and quantified targets

None.



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR AGRICULTURE AND RURAL DEVELOPMENT

Directorate E. Rural development programmes I
Director

Brussels,
TF/lvdz/D(2012) 356951

Subject: Modification of the Rural Development Programme for Denmark, notified to the Commission on 22 December 2011 in accordance with Article 6 (1) (c) and 9 of Regulation (EC) 1974/2006

Reference: CCI: 2007 DK 06 RPO 001

Dear Mr Bonde,

I hereby refer to the receipt via SFC on 22 December 2011 of a proposal for the modification of the Danish Rural Development Programme 2007-2013 in accordance with Article 6 paragraph 1 (c) and 9 of Regulation (EC) No 1974 /2006.

The modification includes the following main elements:

- New measure on compensation for changed watercourse maintenance (213)
- New measure on consultancy services connected to the watercourse initiative (323)
- New measure on establishment of cultivation free buffer zones (213)
- Amendment of measure on grazing or cutting of pastures and natural areas (214)
- Amendment of measure on investments in wetland creation (216)
- New measure on afforestation of publicly owned agricultural land (221)
- Minor changes to the financial table, including a transfer between the axes within the 1 per cent limit referred to in Article 9 of Regulation (EC) No 1974/2006

The Commission services have assessed the modifications proposed as referred to in Article 9 paragraph 6 of Regulation (EC) No 1974 /2006.

In Annex 1 to this letter a number of points are raised with regard to elements of the proposal which either do not comply with the relevant provisions of Regulation (EC) No 1698/2005 and Regulation (EC) No 1974/2006 or for which insufficient information has been provided for the assessment of their compatibility with the said regulations.

Ministeriet for Fødevarer, Landbrug og Fiskeri
NaturErhvervsstyrelsen
Att.: Kontorchef Steen BONDE
Koordinationskontor for landdistrikter og erhvervsudvikling
Nyropsgade 30
1780 KØBENHAVN V
DANEMARK

The proposal in its current format is not considered acceptable and should be revised and resubmitted taking into account the comments mentioned.

The four month period for the assessment of the proposed programme modification is suspended until the Commission receives a compliant programme change. Unit E.3 is at your disposal for clarification of any questions you may have.

Yours sincerely,

(signed)
Mihail DUMITRU

Annex 1: Comments on the amendments proposed

ANNEX 1: Comments on the proposed amendments

Measure 213a

The measure description should explain the pertinence of the measure for the implementation of the WFD and contain a reference to the relevant point in Article 11.3 or to Article 11.4 of that Directive.

It should be specified that only utilised agricultural areas (UAA) are eligible and that only farmers can be beneficiaries of this measure (and not other land managers).

Eligibility conditions must be clear and verifiable. For the payment of 165 euros the precise eligible conditions are not clearly defined ('may have to change to spring crops or grass') and for the payment of 50 euros/ha (permanent pasture) the eligibility conditions are not specified at all in the text received. It should therefore be verified that objective criteria exist for distinguishing one situation from the other and determining when a farmer is eligible for a payment and when not. Payments can only be made where there is a real, measurable and significant loss of income. Transaction costs are not covered.

The text provides that new areas which are not initially designated can be made eligible at a later stage if they turn out to be affected. This should be better explained. If it refers to effects which appear only gradually over time (due to silting up of drains etc.) it seems logical enough, but if it is because of uncertainty about the model used for designation of the areas, it would presumably also be relevant to review the designation of areas which were initially included but which later turn out not to be affected.

Among the measures with which this payment may be combined there is a reference to "Natura2000 payments". It is not clear what measure this is. It should be clarified if there could be a risk of overcompensation.

Also, the possible overlapping of this measure with "support for plant genetic resources" should be verified to avoid overcompensation.

The text states that the adoption of the river basin management plans is expected in 2012, but they have in fact already been adopted and entered into effect on 22 December 2011.

With regard to expected impacts it could be assumed that the proposed operations will have an effect on the gross nutrient balance indicator given that changes in crops types and growing seasons are expected as result of the their implementation.

One of the indicators refers to "total investment volume". This is not a valid indicator, as no investments are involved. The indicator seems in fact to refer to total public spending.

The text refers to 6,500 km watercourses being affected, but it appears that this was changed in the latest version of the water plans.

Section 5.3.5.5 of the RDP describing the measures dealing with periodical flooding of farmland should be updated in line with the new measure description.

Measure 213b

The measure description should explain the pertinence of the measure for the implementation of the WFD and contain a reference to the relevant point in Article 11.3 or to Article 11.4 of that Directive.

It should be specified that only utilised agricultural areas (UAA) are eligible and that only farmers can be beneficiaries of this measure (not other land managers).

With regard to the baseline it should be verified that all other EU legislation for the protection of water has been taken into account.

It is not clear what is meant by a "fixed annual support rate of up to 349 euros". It should be clarified what the level of the payment is.

A single rate has been calculated for all areas without taking into account the previous use of the areas concerned. However, it would be appropriate to consider, if possible, to differentiate the payment. In particular, areas currently kept as grassland would incur a lower income loss than areas used for arable crops.

With regard to the possibility to grant compensation for 1 year and 4 months in one instalment in the first year, controls have to be carried out according to the Regulations in force for the entire period (in this particular case – 1 1/3 year).

It should be explained how permission to cultivate perennial energy crops and previously established other perennial crops on the buffer zones will fit in with (a) the objectives of the measure; and (b) the support calculation.

Presumably, the income loss could be lower for areas on which the cultivation of existing crops continues (however more extensively).

Since one of the environmental objectives of this measure is the protection of biodiversity and the improvement of ecological connectivity in the rural landscape, it should be explained how these objectives can be achieved given the disturbance for wildlife following from the operations related to the management of perennial energy crops.

With regard to the combination of this measure with the Article 68 measure supporting the establishment of energy crops, it should be verified that there is no risk of overcompensation.

The demarcation with regard to existing commitments under measure 214d (border strips) should be clarified. Presumably, existing commitments could be terminated and compensation offered under the new scheme instead, provided they are within the new eligible zones. In any case, any possibility of overlap should be avoided.

With regard to grazing on the areas, it should be clarified how the grazing pressure will be adjusted according to the needs of the areas. It could be recommendable to set limits on the stocking density.

It should be clearly specified in the text that this measure falls under the new challenges referred to in 16a of Regulation (EC) 1698/2005 with a 75 per cent co-financing of public expenditure by the EAFRD. This appears from table 5.3.6 (health check indicators) and indirectly also from table 6.3 (indicative allocation of funds for operations referred to in

article 16a) but it should also be explicitly stated in the measure description. In addition, the relevant entry in table 5.3.6 should refer to measure 213 instead of 214.

Measure 214a

A minimum stocking rate of animals is introduced as a means of regulating the grazing pressure on the areas, referring to a minimum level of 0.5 LU/ha. It should be confirmed that the proposed rate refers to the definition in Annex V of Regulation (EC) 1974/2006.

It would be appropriate also to ensure that there is no risk of overgrazing, with negative impact on vegetation, for example by way of a maximum stocking rate.

The text states that the farmer chooses each year which of the two definitions to apply and that if the livestock density option is chosen it should be at least 0.5 LU/ha. At the same time, however, it is provided that the managing authority should set the minimum livestock density and that it may set it at a lower level than 0.5 LU/ha. The two statements seem to be conflicting.

It should be ensured that there is no overlapping between this measure and measures under Article 68 of Regulation (EC) No 73/2009.

The discrepancy in approach as regards the inclusion of a stocking rate as an alternative support criterion in this measure and the lack of such an option in the recently notified art 68 measure for extensive management of pastures should be explained.

Could the Danish authorities explain better the reasons for the lower than expected uptake under this measure in the RDP?

Measure 216b

It should be confirmed that the operations under this measure go beyond the mandatory requirements of the WFD as defined in recently adopted river basin management plans.

Measure 221c

The proposed standard payments of up to 7,344 euros per hectare are based on average cost estimates and target a 100 per cent compensation of the costs. This creates a risk of overcompensation as per definition some projects will have below average costs.¹ It is not clear how the national authorities plan to deal with this risk. An approach could be to base the compensation on actual costs incurred, supported by invoices, rather than standard rates. The administrative costs would presumably be limited as there are relatively few beneficiaries, and the main beneficiary is the Nature Agency itself.

Related to the above, it is not clear how the Danish authorities will ensure that the maximum limit for the EAFRD contribution (55 per cent of total public expenditure) will be controlled and enforced. Indeed, the proposal suggests that the EU contribution of 55

¹ The expert statement accompanying the proposed measure asserts that the support rates are well within the likely costs (in fact closer to 50 per cent of the direct costs), but in doing so it clearly refers to different support rates from the ones actually proposed for the measure. For example, the expert statement refers to a rate of 2,150 euros/ha plus 800 euros/ha for fencing equal to 2,950 euros/ha, which is lower than any of the rates actually proposed.

per cent will be paid to the beneficiaries directly, based on the standard support rates for the types of forest concerned, and that the remaining costs will be covered by the beneficiaries, which are also public. However, the 55 per cent contribution from the EAFRD should be calculated on the basis of actual public expenditure incurred, not a theoretical estimate of that expenditure. In order to be eligible for the EAFRD contribution, the national Paying Agency needs to be able to account for the entire public contribution. An approach based on actually documented costs would be preferable in this regard as well.

The main beneficiary of the measure is the Nature Agency which is also managing the scheme. It should be verified that there is a clear division of functions within the agency so that conflicts of interest are avoided in managing the scheme, carrying out controls etc.

The measure would cover additional costs related to the use of low impact soil preparation methods in the establishment phase. However, the use of low impact methods is not clearly stated as an eligibility condition in the proposed measure.

The list of eligible beneficiaries includes publicly owned companies (for example water companies). In this respect it should be clarified that all beneficiaries should be public law bodies, as according to Annex 1 of Regulation (EC) No 1698/2005 private beneficiaries are not eligible for a 100 per cent support rate under this measure.

The description of eligible areas seems to indicate that areas which receive payments under agri-environmental measures would be eligible. This needs clarification. In addition, it should be clarified under which conditions it would be allowed to afforest permanent pasture areas.

It should be clarified to what extent the measure promotes biodiversity as well as contributing to the protection of groundwater resources and public amenity values. A strong environmental focus would seem to be appropriate, as funds for this measure are transferred from measure 225.

The proposal states that applications for support will be made in the year following the completion of the plantations. This does not seem to be in line with normal state aid principles, according to which operations should not normally have been completed at the time of the decision to grant the aid.

The relevant state aid reference should be inserted in table 9b of the RDP and the text should take into account any issues raised in connection with the state aid approval.

Section 5.3.9.1 of the RDP describing the afforestation measures under the programme should be updated.

Measure 323e

The proposed measure would finance the preparation of impact assessments as a basis for the payment of compensation to farmers under measure 213a. These operations are not eligible under Article 57 of Regulation 1698/2005. Impact assessments do not qualify as protection or management plan in the sense in which these terms are used in Article 57. Neither do the operations fall under the definition of investments in Article 55 of Regulation 1974/2006. However, as these preparatory studies are necessary for the

implementation of a measure under the RDP, it would be possible to finance them under the technical assistance measure as preparation of programme assistance.

Other issues (horizontal issues, financial table, etc.)

It should be verified that the description of the cross compliance requirements in section 5.1.1 of the RDP is up-to-date. This point concerns in particular: 1) requirements related to the protection of Natura2000 areas and species, and 2) requirements related to the application of fertilizer to water-saturated, flooded, frozen, or snow covered land. Other issues may also need updating. Any change in the baseline which affects the calculation of support should be reflected in the support rates or eligibility rules of the measures concerned.

No explanation is given for the reduction in the expected private contribution to measure 114. In fact, the reduction does not seem to be in line with the stated aid intensity under the measure, which is 50 per cent. According to that aid intensity, the private contribution should actually be increased, not lowered.



Ministry of Food, Agriculture and Fisheries

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The Danish AgriFish Agency
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Revised notification of amendment to the Danish Rural Development Programme

The Danish Managing Authority has received the comments from DG AGRI by letter of 22 March 2012 (*Ref. Ares(2012)337345/TF/lvdz/D(2012) 356951*) concerning the amendments to the Danish RDP (CCI: 2007DK06RPO 001) notified to DG AGRI by letter of 22 December 2011. Please find beneath our replies to the specific comments.

The Danish Managing Authority wish to inform the Commission that the Danish authorities, due to the ongoing process with devising the legal and administrative framework relevant for measure 213a, have decided to await the finalisation of that work before introducing the measure in the RDC. Consequently, measure 213a has been withdrawn from the notification of 22. December 2011, and is not included in the adjusted RDP proposal enclosed to this letter. The same applies for the application regarding the impact assessments, which were suggested financed under the technical assistance envelope.

The Danish authorities intend to reapply for the introduction in the RDP of the area compensation measure and the impact assessments regarding reduced water course maintenance later this autumn. The Danish authority are thankful to the Commission for its assistance and comments so far received regarding the support initiatives.

The decision to withdraw the measures is very recent. The Danish authorities had already prepared their answers to measure 213a and the impact assessments, which were intended to be submitted to the Commission. For your information, the prepared answers have been included in this letter, so to provide the Commission with relevant background information regarding the measures as they have been envisaged implemented up until now.

The information is also submitted with the interest of ensuring a good and swift forthcoming notification process, in that we do recognize that this will also depend on the specific content and information laid forward in the forthcoming notification dealing with the reduced water course maintenance initiative.

Questions by letter of 22 March 2012:

Measure 213a: Pertinence of the measure for the implementation of the WFD: The measure description should explain the pertinence of the measure for the implementation of the WFD and contain a reference to the relevant point in Article 11.3 or to Article 11.4 of that Directive.

Reply: The measure in question is targeted to achieve good ecological status and increased amenity value along for selected sections of up to 4,150 km watercourses, that will be affected

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by changed maintenance, greater biodiversity and guarantee of the basis for fishing stocks and thereby the regeneration of better fishing waters. The measure is part of the activities that are planned for the Danish implementation of the Water framework directive under article 11.4 of Directive 2000/60/EC (supplementary measure).

Reference is made to Annex 3 of the river basin management plans (adopted on 22 December 2011), which lists the national legal statute with relevance for the basic measures implementing the Water framework directive in Denmark (cf. art. 11.3 of the directive). See link, page 211: http://www.naturstyrelsen.dk/NR/rdonlyres/8C2B25F2-8DED-4A14-A66B-74454FC23802/0/1_14_Storebaelt.pdf (taken from the water plan for the area of Storebælt). In annex 3 (7.10), it appears that supplementary measures (cf. art. 11.4 of the directive) regarding specific water areas shall be described in the action plan of the relevant water plan (see table 1.3.1).

Areas eligible for support: It should be specified that only utilised agricultural areas (UAA) are eligible and that only farmers can be beneficiaries of this measure (and not other land managers).

Reply: The Danish authorities intend to manage the scheme accordingly.

Eligibility conditions: Eligibility conditions must be clear and verifiable. For the payment of 165 euros the precise eligible conditions are not clearly defined ('may have to change to spring crops or grass') and for the payment of 50 euros/ha (permanent pasture) the eligibility conditions are not specified at all in the text received. It should therefore be verified that objective criteria exist for distinguishing one situation from the other and determining when a farmer is eligible for a payment and when not. Payments can only be made where there is a real, measurable and significant loss of income. Transaction costs are not covered.

Reply: The clear and easy distinguishing of areas eligible for support and areas not eligible will be specifically designated by the impact assessment. The designation shall permit to identify, which areas are expected to suffer a loss of income as a result of higher ground water level or even flooding due to the changed watercourse maintenance and which are not. With regard to the compensation level, the basis of their calculation and the criteria used to differentiate between support levels has been provided by the University of Copenhagen. It is foreseen to ensure that 75 % of the farmers are fully compensated for their losses. In order not to overcompensate, three rates of compensation have been envisaged:

- One for areas previously cultivated with arable crops as wheat, corn and others, which were every year ploughed and sown with new crops. Due to the change in watercourse maintenance the impact assessment concludes that the area will be so wet, that normal crop production, including sowing and harvesting will no longer be possible. Some permanent pasture will normally be possible to graze or harvest, but in some years it may be so wet that no production is possible at all.
- A second rate of compensation is foreseen for areas previously cultivated with the same type of crops as above, but the water will not hinder crop production totally. This case will cover situations where flooding or exceptionally high ground water levels will occur primarily in the late autumn, making it impossible to grow crops, which have to be sown

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in the autumn of the year before harvesting. Normally some soil cultivation will be possible so that spring crops can be produced to some extent though with lower yields.

- A third rate is meant to compensate areas farmed as permanent pasture, which due to higher ground water levels, will have to convert from an intensive to an extensive-based management of the grass land. The shift in production form coincides with expected reductions in production yield and income losses for the farmer.

The mentioned impact assessments will determine, using existing historic data and new measuring of watercourse physics, to which extent the changes in watercourse maintenance will change the ground water level and risk of flooding, compared to the present maintenance of the watercourse. This will lead to very clear and precise designation of areas which will be entitled to receive compensation and the level of this compensation.

Areas designated subsequently to the impact assessment: The text provides that new areas which are not initially designated can be made eligible at a later stage if they turn out to be affected. This should be better explained. If it refers to effects which appear only gradually over time (due to silting up of drains etc.) it seems logical enough, but if it is because of uncertainty about the model used for designation of the areas, it would presumably also be relevant to review the designation of areas which were initially included but which later turn out not to be affected.

Reply: The Danish authorities intend to perform a close monitoring with the support measure. If the change in water course maintenance exceptionally leads to unforeseen consequences and affect a significantly larger or smaller area than anticipated by the impact assessment, a recalculation and adjustment of the designated areas eligible for future compensation will be made.

Natura 2000 payments: Among the measures with which this payment may be combined there is a reference to "Natura2000 payments". It is not clear what measure this is. It should be clarified if there could be a risk of overcompensation.

Reply: The reference to "Natura2000 payments" is a mistake and the support combination possibility will not be included in the forthcoming the RDP notification-.

Demarcation to the measure "support for plant genetic resources": The possible overlapping of this measure with "support for plant genetic resources" should be verified to avoid overcompensation.

Reply: The Danish authorities do not intend to manage the measures, so that support under the two measures can be combined.

Adoption of the river basin management plans: The text states that the adoption of the river basin management plans is expected in 2012, but they have in fact already been adopted and entered into effect on 22 December 2011.

Reply: This is correct. The information will be included in the forthcoming notification..

Gross nutrient balance indicator: With regard to expected impacts it could be assumed that the proposed operations will have an effect on the gross nutrient balance indicator given that changes in crops types and growing seasons are expected as result of the their implementation.

Reply: We agree with the comment. The change in growing seasons and to a more extensive area usage due to the change in crop types will invariably lead to a reduction in the use of nutrient, and as a result an expected reduction of nitrogen and phosphorous leaching from the affected areas. Since the impact assessments are yet to be conducted, it is presently not possible to quantify the total expected impact of the indicator, which is dependent on an assessment of the relative predominance of each of the growing situations for which compensation will be paid.

The indicator “total investment volume”: One of the indicators refers to "total investment volume". This is not a valid indicator, as no investments are involved. The indicator seems in fact to refer to total public spending.

Reply: We agree that the indicator is not relevant.

The length of watercourses: The text refers to 6,500 km watercourses being affected, but it appears that this was changed in the final version of the water plans.

Reply: This is correct. The correct figure will be mentioned in the the forthcoming notification..

Text adjustments to section 5.3.5.5: Section 5.3.5.5 of the RDP describing the measures dealing with periodical flooding of farmland should be updated in line with the new measure description.

Reply: We agree with the comment.

Measure 213b:

Pertinence of the measure for the implementation of the WFD:

The measure description should explain the pertinence of the measure for the implementation of the WFD and contain a reference to the relevant point in Article 11.3 or to Article 11.4 of that Directive.

Reply: Additional text has been inserted in the measure description in RDP amendment proposal. As part of the Danish implementation of the Water framework directive, Denmark will implement, with binding effect from 1st of September 2012, an up to 10 m mandatory cultivation-, spraying- and fertilizerfree buffer zones along all open streams and ponds more than 100 m² in rural areas. The measure implements article 11.4 of Directive 2000/60/EC. It is foreseen to compensate the extra cost incurred and income foregone for farmers caused by this measure.

Areas eligible for support: It should be specified that only utilised agricultural areas (UAA) are eligible and that only farmers can be beneficiaries of this measure (and not other land managers).

Reply: The specification has been provided in the resubmitted measure description.

Baseline: With regard to the baseline it should be verified that all other EU legislation for the protection of water has been taken into account.

Reply: Reference is made to the resubmitted description text in which additional text has been provided (cf. the section "baseline"). Incidentally, we can inform that the measure is expected to result in additional reduction in N-leaching of 2.500 tons per year as a result of estimated 50.000 hectares being affected by the mandatory requirement. The buffer zones are also expected to lead to a reduction in P-leaching, usage of plant protection products and lead to a general increase in natural amenities in rural areas.

Support rate: It is not clear what is meant by a "fixed annual support rate of up to 349 euros". It should be clarified what the level of the payment is.

Reply: The clarification has been provided with the amended text. Reference is made to the reply underneath for the exact support rates suggested to be provided under the measure.

Differentiation of payments: A single rate has been calculated for all areas without taking into account the previous use of the areas concerned. However, it would be appropriate to consider, if possible, to differentiate the payment. In particular, areas currently kept as grassland would incur a lower income loss than areas used for arable crops.

Reply: We recognize the relevancy of proposing differentiated support rates under the measure, so that compensation levels under the measure take the usage of the areas prior to the conversion to cultivation-free buffer zones into consideration. In accordance with the Commission's comment, a specific support rate is suggested for agricultural areas previously farmed as permanent pasture. The support compensation rate is set to the fixed level of 161 euro pr. ha (i.e. 1.200 DK kr.). For agricultural areas previously farmed with any other arable crop, the compensation rate is set at 282 euro pr. ha. (i.e. 2.100 DK kr.).

Support is only offered for areas eligible to the single payment aid granted under Regulation (EC) No 73/2009. For your information, we have in the resubmitted proposal specified that support also may be granted to areas with perennial crops consisting of Christmas trees, in that the same support requirements applies for these areas as for all other areas eligible for support under the measure (incl. that the areas must be managed by farmers, with no use of fertilisers or plant protection products).

Areas established with Christmas trees have recently been introduced in the proposal for national law on mandatory buffer zones to be adopted, as areas for which compensation under 213b is foreseen. The legal proposal does not foresee support for reestablishment of Christmas trees. Compensation under 213b will not be provided if areas are planted with Christmas trees subsequent to the date fixed, where the Law on Mandatory Buffer Zones goes into application (expected to take effect on September 1, 2012).

The compensation rate for areas with established perennial crops is suggested set at the same level as for areas previously farmed with arable crops, cf. the reply underneath.

Controls with payments: With regard to the possibility to grant compensation for 1 year and 4 months in one instalment in the first year, controls have to be carried out according to the Regulations in force for the entire period (in this particular case – 1 1/3 year).

Reply: We take note of the comment. The clarification has been inserted in the resubmitted proposal.

Cultivation of energy crops / income loss: It should be explained how permission to cultivate perennial energy crops and previously established other perennial crops on the buffer zones will fit in with (a) the objectives of the measure; and (b) the support calculation. Presumably, the income loss could be lower for areas on which the cultivation of existing crops continues (however more extensively).

Reply: National legislation regarding establishment of mandatory buffer zones is expected to take effect on September 1st 2012 on the basis of Law Act nr. 591 of 14. June 2011 (“Lov om Randzoner”). With the proposed amendment to the Law, which is expected to be adopted by the national assembly (2011/LSF 145), the permission to cultivate energy crops in the mandatory buffer zones has been withdrawn. As a result, the measure text has been adjusted, with the possible cultivation of energy crops in the mandatory buffer zones withdrawn from the measure description. If, unexpectedly, the proposal is rejected, and cultivation of energy crops is made permissible in the buffer zones, we would, for your information, reconsider the present text and seek to include areas with energy crops in a forthcoming amendment proposal. In that case, the text will be adjusted, so that it addresses this particular and your other comments on energy crops, cf. beneath.

Regarding the amended law:

The recent legal amendment to the Law on Buffer Zones was ratified with Law Act nr. 563 of 18. June 2012 (“Lov om ændring af lov om randzoner”). With the law, further restrictions have been adopted regarding the possibility to cultivate energy crops in the mandatory buffer zones. The amended law gives permission to maintain the crop on the buffer zone, but not to re-establish it. The use of plant protection products, fertilizer or any other soil improvement agents is not authorized in the buffer zones.

In the resubmitted RDC proposal, the measure text under 213b has been updated to bring it in line with the recently adopted law. Reference is also made to the enclosed annex “Questions and replies in regard to perennial energy crops” of 30. June 2012, which provides more detailed answers to the Commission’s questions regarding energy crop operations in the mandatory buffer zones, in view of the recent law amendment.

Environmental objectives and energy crop operations: Since one of the environmental objectives of this measure is the protection of biodiversity and the improvement of ecological connectivity in the rural landscape, it should be explained how these objectives can be achieved given the disturbance for wild fauna linked to the operations to manage perennial energy crops

Reply: Reference is made to the enclosed annex “Questions and replies in regard to perennial energy crops” of 30. June 2012

Demarcation to the Article 68 Programme: With regard to the combination of this measure with the Article 68 measure supporting the establishment of energy crops, it should be verified that there is no risk of overcompensation.

Reply: Reference is made to the enclosed annex “Questions and replies in regard to perennial energy crops” of 30. June 2012.

Demarcation to measure 214d (border strips): The demarcation with regard to existing commitments under measure 214d (border strips) should be clarified. Presumably, existing commitments could be terminated and compensation offered under the new scheme instead, provided they are within the new eligible zones. In any case, any possibility of overlap should be avoided.

Reply:

Reference is made to the resubmitted measure description. It has been inserted in the text, that compensation under 213b may not be combined with commitments under measure 214d for the same agricultural area. When relevant, existing contracts under measure 214d, or any other RDP measures issued in the present programming period will be revised to reflect the new baseline for areas covered by the mandatory buffer zones, and the beneficiaries will be offered to terminate the contracts in line with Article 46 of Regulation (EC) 1974/2006.

Grazing pressure: With regard to grazing on the areas, it should be clarified how the grazing pressure will be adjusted according to the needs of the areas. It could be recommendable to set limits on the stocking density.

Reply: It appears from the text proposal that if buffer zones are used for grazing, the maximum grazing will be adjusted according to the local conditions and in order to prevent overgrazing of the area and loss or damage of plant cover. The commitment is similar to the way the maximum grazing pressure is regulated under measure 214a. (Conservation by grazing or cutting on pasture areas).

Heath Check measure: It should be clearly specified in the text that this measure falls under the new challenges referred to in 16a of Regulation (EC) 1698/2005 with a 75 per cent co-financing of public expenditure by the EAFRD. This appears from table 5.3.6 (health check indicators) and indirectly also from table 6.3 (indicative allocation of funds for operations referred to in article 16a) but it should also be explicitly stated in the measure description. In addition, the relevant entry in table 5.3.6 should refer to measure 213 instead of 214.

Reply: The amendment has been provided in the adjusted description of the measure and the relevant entry in table 5.3.6 (Annex 13) in which reference is made to measure 213 (instead of 214).

Measure 214a:

Grazing pressure: A minimum stocking rate of animals is introduced as a means of regulating the grazing pressure on the areas, referring to a minimum level of 0.5 LU/ha. It should be confirmed that the proposed rate refers to the definition in Annex V of Regulation (EC) 1974/2006.

Reply: We can confirm this. Reference to Annex V of Regulation (EC) 1974/2006 has been inserted in the measure description. On this particular issue, for your information, we have in the resubmitted proposal made an adjustment to the minimum grazing pressure from 0.5 to 1.5 LU/ha. Please see our answer below.

Overgrazing: It would be appropriate also to ensure that there is no risk of overgrazing, with negative impact on vegetation, for example by way of a maximum stocking rate.

Reply: The amendment intends to provide more flexibility in regard to the measure's minimum grazing pressure commitment (i.e. areas eligible for support must be grazed or cut back in such a manner that the vegetation is visually dense and low by the 31st August each year). This commitment has shown to be very hard to practice on natural areas with high biodiversity - and for some areas to be in conflict with the biodiversity purpose of the measure. Therefore with the amendment possibility is given to introduce an alternative support obligation concerning the minimum grazing pressure (i.e. a minimum level of 0.5 LU/ha).

The objective of the amendment is to address the specific issue raised by the minimum grazing pressure requirement. Consequently, no changes have been made in regard to the maximum grazing pressure commitment (i.e. stating that the grazing of the area in question must not lead to loss or damage of plant cover). The commitment has therefore been preserved in its existing form in the RDP proposal. Similarly no changes have been suggested in relation to the mode of inspection regarding the meeting of support commitments, which is planned to be carried out in an unaltered way, based on yearly random on-the-spot controls of the area receiving support, by experienced controllers, who shall visually verify regardless of the chosen minimum grazing option, that overgrazing (i.e. loss or damage of plant cover), has, in fact, not occurred on the specific area.

A maximum stocking rate as a means of regulation the maximum grazing pressure has therefore not been considered, and is in fact, not considered desirable, because of the variability of vegetation on the supported areas, which may lead to uncertain outcomes and a potential risk of overgrazing on some areas, if a general maximum stocking rate was to be applied. Adjustments to the measure description text has been provided with the resubmitted proposal.

Grazing pressure definitions: The text states that the farmer chooses each year which of the two definitions to apply and that if the livestock density option is chosen it should be at least 0.5 LU/ha. At the same time, however, it is provided that the managing authority should set the minimum livestock density and that it may set it at a lower level than 0.5 LU/ha. The two statements seem to be conflicting.

Reply: We recognize that the given text passage in the proposal is in need of further clarification. Firstly, as previously mentioned, we have adjusted the minimum grazing pressure from 0,5 to 1,5 LU/ha in the programme following recommendations from the municipalities, who are responsible for the Nature 2000 implementation.

As far as the option possibility is concerned, farmers have indeed the possibility to choose which of the two definitions to apply. If the farmer chooses the grazing pressure option, he must com-

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ply with the requirement of minimum 1,5 LU/ha to be eligible for support. If it is deemed necessary in order to preserve the natural amenities of the particular protected grassland, The Danish AgriFish Agency has the possibility to set a lower minimum grazing pressure than the 1.5 LU/ha from the application, and adjust the livestock density to a lower level, which then applies for the remaining of the commitment period.

At the time when the RDP amendment proposal was submitted (22. December 2011), the legal basis of the now adopted revised national Order implementing measure 214a was yet to be drafted. A study group had at that time suggested a preliminary minimum stocking level of 0,5 LU/ha, which could serve as a basis for further investigations. Subsequently, and on the basis of their experience with implementing the Nature 2000 directive, agronomists engaged in the municipal implementation of the directive, have assessed that the preliminary minimum density level could easily be increased to 1,5 LU/ha, so to ensure sufficient maintenance of grasslands without jeopardizing the plant cover on the areas eligible for support. The minimal stocking rate of 1,5 LU/ha has been inserted in the adopted Order put into effect on February 1, 2012, which also, and in accordance with the RDP proposal, specifies that support under 214a is conditional upon the meeting of the maximum grazing pressure requirement, i.e. that overgrazing (i.e. loss of plant cover) should not occur on areas receiving support.

Considering the above made provisions, including the possibility, in justified cases, to set the minimal pressure to below 1,5 LU/ha, the Danish authorities do not consider that the amendment in any way increases the likelihood of overgrazing from occurring.

Demarcation to the Article 68 Programme: It should be ensured that there is no overlapping between this measure and measures under Article 68 of Regulation (EC) No 73/2009.

Reply: Reference is made to the resubmitted proposal, where a minor adjustment in the text regarding the demarcation to the Article 68-programme has been inserted. We can confirm that the demarcation, as presented in the resubmitted text under 214b, is in fact the one currently in force and applied in our administration of the demarcation between 214b and the Article 68 Programme. The demarcation is as follows:

The payment under 214a may not be combined with the single payment aid granted under Regulation (EC) No 73/2009 - with the exception of areas that can achieve the single payment regardless they no longer comply with the definition of "eligible" as a result of the implementation of the nature and water directives pursuant to article 34 (2)(b)(i) of Regulation (EC) No 73/2009. These areas are excluded from payment under the article 68 pillar I-program.

Support criterion approach: The discrepancy in approach as regards the inclusion of a stocking rate as an alternative support criterion in this measure and the lack of such an option in the recently notified art 68 measure for extensive management of pastures should be explained.

Reply: As described in the modification submission template, the livestock density option intends to provide an alternative means to regulate the grazing pressure commitment, which in its current form has proven difficult to practice on natural areas with high biodiversity, and in some cases appears to be in conflict with the biodiversity purpose of the measure. With the amend-

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ment, the possibility is given to introduce an alternative support obligation to alleviate the adverse effects posed by the existing support obligation on natural areas.

With the recently established demarcation between the present RDP measure (214a) and the article 68 measure for extensive management of pastures, support under the latter measure shall be provided only to areas used for agricultural purposes eligible for Single Payment support, while new contracts under the RDP measure is provided for areas that do not receive Single Payment support, endowed with more natural amenities for which an alternative grazing pressure approach would seem more relevant.

Since the inclusion of a stocking rate as an alternative support criterion is intended specifically towards natural areas, the Danish managing authority do not find it relevant to introduce a similar option under the article 68 measure.

Expected uptake: Could the Danish authorities explain better the reasons for the lower than expected uptake under this measure in the RDP?

Reply: With the amendment proposal, the financial information regarding the measure has been adjusted, with a reduction of the expected uptake from 18.4 mio. euro to 16.7 mio. euro in the remaining of the programming period. The expected reduction is a result of updated budget forecasts, which have been revised as a result of figures now available for the financial year 2011, showing an uptake in 2011 less than what was initially was planned.

Measure 216b:

Measure requirements compared to the requirements in the river basin plans: It should be confirmed that the operations under this measure go beyond the mandatory requirements of the WFD as defined in recently adopted river basin management plans.

Reply: The operation under the measure on investments in wetland creation (216b) are part of the activities that are planned for the Danish implementation of the Water framework directive under article 11.4 of Directive 2000/60/EC (supplementary measures). The river basin management plans adopted on 22. December 2011 do not include obligations for farmers or any other land managers to convert areas to wetlands. Hence, with regard to Council Regulation No 1698/2005, and as stated in the introductory text to the measure description, cf. the RDP proposal of 22. December 2011, all operations under the measure fall under article 36 (a) (vi) and 41. The article reference has therefore not been modified, put kept unchanged in the resubmitted proposal.

Measure 221c:

Compensation level: The proposed standard payments of up to 7,344 euros per hectare are based on average cost estimates and target a 100 per cent compensation of the costs. This creates a risk of overcompensation as per definition some projects will have below average costs. It is not clear how the national authorities plan to deal with this risk. An approach could be to base the compensation on actual costs incurred, supported by invoices, rather than standard rates. The administrative costs would presumably be limited as there are relatively few beneficiaries, and the main beneficiary is the Nature Agency itself.

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Reply: Apparently DG-AGRI has not received the latest version of the “Scheme for public afforestation in Denmark” forwarded to M.2.Competition on 1st of February 2012 to obtain the state aid notification, that was achieved 19th of March 2012. The 1st of February version is now forwarded with this letter, cf. the resubmitted RDP proposal, because Denmark has made some adjustments in the scheme text because of these questions from DG AGRI. The adjustments are inserted with visible TC in the measure description. In short, the question about “flat rate” or “actual costs incurred” was also discussed with M.2.Competition, and Denmark decided to make it a scheme, where the compensations is based on “actual costs incurred”. Reference is made to the resubmitted text..

Incurred costs and EAFRD contribution: It is not clear how the Danish authorities will ensure that the maximum limit for the EAFRD contribution (55 per cent of total public expenditure) will be controlled and enforced. Indeed, the proposal suggests that the EU contribution of 55per cent will be paid to the beneficiaries directly, based on the standard support rates for the types of forest concerned, and that the remaining costs will be covered by the beneficiaries, which are also public. However, the 55 per cent contribution from the EAFRD should be calculated on the basis of actual public expenditure incurred, not a theoretical estimate of that expenditure. In order to be eligible for the EAFRD contribution, the national Paying Agency needs to be able to account for the entire public contribution. An approach based on actually documented costs would be preferable in this regard as well.

Reply: By making it a scheme where the compensations is based on “actual costs incurred” the risk of overcompensating is removed. Reference is made to the resubmitted text.

Division of functions: The main beneficiary of the measure is the Nature Agency which is also managing the scheme. It should be verified that there is a clear division of functions within the agency so that conflicts of interest are avoided in managing the scheme, carrying out controls etc.

Reply: The central Economy Office in the Danish Nature Agency will receive the applications, respond, accept and control the documented cost and disburse the grants. Most of the applications will probably be forwarded by the Danish Nature Agency's area units (former state forest district). The Nature Planning and Biodiversity Office in the Danish Nature Agency will check the actual afforestation in the field. The Nature Planning and Biodiversity Office already controls the recipients of the private afforestation schemes. Thus, there is a clear division of functions within the agency. This division of functions is described on page 3 and 6-7 in the scheme.

Also there will be a list of priority in case more applications are received than there are funds. This list is to be political approved in Denmark, but the Nature Agency will recommend that the priority should be firstly co-financed projects with more than two partners (e.g. a municipality, a water work and a local unit of the Nature Agency), secondly projects with two co-financing partners, thirdly projects with just one project-owner, fourthly according to size (biggest projects first) and fifthly after proximity to cities (the more people within 3 km the higher priority). This should prevent any risk that the Nature Agency would favour its own area units (the former state forest districts).

Eligibility conditions (low impact methods): The measure would cover additional costs related to the use of low impact soil preparation methods in the establishment phase. However, the use of low impact methods is not clearly stated as an eligibility condition in the proposed measure.

Reply: Sorry for not describing this in the scheme text. In Denmark afforestation is recognised as an area-use that solves several environmental problems and gives a wide range of goods to the society. But afforestation can be problematic if there is archaeological interests in the soil. High impact soil preparation methods means ploughing to 80-100 cm depth. Hereby important cultural heritage, like traces of old Viking settlements, have unintentionally been destroyed in recent decades. Thus Denmark wishes it to be mandatory for public bodies wanting this grant, that they do not use high impact soil preparation methods. This has now been included in the resubmitted measure description.

Eligible beneficiaries: The list of eligible beneficiaries includes publicly owned companies (for example water companies). In this respect it should be clarified that all beneficiaries should be public law bodies, as according to Annex 1 of Regulation (EC) No 1698/2005 private beneficiaries are not eligible for a 100 per cent support rate under this measure.

Reply: Yes. Reference is made to the resubmitted text, section: *“Beneficiaries: Government Agencies, municipalities and water works, that are “public law bodies“ in accordance with Art 1 (9) of Directive 2004/18/EC”*

Eligible areas: The description of eligible areas seems to indicate that areas which receive payments under agri-environmental measures would be eligible. This needs clarification. In addition, it should be clarified under which conditions it would be allowed to afforest permanent pasture areas.

Reply: In the resubmitted measure text, it's described, that grants can not be obtained in designated “non-afforestation areas” in accordance with the Danish special planning. Also new public forests must not be established in areas, which are protected under the Danish Nature Conservation Act, areas which are designated for other purposes in the regional planning or areas where afforestation is incompatible with the Natura 2000 designation.

Furthermore, in the resubmitted text, is a description of agricultural land, that can obtain grants from this scheme. Denmark has adjusted this description to hopefully answer DG AGRI's question adequately. The text is now:

To obtain support of the public expenditures by this scheme the afforestation must be carried out on agricultural areas. The area must not be protected under the Danish Nature Conservation Act, and the area must not be designated for other purposes in the regional planning e.g. “non-afforestation areas”. Also afforestation on the area must be compatible with the Natura 2000 designation, if the area is a Natura 2000 site.

Afforestation must be carried out on agricultural areas which have previously been farmed. Agricultural land is defined as land which has been in regular use for commer-

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cial farming, including during the most recent cultivation season prior to the date of application.

Areas with permanent pasture and areas which have been set aside or taken out of production under one of the EU's support schemes can also be included. Thus areas that have received EU-grants within an agri-environment friendly scheme, can be afforested if the conversion is of significant benefit to the environment or to animal welfare or both according to Commission Regulation (EC) 1974/2006 article 27 (11). The EU-grant for agri-environment friendly practices is then replaced by the afforestation grant.

Thus, it's possible to obtain grants to afforestation of permanent pasture areas from this scheme, if the area

- 1) is not protected under the Danish Nature Conservation Act,
- 2) is not within a "non-afforestation area" or similar non-forest designation in the regional planning
- 3) is in a Natura 2000 site, and the designation is compatible with afforestation.
- 4) Also the area must have been in regular use for commercial farming, including during the most recent cultivation season prior to the date of application.
- 5) If the area has received grants from an EU agri-environment friendly scheme, e.g. as permanent pasture, the area can still be afforested if the conversion is of significant benefit to the environment, and the grant replaced by the afforestation grant.

Environmental objectives: It should be clarified to what extent the measure promotes biodiversity as well as contributing to the protection of groundwater resources and public amenity values. A strong environmental focus would seem to be appropriate, as funds for this measure are transferred from measure 225.

Reply: Afforestation of fields of agricultural land in Denmark will contribute significantly to the biodiversity. An agricultural field in Denmark (approx. 60 % of the countrys land area) is most often ploughed, fertilized and sprayed with pesticides every year. Thus the biodiversity is often quite low in the fields. Just by making afforestation the biodiversity is increased considerably because the intensively agricultural use of the area cease.

It takes long time for a new forest to build up a true forest biodiversity. In Denmark it might take decades before forest species of plants, fungus and insects appear in a new forest. But Denmark would without human interference have been a forest covered landscape. Most of the countrys "red list species" are forest or forest related species. Thus, to increase biodiversity in Denmark more forest is needed.

Also, a part from increasing biodiversity on the afforested areas it self, a new forest contributes to higher biodiversity in nearby streams and lakes by securing cleaner water, and in the future timber-harvesting in the new forest can compensate for not logging "old forest" with very high biodiversity, if there's at will and wish to do so.

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Furthermore the new public forest will enhance the nature area in Denmark and the “green network” in the landscape, which is often a major purpose with the new forest together with creating a new recreational area and secure groundwater protection.

The text has been changed a bit on its first page to describe the benefits in biodiversity by afforestation.

Applications for support: The proposal states that applications for support will be made in the year following the completion of the plantations. This does not seem to be in line with normal state aid principles, according to which operations should not normally have been completed at the time of the decision to grant the aid.

Reply: The question about when to apply for support was also discussed with M.2.Competition and the scheme was changed, so applications must be send and accepts received before applicants can start the planting or sowing and afterwards receive grants. Reference is made to the text.

State aid reference: The relevant state aid reference should be inserted in table 9b of the RDP and the text should take into account any issues raised in connection with the state aid approval.

Reply: The state Aid approval was “SA:33976 /2011/N) – Denmark” dated 19th of March 2012. The information has been inserted in table 9b.

Text adjustments to section 5.3.9.1: Section 5.3.9.1 of the RDP describing the afforestation measures under the programme should be updated.

Reply: Section 5.3.9.1 has been updated with a reference to the new measure 221c under the (cf. the section “Afforestation”).

Measure 323e:

Impact assessments: The proposed measure would finance the preparation of impact assessments as a basis for the payment of compensation to farmers under measure 213a. These operations are not eligible under Article 57 of Regulation 1698/2005. Impact assessments do not qualify as protection or management plan in the sense in which these terms are used in Article 57. Neither do the operations fall under the definition of investments in Article 55 of Regulation 1974/2006. However, as these preparatory studies are necessary for the implementation of a measure under the RDP, it would be possible to finance them under the technical assistance measure as preparation of programme assistance.

Reply: The Danish AgriFish Agency takes note of the comment. The Danish authorities intend to reapply for the possibility of financing the impact assessments under the technical assistance envelope, when forwarding the notification planned for the autumn 2012. For the time being, the impacts assessments are withdrawn from the present notification. The funds, which had been allocated to measure 323e originated from measure 216, and have been reallocated to this measure. Reference is made to the updated financial table (table 7).

Other issues:

Description of cross compliance requirements: It should be verified that the description of the cross compliance requirements in section 5.1.1 of the RDP is up-to-date. This point concerns in particular: 1) requirements related to the protection of Natura2000 areas and species, and 2) requirements related to the application of fertilizer to water-saturated, flooded, frozen, or snow covered land. Other issues may also need updating. Any change in the baseline which affects the calculation of support should be reflected in the support rates or eligibility rules of the measures concerned.

Reply: Section 5.1.1 has been updated as well as Annex 10 specifying the specific implemented cross compliance requirements.

Regarding requirements related to the protection of Natura2000 areas and species, three new sub-requirements have recently been implemented under cross compliance requirement 1.27 on conservation of wild bird (implementation of Directive 2009/147/EC) prohibiting:

- deliberate killing or capture of wild birds by any method
- deliberate destruction of, or damage to their nests and eggs or removal of their nests
- deliberate disturbance of these birds

These requirements are not part of the baseline conditions of any RDP measure, nor do they affect eligibility rules, which is why the requirements are not specifically mentioned in section 5.1.1. Reference is made to "*Vejledning om Kontrol med Krydsoverensstemmelse 2012*" for a full update on the implementation of cross compliance in Denmark (see link: <http://2.naturerhverv.fvm.dk/vejledning.aspx?ID=22450>).

Regarding requirements related to the application of fertilizer to water-saturated, flooded, frozen, or snow covered land, we can inform you that the Ministry of Environment is in the process of implementing legal statutes regarding such requirements in national legislation. A Proposal to ministry order has recently been sent to public hearing. A final legal text is expected to be adopted by August 1, 2012. When adopted, the requirements will be inserted in the RDP and revisions will be made to the baseline conditions or eligibility rules for those RDP measures that would be affected by the new requirements.

In addition to the above, 5 additional cross compliance requirements on plant protection products have recently been introduced with Order No. 244 of 15 March 2012 on cross-compliance, cf. annex 10 (requirements 2A1, 2B1, 2C1, 2D1 and 2D2). These requirements establish standards and rules regarding safe storage, used equipment and location of filling and cleaning of spraying equipment as well as the requirement for personal handling pesticides to be in possession of issued certificate.

These minimum cross compliance requirements on plant protection products are relevant for beneficiaries under the AE measures, cf. axis 2, see art.39, 3 and art.51,1 in Council Regulation 1698/2005, and Annex II, 5.3.2.1, in Commission Regulation 1974/2006. The requirements do however not provide basis for a revision of the compensation level and baseline of any AE measure. Pesticide free farming measures, such as for instance 214c, compensate for losses of income in relation to the requirement of not being able to use plant protection products, besides

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those which are permitted for organic agricultural production in Denmark. The new requirements will therefore be relevant for all farmers, and do therefore not result in changes regarding compensation level.

Private contribution to measure 114: No explanation is given for the reduction in the expected private contribution to measure 114. In fact, the reduction does not seem to be in line with the stated aid intensity under the measure, which is 50 per cent. According to that aid intensity, the private contribution should actually be increased, not lowered.

Reply: The reduction has been made by mistake. The "Private Expenditure" column should rightfully indicate 567.040 euro as is the case for "Public expenditures". Thereby the "Total cost" increases to 1.134.080 euro (with a state aid intensity of 50 percent). The "EU" column is not affected. The error has now been corrected (see table in chapter 7, "Indicative breakdown of payments").

We hereby re-submit the notification to the Commission with the amendments resulting from the above comments. Enclosed are:

- A revised version of the Danish RDP amended by notification of 22. December 2011 (with visible TCs)
- The revised version (without TCs)
- The note "Questions and replies in regard to perennial energy crops" of 30. June 2012
- The Annexes to the RDP:
 - Annexes 5h, 5i and 6b are new annexes under the RDP
 - The amended Annex 10 on cross compliance with/and without TCs, cf. the reply to "Other Issues"
 - The amended Annex 13 (table 5.3.6 –Health Check operations) with/and without TCs

Best regards,

Steen Bonde
Head of Unit

5.2.2.1. Mandatory establishment of cultivation-free buffer zones (Code 213)

Article (and paragraph) which covers the measure

Articles 36(a)(iii) and 38 of Regulation (EC) No 1698/2005

Point 5.3.2.1.5 of Annex II to Regulation (EC) No 1974/2006

Article 16a of Regulation (EC) 1698/2005 (cf. new challenges/Health Check measure)

Code of the measure

213

Implementation of the Water Framework Directive

As part of the Danish implementation of the Water framework directive, Denmark will implement, with binding effect from 1st of September 2012, an up to 10 m mandatory cultivation-, spraying- and fertilizerfree buffer zones along all open streams and ponds more than 100 m² in rural areas. The measure implements article 11.4 of Directive 2000/60/EC.

Rationale for intervention

In order to implement the WFD successfully it has been decided also to apply mandatory obligations for management of farmland and to offer support to compensate for costs incurred and income foregone for farmers resulting from implementing the Water Framework Directive (2000/60/EC) pursuant to art 38 in REG 1698/2005.

As part of the Danish implementation of the Water framework directive and pursuant to Act no. 591 of 14th June 2011 (Law of Bufferzones) Denmark will implement, with binding effect from 1st of September 2012, an up to 10 m mandatory cultivation-free buffer zones along all open streams and ponds more than 100 m² in non-urban zones. It is foreseen to compensate the extra cost incurred and income foregone by a farmer caused by this measure. The measure is foreseen to have a positive impact on the aquatic environment by reducing the phosphorous and pesticides emissions and leaching of nitrate caused by agriculture.

Objectives of the measure

The purpose of the support scheme is to compensate the establishment of non-cultivated buffer zones along lakes and open watercourses in non-urban zones in order to reduce the leaching of Phosphorus, Nitrate and pesticides into surface water. The buffer zones will also contribute to safeguard biodiversity and improve ecological connectivity of the rural landscape.

It has been estimated that the mandatory buffer zone measure comprises approximately 50,000 hectares divided between approximately 30,000 beneficiaries. It has been assessed by the University of Aarhus that the gross impact with regard to a reduced P-discharge could contribute to a reduction up to 160 tonnes per year

The requirement of no cultivation within the buffer zone will not apply if managed as permanent pasture without the use of fertilisers and pesticides.

The University of Aarhus has assessed the impact with regard to reduced N-discharge at 2,500 tonnes of N. The reduced N leaching is expected to be 5 kg N per hectare less if permanent pasture is grown.

Scope and actions

Area payment is offered as compensation for the mandatory establishment of cultivation-free buffer zones. The cultivation-free buffer zones must be established on farmable land along all open watercourses and lakes in excess of 100 m² in non-urban zones. Support is given as an annual area subsidy with a fixed support rate.

The existing voluntary measure regarding bufferzones (code 214d) will end in 2011, The requirements of no use of pesticides, fertiliser and cultivation-free buffer zones will be mandatory and statutory as part of the Danish implementation of the Water framework directive. Farmers are expected to be compensated with support in accordance to Article 38 of Council Regulation (EC) No 1698/2005. As a exception to the general requirements farmers can establish fertiliser and spraying -free farming of permanent pasture in the buffer zone.

The obligations are well beyond the national minimum rules concerning the management and conservation of pasture and natural areas. For land covered by support under the single payment scheme, the obligations will extend beyond the conditions concerning good agricultural and environmental condition, cf. Commission Regulation (EC) No 73/2009.

The cultivation-free buffer zones will in some areas compliment an already existing un-cultivated strip of 2 metres along lakes and open water courses pursuant to the baseline under Regulation (EC) 73/2009. For the existing 2 metre border strips the additional requirement will only be for 8 additional metres and the compensation will only be given for the 8 metres up to the 10 metre requirement.

In accordance with section 69 of the Danish Watercourse Act, the provision on 2 metre non-cultivated strips along all natural or high priority watercourses as well as lakes larger than 100 m² applies. No soil preparation or cultivation is allowed in these areas.

It is expected that the compensation to farmers can be applied for in 2013 for the establishment of mandatory buffer zones going back to September 1st 2012. In 2013 it is foreseen that the payment to farmers will cover the period 1st september 2012 to 31st december 2013.

Priority criteria

All applicants shall be offered the support. No priority criteria are needed. Adequate funding will be allocated for at least 50,000 ha.

Beneficiaries

Support may only be granted to farmers and not to other land managers. Only utilised agricultural areas (UAA) are eligible for compensation.

Administration

The support scheme will be paid out by the AgriFish Agency (a new body replacing 3 previous Danish public bodies under the Ministry of Food, Agriculture and Fisheries;

Fødevarerhverv, Plantedirektoratet and Fiskeridirektoratet). The on-the spot control will also be carried-out by the AgriFish Agency.

Confirmation that the cross-compliance requirements are identical to those provided for by Regulation (EC) No 73/2009

The cross-compliance requirements, which set out the basic conditions for receiving single farm payment support under Council Regulation (EC) No 73/2009, form the basis for the establishment of further obligations for which compensation is paid.

Support is only given for obligations which extend beyond these mandatory obligations.

Description and justification of the different types of commitments, based on their expected environmental impact in relation to environmental needs and priorities

Beneficiaries can combine payments of support under this measure and single farm payment support in accordance with Council Regulation (EC) No 73/2009. The payments of support cover only those commitments going beyond the baseline standards established pursuant to that regulation.

The beneficiary must commit to not add plant protection products, fertilisers or soil improvement agents to the land during the commitment period. The area must be established as grass or set-aside area

If the bufferzone is used for grazing, the maximum grazing pressure is indirectly regulated through the measure as the grazing pressure must be adjusted according to the conditions and in order to prevent overgrazing of the area and loss or damage of plant cover.

If there is an existing perennial crops as for example christmas trees, perennial energy crops, orchards etc in the buffer zone, it is possible to maintain this crop, but not to reestablish it. Compensation will not be provided if areas are planted with perennial crops subsequent to the date fixed, where the Law on Mandatory Buffer Zones goes into application (expected to take effect on September 1, 2012).

The beneficiary must commit to use no plant protection products, fertilisers or soil improvement agents to the land. In some special cases it is foreseen, that the minister can make an exemption from the general rule. If this is the case, there will be no support for the area in question.

The measure is expected to lead to improvement of the aquatic environment and natural conditions by reducing Phosphorus and Nitrogen leaching and erosion from the buffer zones to the aquatic environment and by banning the use of plant protection products in the bufferzones. The buffer zones will also help to safeguard biodiversity and improve ecological state of the rural landscape.

- **The areas designated to implement Directive 2000/60/EEC and the obligations for farmers resulting from the corresponding national/regional management provisions**

In order to implement the Water Framework directive, river basin management plans for 23 appointed river valley areas in Denmark have been adopted nationally in 2011. Eligible areas for support under the measures are designated pursuant to these plans.

Description of the methodology and the agronomic assumptions used as reference point for the calculations justifying additional costs and income foregone resulting from the disadvantages in the area concerned related to the implementation of Directives 79/409/EEC and 92/43/EEC

The level of support has been established on the basis of calculated income losses accrued from the obligations.

The reference level for calculating income foregone and additional costs resulting from the commitments are the relevant standards and requirements referred to in Article 39(3) of Council Regulation (EC) No 1698/2005. The payments cover only those commitments going beyond the baseline standards established pursuant to Regulation (EC) No 73/2009.

The proposed support rates apply to all farms and are based on the average data for historic yields which can be differentiated by soil type (clay or sandy soil) and production type (grass, extensive pasture, crops, pigs, cattle). The support does not contain compensation for transaction costs. Further explanation of the calculation requirements is given in annex 5i.

Baseline The mandatory buffer zones implement art. 11.4 of Directive 2000/60/EC. The 10 meter mandatory cultivation-free buffer zones will in some areas complement an already existing un-cultivated strip of 2 meters along lakes and open water courses pursuant to the baseline under Regulation (EC) 73/2009. Considering the EU legislation for the protection of water, the 2 meters strips constitutes the only relevant baseline to take into consideration for the present measure. For the existing 2 meters border strips the additional requirement will only be for 8 additional meters and the compensation will only be given for the 8 meters up to the 10 meter requirement.

According to Executive Order No 1362 of 19 December 2008 on cross-compliance, with changes pursuant to Order No 239 of 27 March 2009 and Order No 253 of 31 March 2009 on direct support for farmers according to the single farm payments scheme, the following mandatory obligations exist:

Plant cover on non-cultivated agricultural land: Uncultivated areas must be covered with plant cover. Conditions are made concerning timing for establishment, the use of seeds and after-sowing.

Maintenance of uncultivated areas: Uncultivated agricultural land must be cut at least once every two years in July or August, while permanent pasture must be cut at least once a year in July or August. In the case of permanent pasture, mowing can be replaced by grazing. The plant cover on uncultivated agricultural areas must not be cut in the period 1 May to 30 June. The areas must not be utilised in a way that destroys or removes the plant cover. No plant protection products must be used on the area except for products used for selective prevention of certain aggressive weeds on the condition that the remaining plant cover is not damaged and is not given fertiliser or artificial irrigation.

The calculation of support is based on income-foregone related to establishing the cultivation-free buffer zones or for establishing the buffer zones with permanent grass or perennial energy crops with no use of fertilisers and plant protection products.

Support commitments and baseline

Support commitments	Baseline commitments
An up to 10 meter buffer zone along lakes and open water courses in non-urban zones must be established and maintained as cultivation free and without any use of fertilisation or plant protection products.	The buffer zone areas will where relevant compliment an already existing un-cultivated strip of 2 metres along lakes and open water courses pursuant to the baseline under Regulation (EC) 73/2009.
Same	Obligations concerning the plant cover on border strip pursuant to Regulation 73/2009
Same	Border strips must be cut at least once every two years (Order No 1362 of 19 December 2008 on cross-compliance, with changes pursuant to Order No 239 of 27 March 2009 and Order No 253 of 31 March 2009 on direct support for farmers according to the single farm payments scheme)

Control

The respect of the support conditions shall be controlled through on-the-spot control and through administrative control by the AgriFish Agency.

Amounts of support

As compensation for the mandatory requirements of establishing cultivation-, spraying- and fertiliser-free buffer zones, the following two annual support rates per ha are provided:

- 161 € to agricultural areas previously farmed as permanent pasture
- 282 € to agricultural areas previously farmed with arable and perennial crops

Support is only offered for areas eligible to the single payment aid granted under Regulation (EC) No 73/2009. Support may also be provided for areas with established perennial crops consisting of Christmas trees. While the measure is considered to be very significant and comparable with a permanent conservation, one of the two support rates exceeds the normal maximum rate of euro 200 per ha per year. The annual support is expected to be paid out together with the single payment premium for the calendar year. The requirements regarding the buffer zones are applying from 1st September 2012, it is foreseen that the farmers apply for the support in 2013 including the period from 1st September 2012 to 31st December 2013. With regard to administrative and on-spot controls, these will be carried out in accordance to the Regulation in force, and so that

they cover the entire period of the payment period (in the case of the first payment period, from 1st September 2012 to 31st December 2013).

Combinations of support

Support under this measure can be combined with the following measures in the program.

- Non-productive investments in connection with protection of environment, nature and animal welfare
- Island support
- The Article 68 measure: “Support for extensive maintenance of pasture areas”
- Conservation by grazing or cutting on pasture and natural areas (Code 214a)

It cannot be combined with other types of area support in the programme, and there will be controls to prevent double support regarding these schemes via the coordinated administrative control of common application forms for area payments under LDP and the single payment scheme.

Compensation under 213 may not be combined with measure 214d for the same agricultural area. When relevant, existing contracts issued under 213 as well as under any other RDC measure during the present RDP programming period will – in accordance with Article 46 of Regulation (EC) 1974/ 2006 - be revised to reflect the new baseline for areas covered by the mandatory buffer zones, and the beneficiaries will be offered to terminate their contracts.

When relevant, baseline conditions of RDP measures covering areas included under 213 will be adjusted to the baseline conditions of measure 213.

Compatibility with CAP first pillar measures

The commitment may be combined with the article 68 measure “Support for extensive maintenance of pasture areas”. The commitment may not be combined with commitments made for the same agricultural production pursuant to the measures implemented under common market organisations and the direct support schemes listed in Annex I to Regulation No 1974/2006. The payment can be combined with the single payment aid granted under Regulation (EC) No 73/2009.

Evidence as referred to in Article 48(2) of the implementing rules allowing the Commission to check consistency and plausibility of the calculations

The Institute of Food and Resource Economics at the University of Copenhagen has provided the data and calculations used as the basis for setting support rates. The research institution is functionally independent from the AgriFish Agency which is responsible for the calculations. The institution represents the necessary expertise to assist in this task.

Financing

Total cost: 24.8 million euro.

Public expenditure: 24.8 million euro.

Transition arrangements

This measure is not similar to activity co-financed under the Rural Development Programme 2000-2006. No transition arrangements are necessary.

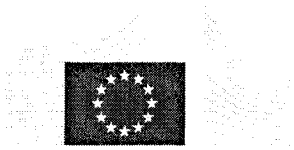
Quantified targets for EU common indicators

Type of indicator	Indicator	Target 2007-2013
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Output	Number of farm holdings and holdings of other land managers receiving support	30,000
	Total area under agri-environmental support	50,000 ha
	Total number of contracts	30,000
	Physical area under agri-environmental support	50,000 ha
	Number of actions related to genetic resources	None
Result	Areas under successful land management	50,000 ha
Impact	Reversal in biodiversity decline (farmland bird species population)	Maintain index level for breeding bird population (IRENA population index for 18 breeds of birds on agricultural land: 106.1 in 2001. Common objective)
	Changes in gross nutrient balance	Reduction of up to 160 t P and 2,500 t N per year
	Increase in production of renewable energy	Negligible

Additional programme-specific indicators and quantified targets

None.



EUROPEAN COMMISSION
 DIRECTORATE-GENERAL FOR AGRICULTURE AND RURAL DEVELOPMENT

Director General

Brussels,
 E.3 TF/lvdz (2012) 1018214

Subject: Modification of the Rural Development Programme for Denmark, notified to the Commission on 22 December 2011 in accordance with Articles 6(1)(c) and 9 of Regulation (EC) 1974/2006

Reference: CCI: 2007 DK 06 RPO 001

Dear Mr Bonde,

I hereby refer to the receipt of a proposal for the modification of the Danish Rural Development Programme for 2007-2013 via SFC on 22 December 2011 in accordance with Article 6 paragraph 1 (c) and 9 of Regulation (EC) No 1974 /2006. A revised version taking into account the observations of the Commission services was submitted on 12 July 2012. The amendments concern:

- New measure on cultivation free buffer zones (213)
- Amendment of measure on grazing or cutting of pastures (214)
- Amendment of measure on construction of wetlands (216)
- New measure on public afforestation of agricultural land (221)

The Commission services have assessed the modifications proposed as referred to in Article 9 paragraph 6 of Regulation (EC) No 1974 /2006. The modifications are coherent with the relevant version of the national strategy plan and comply with the provisions of Regulation (EC) No 1698/2005 and Regulation (EC) No 1974/2006. The proposal is hereby accepted.

Yours sincerely,

Pour le Directeur Général empêché
 Loretta DORMAL MARINO
 Directeur Général Adjoint

José Manuel SILVA RODRIGUEZ

Ministeriet for Fødevarer, Landbrug og Fiskeri
 NaturErhvervsstyrelsen
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Ministry of Food, Agriculture and Fisheries

The Danish AgriFish Agency



European Commission
 DG Agriculture - Unit E3
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Center for Agricultural Subsidies /
 The Danish AgriFish Agency
 Ref. 32001-011112
 8. November 2012

Notification of amendment to the Danish Rural Development Programme of November 8, 2012 (pursuant to Article 6 (1)(c) of Regulation 1974/2006)

The Danish Managing Authority hereby wishes to notify specific amendments to the Danish RDP (CCI: 2007DK06RPO001). The attached modification is being submitted in accordance with Articles 6(1)(c) of Commission Regulation (EC) No 1974/2006.

Enclosed are modification submission templates for:

- New measure “Payments to farmers in connection with the implementation of the Water Framework Directive, Directive 2000/60/EC” (213b)
- Investments in animal housing systems to promote production methods that improve animal welfare (121)
- Improving efficiency of processes and technologies and development of quality products in food production (124).
- Non –productive investments (low lying agricultural farm land) (see template for relevant measure codes)
- First afforestation of agricultural land (221a)
- Development of insect screen technology for use in poultry farms to improve food safety (124)
- Repurchase option to original owner (state acquisition of land) (216c and 323a)
- adjustment of text in chapter 16 regarding Technical Assistance operations
- adjustment of text in chapter 10.3 regarding demarcation to the Article 68 Programme (cf. Regulation 73/2009)
- adjustment of text in chapter 11 regarding authorities involved in the administration of the RDP
- minor text adjustment concerning the demarcation between the compensation measure to mandatory buffer zones (213a) and other RDP measures

The amendment regarding “*Improving efficiency of processes and technologies and development of quality products in food production (124)*” shall contribute to provide additional scope to the efforts made to achieve the objectives put forward by the “Health Check”, with emphasis put on innovative activities resulting in the development of sustainable production methods, in particular in the field of organic production.

The Danish authorities apply for the projects concerned by the above amendment to be included in the list of operations referred to in Article 16a as operations to meet the challenges put for-

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ward in the "Health Check". These projects are to support the effects listed in Annex II to Regulation (EC) No 1698/2005 (regarding article 29 of the regulation), which relates the Health Check priorities mentioned in Article 16a of the regulation. The projects do not introduce additional potential effects not listed in that Annex. The modification is therefore submitted in accordance with Articles 6(1)(c) of Commission Regulation (EC) No 1974/2006.

As back ground information for compensation measure 213b, the University of Copenhagen has provided a memo relating incomes foregone for farmers as a result of reduced watercourse maintenance (Annex 5j). The compensation measure has previously been submitted to the Commission, then withdrawn, and is now presented again to the Commission in the context of the present notification.

Minor modifications have been made to the National Strategy Plan following this notification. Reference is made to the modification submission templates, in which the amendments made to the NSP are specified.

The text amendments described in the modification templates have been inserted into the RDP as well as in the NSP with TCs visible.

The present notification of amendment to the Danish RDP (of November 8, 2012) follows another programme notification sent yesterday to the Commission (November 7, 2012), and which was submitted in accordance with Article 6(1)(a) of Commission Regulation (EC) 1974/2006.

The split into two notifications has been done in the interest of ensuring a timely notification process. The present notification (of November 8, 2012) is not submitted in accordance with Article 6(1)(a) of Commission Regulation (EC) No 1974/2006, and not subject to the decision delays that apply to that article. The geographic unit in DG AGRI has been informed of the two notifications, that are to be examined by the Commission in parallel, and We are grateful that this arrangement could be made, so that We may foresee a timely notification and implementation of the programme amendments.

Enclosed to the each notifications are the corresponding programme versions of November 7 and 8, 2012, dealing respectively with the amendments presented in each of the two notifications. The programme version of November 8, 2012 operates with the financial and indicator plan presently in force, approved by the Commission on July 20, 2012, whereas the amended financial plan subject to the procedure described in Article 6 (1)(a) in Regulation 1974/2006 and its implications for indicator levels are presented in the version of November 7, 2012. The two programme versions are therefore mutually consistent and complementary without inconsistencies or undesirable overlaps occurring between the two notifications.

All modifications made to the NSP as a result of the two notifications are gathered in the version of the NSP enclosed the notification of November 7, 2012. The full set of annexes, including annex 5j regarding compensation following reduced watercourse maintenance, was also submitted with that notification.

Best regards,

The Danish food Industry Agency

Steen Bonde
Head of Unit

Enclosed:

- Modification submission templates, cf. the above listed modifications
- Revised version of the Danish RDP amended by notification of 8. November 2012 (with visible TCs and without visible TCs)

5.2.2.1a. Mandatory establishment of cultivation-free buffer zones (Code 213a)

Article (and paragraph) which covers the measure

Articles 36(a)(iii) and 38 of Regulation (EC) No 1698/2005

Point 5.3.2.1.5 of Annex II to Regulation (EC) No 1974/2006

Article 16a of Regulation (EC) 1698/2005 (cf. new challenges/Health Check measure)

Code of the measure

213

Implementation of the Water Framework Directive

As part of the Danish implementation of the Water framework directive, Denmark will implement, with binding effect from 1st of September 2012, an up to 10 m mandatory cultivation-, spraying- and fertilizerfree buffer zones along all open streams and ponds more than 100 m² in rural areas. The measure implements article 11.4 of Directive 2000/60/EC.

Rationale for intervention

In order to implement the WFD successfully it has been decided also to apply mandatory obligations for management of farmland and to offer support to compensate for costs incurred and income foregone for farmers resulting from implementing the Water Framework Directive (2000/60/EC) pursuant to art 38 in REG 1698/2005.

As part of the Danish implementation of the Water framework directive and pursuant to Act no. 591 of 14th June 2011 (Law of Bufferzones) Denmark will implement, with binding effect from 1st of September 2012, an up to 10 m mandatory cultivation-free buffer zones along all open streams and ponds more than 100 m² in non-urban zones. It is foreseen to compensate the extra cost incurred and income foregone by a farmer caused by this measure. The measure is foreseen to have a positive impact on the aquatic environment by reducing the phosphorous and pesticides emissions and leaching of nitrate caused by agriculture.

Objectives of the measure

The purpose of the support scheme is to compensate the establishment of non-cultivated buffer zones along lakes and open watercourses in non-urban zones in order to reduce the leaching of Phosphorus, Nitrate and pesticides into surface water. The buffer zones will also contribute to safeguard biodiversity and improve ecological connectivity of the rural landscape.

It has been estimated that the mandatory buffer zone measure comprises approximately 50,000 hectares divided between approximately 30,000 beneficiaries. It has been assessed by the University of Aarhus that the gross impact with regard to a reduced P-discharge could contribute to a reduction up to 160 tonnes per year

The requirement of no cultivation within the buffer zone will not apply if managed as permanent pasture without the use of fertilisers and pesticides.

The University of Aarhus has assessed the impact with regard to reduced N-discharge at 2,500 tonnes of N. The reduced N leaching is expected to be 5 kg N per hectare less if permanent pasture is grown.

Scope and actions

Area payment is offered as compensation for the mandatory establishment of cultivation-free buffer zones. The cultivation-free buffer zones must be established on farmable land along all open watercourses and lakes in excess of 100 m² in non-urban zones. Support is given as an annual area subsidy with a fixed support rate.

The existing voluntary measure regarding bufferzones (code 214d) will end in 2011, The requirements of no use of pesticides, fertiliser and cultivation-free buffer zones will be mandatory and statutory as part of the Danish implementation of the Water framework directive. Farmers are expected to be compensated with support in accordance to Article 38 of Council Regulation (EC) No 1698/2005. As a exception to the general requirements farmers can establish fertiliser and spraying -free farming of permanent pasture in the buffer zone.

The obligations are well beyond the national minimum rules concerning the management and conservation of pasture and natural areas. For land covered by support under the single payment scheme, the obligations will extend beyond the conditions concerning good agricultural and environmental condition, cf. Commission Regulation (EC) No 73/2009.

The cultivation-free buffer zones will in some areas compliment an already existing un-cultivated strip of 2 metres along lakes and open water courses pursuant to the baseline under Regulation (EC) 73/2009. For the existing 2 metre border strips the additional requirement will only be for 8 additional metres and the compensation will only be given for the 8 metres up to the 10 metre requirement.

In accordance with section 69 of the Danish Watercourse Act, the provision on 2 metre non-cultivated strips along all natural or high priority watercourses as well as lakes larger than 100 m² applies. No soil preparation or cultivation is allowed in these areas.

It is expected that the compensation to farmers can be applied for in 2013 for the establishment of mandatory buffer zones going back to September 1st 2012. In 2013 it is foreseen that the payment to farmers will cover the period 1st september 2012 to 31st december 2013.

Priority criteria

All applicants shall be offered the support. No priority criteria are needed. Adequate funding will be allocated for at least 50,000 ha.

Beneficiaries

Support may only be granted to farmers and not to other land managers. Only utilised agricultural areas (UAA) are eligible for compensation.

Administration

The support scheme will be paid out by the AgriFish Agency (a new body replacing 3 previous Danish public bodies under the Ministry of Food, Agriculture and Fisheries;

FødevarerErhverv, Plantedirektoratet and Fiskeridirektoratet). The on-the spot control will also be carried-out by the AgriFish Agency.

Confirmation that the cross-compliance requirements are identical to those provided for by Regulation (EC) No 73/2009

The cross-compliance requirements, which set out the basic conditions for receiving single farm payment support under Council Regulation (EC) No 73/2009, form the basis for the establishment of further obligations for which compensation is paid.

Support is only given for obligations which extend beyond these mandatory obligations.

Description and justification of the different types of commitments, based on their expected environmental impact in relation to environmental needs and priorities

Beneficiaries can combine payments of support under this measure and single farm payment support in accordance with Council Regulation (EC) No 73/2009. The payments of support cover only those commitments going beyond the baseline standards established pursuant to that regulation.

The beneficiary must commit to not add plant protection products, fertilisers to the land during the commitment period. The area must be established as grass or set-aside area

If the bufferzone is used for grazing, the maximum grazing pressure is indirectly regulated through the measure as the grazing pressure must be adjusted according to the conditions and in order to prevent overgrazing of the area and loss or damage of plant cover.

If there is an existing perennial crops as for example christmas trees, perennial energy crops, orchards etc in the buffer zone, it is possible to maintain this crop, but not to reestablish it. Compensation will not be provided if areas are planted with perennial crops subsequent to the date fixed, where the Law on Mandatory Buffer Zones goes into application (expected to take effect on September 1, 2012).

The beneficiary must commit to use no plant protection products, fertilisers to the land. In some special cases it is foreseen, that the minister can make an exemption from the general rule. If this is the case, there will be no support for the area in question.

The measure is expected to lead to improvement of the aquatic environment and natural conditions by reducing Phosphorus and Nitrogen leaching and erosion from the buffer zones to the aquatic environment and by banning the use of plant protection products in the bufferzones. The buffer zones will also help to safeguard biodiversity and improve ecological state of the rural landscape.

The areas designated to implement Directive 2000/60/EEC and the obligations for farmers resulting from the corresponding national/regional management provisions

In order to implement the Water Framework directive, river basin management plans for 23 appointed river valley areas in Denmark have been adopted nationally in 2011. Eligible areas for support under the measures are designated pursuant to these plans.

Description of the methodology and the agronomic assumptions used as reference point for the calculations justifying additional costs and income foregone resulting from the disadvantages in the area concerned related to the implementation of Directives 79/409/EEC and 92/43/EEC

The level of support has been established on the basis of calculated income losses accrued from the obligations.

The reference level for calculating income foregone and additional costs resulting from the commitments are the relevant standards and requirements referred to in Article 39(3) of Council Regulation (EC) No 1698/2005. The payments cover only those commitments going beyond the baseline standards established pursuant to Regulation (EC) No 73/2009.

The proposed support rates apply to all farms and are based on the average data for historic yields which can be differentiated by soil type (clay or sandy soil) and production type (grass, extensive pasture, crops, pigs, cattle). The support does not contain compensation for transaction costs. Further explanation of the calculation requirements is given in annex 5i.

Baseline

The mandatory buffer zones implement art. 11.4 of Directive 2000/60/EC. The 10 meter mandatory cultivation-free buffer zones will in some areas complement an already existing un-cultivated strip of 2 meters along lakes and open water courses pursuant to the baseline under Regulation (EC) 73/2009. Considering the EU legislation for the protection of water, the 2 meters strips constitutes the only relevant baseline to take into consideration for the present measure. For the existing 2 meters border strips the additional requirement will only be for 8 additional meters and the compensation will only be given for the 8 meters up to the 10 meter requirement.

According to Executive Order No 1362 of 19 December 2008 on cross-compliance, with changes pursuant to Order No 239 of 27 March 2009 and Order No 253 of 31 March 2009 on direct support for farmers according to the single farm payments scheme, the following mandatory obligations exist:

Plant cover on non-cultivated agricultural land: Uncultivated areas must be covered with plant cover. Conditions are made concerning timing for establishment, the use of seeds and after-sowing.

Maintenance of uncultivated areas: Uncultivated agricultural land must be cut at least once every two years in July or August, while permanent pasture must be cut at least once a year in July or August. In the case of permanent pasture, mowing can be replaced by grazing. The plant cover on uncultivated agricultural areas must not be cut in the period 1 May to 30 June. The areas must not be utilised in a way that destroys or removes the plant cover. No plant protection products must be used on the area except for products used for selective prevention of certain aggressive weeds on the condition that the remaining plant cover is not damaged and is not given fertiliser or artificial irrigation.

The calculation of support is based on income-foregone related to establishing the cultivation-free buffer zones or for establishing the buffer zones with permanent grass or perennial energy crops with no use of fertilisers and plant protection products.

Support commitments and baseline

Support commitments	Baseline commitments
An up to 10 meter buffer zone along lakes and open water courses in non-urban zones must be established and maintained as cultivation free and without any use of fertilisation or plant protection products.	The buffer zone areas will where relevant compliment an already existing un-cultivated strip of 2 metres along lakes and open water courses pursuant to the baseline under Regulation (EC) 73/2009.
Same	Obligations concerning the plant cover on border strip pursuant to Regulation 73/2009
Same	Border strips must be cut at least once every two years (Order No 1362 of 19 December 2008 on cross-compliance, with changes pursuant to Order No 239 of 27 March 2009 and Order No 253 of 31 March 2009 on direct support for farmers according to the single farm payments scheme)

Control

The respect of the support conditions shall be controlled through on-the-spot control and through administrative control by the AgriFish Agency.

Amounts of support

As compensation for the mandatory requirements of establishing cultivation-, spraying- and fertiliser-free buffer zones, the following two annual support rates per ha are provided:

- 161 € to agricultural areas previously farmed as permanent pasture
- 282 € to agricultural areas previously farmed with arable and perennial crops

Support is only offered for areas eligible to the single payment aid granted under Regulation (EC) No 73/2009. Support may also be provided for areas with established perennial crops consisting of Christmas trees. While the measure is considered to be very significant and comparable with a permanent conservation, one of the two support rates exceeds the normal maximum rate of euro 200 per ha per year. The annual support is expected to be paid out together with the single payment premium for the calendar year. The requirements regarding the buffer zones are applying from 1st September 2012, it is foreseen that the farmers apply for the support in 2013 including the period from 1st September 2012 to 31st December 2013. With regard to administrative and on-spot controls, these will be carried out in accordance to the Regulation in force, and so that they cover the entire period of the payment period (in the case of the first payment period, from 1st September 2012 to 31st December 2013).

Combinations of support

Support under this measure can be combined with the following measures in the program.

- Non-productive investments in connection with protection of environment, nature and animal welfare
- Island support
- The Article 68 measure: “Support for extensive maintenance of pasture areas”
- Conservation by grazing or cutting on pasture and natural areas (Code 214a)
- Conservation supplement payments for grazing, cutting and set-aside (Code 216e)
- other RDP area-based measures, that provide support to areas affected by the national regulation on buffer zones, and where the compensation level is set on the basis of baseline conditions that include the baseline conditions that apply to the mandatory buffer zones (as defined under the present measure 213a).

As a transitional arrangement, area-support contracts to acceptance of wetland, restoration of natural hydrological conditions and maintaining of changed drainage of agricultural land contracts (214e) issued before February 1, 2013, have for the entire duration of the contract period, been exempted from the national regulation regarding obligatory buffer zones, cf. Order nr. 867 of 29. August 2012, and are therefore not eligible for compensation under 213a. These contracts and payments will therefore continue unaltered.

For 214e-contracts issued after February 1, 2013 involving areas covered by the regulation on mandatory buffer zones (and thus eligible for support under 213a), the payment provided under 214e will be adjusted so that any risk of overcompensation in the event of combination of support measures, is avoided.

Compensation under 213a may not be combined with payments under measure 214d for the same agricultural area. When relevant, existing contracts issued under 213a as well as under any other RDP measure during the present RDP programming period will – in accordance with Article 46 of Regulation (EC) 1974/ 2006 - be revised to reflect the new baseline for areas covered by the mandatory buffer zones, and the beneficiaries will be offered to terminate their contracts.

Compatibility with CAP first pillar measures

The commitment may be combined with the article 68 measure “Support for extensive maintenance of pasture areas”. The commitment may not be combined with commitments made for the same agricultural production pursuant to the measures implemented under common market organisations and the direct support schemes listed in Annex I to Regulation No 1974/2006. The payment can be combined with the single payment aid granted under Regulation (EC) No 73/2009.

Evidence as referred to in Article 48(2) of the implementing rules allowing the Commission to check consistency and plausibility of the calculations

The Institute of Food and Resource Economics at the University of Copenhagen has provided the data and calculations used as the basis for setting support rates. The research institution is functionally independent from the AgriFish Agency which is responsible for the calculations. The institution represents the necessary expertise to assist in this task.

Financing

Total cost: 24.8 million euro.

Public expenditure: 24.8 million euro.

Transition arrangements

This measure is not similar to activity co-financed under the Rural Development Programme 2000-2006. No transition arrangements are necessary.

Quantified targets for EU common indicators

Type of indicator	Indicator	Target 2007-2013
Output	Number of farm holdings and holdings of other land managers receiving support	30,000
	Total area under agri-environmental support	50,000 ha
	Total number of contracts	30,000
	Physical area under agri-environmental support	50,000 ha
	Number of actions related to genetic resources	None
Result	Areas under successful land management	50,000 ha
Impact	Reversal in biodiversity decline (farmland bird species population)	Maintain index level for breeding bird population (IRENA population index for 18 breeds of birds on agricultural land: 106.1 in 2001. Common objective)
	Changes in gross nutrient balance	Reduction of up to 160 t P and 2,500 t N per year
	Increase in production of renewable energy	Negligible

Additional programme-specific indicators and quantified targets

None.



EUROPEAN COMMISSION
 DIRECTORATE-GENERAL FOR AGRICULTURE AND RURAL DEVELOPMENT
 Directorate E. Rural development programmes I
Director

Brussels,
 Agri/e.3(2013)

Subject: Modification of the Rural Development Programme for Denmark, notified to the Commission on 8 November 2012 in accordance with Article 6 (1) (c) and 9 of Regulation (EC) 1974/2006

Reference: CCI: 2007 DK 06 RPO 001

Dear Mr Bonde,

I hereby refer to the receipt via SFC on 8 November 2012 of a proposal for the modification of the Danish Rural Development Programme 2007-2013 in accordance with Article 6 paragraph 1 (c) and 9 of Regulation (EC) No 1974 /2006.

The modification includes the following main elements:

- Investments in animal housing systems to promote animal welfare (121)
- Efficiency of processes and technologies in food production (124)
- Technologies to improve food safety (124)
- Compensation to farmers for flooding in connection with reduced watercourse management (213)
- Demarcation between payments for mandatory buffer zones and other measures (213)
- Modification of the requirements on buffer zones (213)
- Repurchase option in contracts on land purchase for environmental projects (216, 323)
- Operations on low-lying agricultural areas (125, 216, 323)
- Afforestation of agricultural land (221)
- Demarcation with Article 68 measures in Pillar 1 of the CAP (Chapter 10)
- Administrative structures for the implementation of the programme (chapter 11)
- Technical assistance for preparatory actions concerning programming period 2014-2020 (Chapter 16)

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 NaturErhvervsstyrelsen
 Center for Arealtilskud – Bæredygtighed
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The Commission services have assessed the modifications proposed as referred to in Article 9 paragraph 6 of Regulation (EC) No 1974 /2006. In Annex 1 to this letter a number of points are raised with regard to elements of the proposal which either do not comply with the relevant provisions of Regulation (EC) No 1698/2005 and Regulation (EC) No 1974/2006 or for which insufficient information has been provided for the assessment of their compatibility with the said regulations.

Please note that further comments and/or a request for additional information may be raised in the context of the on-going consultations within the Commission services.

The proposal in its current format is not considered acceptable and should be revised and resubmitted taking into account the comments mentioned.

The four month period for the assessment of the proposed programme modification is suspended until the Commission receives a compliant programme change. Unit E.3 is at your disposal for clarification of any questions you may have.

Yours sincerely,

(signed)
Mihail DUMITRU

Annex: Comments on the proposed amendments

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ANNEX

Comments on the proposed amendments

Investments in animal housing systems to promote animal welfare (121)

The top-up scheme that was notified for state aid in 2010 for this measure has expired, so it is assumed it is no longer operational. If there will be a top-up in 2013, the Danish authorities are requested to send a special notification form for the changes in accordance with Article 89 of Regulation 1698/2006.

Indeed, all references should be inserted in table 9. For measures 121 and 123, was there only a top-up in 2010 or did it continue in 2011 and 2012? If it continued in 2011 and 2012, the following references should be added: For 2011: SA.32101, for 2012: SA.34591 and SA.34587, for 2013: the new approval reference.

Efficiency of processes and technologies in food production (124)

Table 5.3.6 should be adapted by adding a line covering these operations in accordance with the relevant template. The effects covered by the operations should be among those listed in Annex II of Regulation (EC) No 1698/2005, and the indicators should include a target for the number of cooperation initiatives supported.

In addition, a State aid scheme has been notified for this measure and is listed in table 9 of the RDP. The Danish authorities should ensure that the modification of the measure is in line with the State aid decision which is used as State aid clearance.

Technologies to improve food safety (124)

The explanation for this amendment seems to suggest that the aim is to promote in particular one particular project concerning poultry farms. However, it is the assumption that the amendment would also open the way for other projects in the field of food safety. A programme amendment cannot be a substitute for proper selection procedures involving open calls for applications.

In addition, see the comment above concerning state aid clearance.

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Compensation to farmers for flooding in connection with reduced watercourse management (213)

The support rates seem rather high in comparison to other similar measures, considering that the measure provides compensation for areas where it will still be possible to carry out an agricultural activity. In this respect, the decision to cover 75 of the estimated ranges of income foregone should be further justified in relation to the risk of overcompensation. In addition, proposed text states that, if actual changes in water level are less than anticipated, "suspension of payments may be envisaged". How will this decision be taken? It is essential that where no real extra costs / loss of income are borne, payments are suspended. This point also applies to cases where the expected changes in crop choice (which would have justified the payment) do not materialise. If there has been no change and therefore no extra cost or loss of income, payments must be suspended. Also, reference is made to the issue of demarcation with measure 213a described in section 1.4 below.

Finally, Denmark is invited to clarify the situation following the recent suspension of the river basin-management plans on procedural grounds by a national complaints tribunal. The Danish authorities are reminded that according to Article 26a of Regulation (EC) No 1974/2006 compensation under this measure shall be provided only for disadvantages related to specific requirements that are in accordance with the programmes of measures of the river basin management plans.

Demarcation between payments for mandatory buffer zones and other measures (213)

The proposed text needs to be clarified in a number of respects. Firstly, it needs to be clarified that the mandatory buffer zones form part of the baseline of any other area-based measures. The payments under other measures can therefore not compensate for any elements which are part of this mandatory requirement. Secondly, this is the case regardless of whether the compensation under 213a is actually applied for or not by the particular farmer. Existing contracts overlapping with the buffer zones therefore have to be revised in all cases where there is an overlap with the mandatory requirements in the buffer zones (except where the areas are explicitly exempt from such requirements, as is the case for old wetland projects).

Thirdly, with regard to wetlands, it is difficult to see how the compensation under measure 214e for the acceptance of new wetlands could be paid for areas covered by the buffer zone requirement, as the commitments are similar to the mandatory requirements in those areas. It should therefore be clarified that no payment can be made for such areas if they are subject to the buffer zone requirements. Fourthly, concerning measure 213b, the losses resulting from reduced watercourse management would normally be less severe (less advantageous growing conditions) than those following from the mandatory buffer zone requirements (no cultivation or only extensive grass). It is therefore also difficult to see how payments can be made under measure 213b for areas covered by the buffer zone requirements.

Finally, Denmark is invited to clarify the situation following the recent suspension of the river basin-management plans on procedural grounds by a national complaints tribunal. The Danish

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authorities are reminded that according to Article 26a of Regulation (EC) No 1974/2006 compensation under this measure shall be provided only for disadvantages related to specific requirements that are in accordance with the programmes of measures of the river basin management plans.

Modification of requirements for buffer zones (213)

It should be better explained for which purpose Denmark might allow the use of soil improvement agents on the buffer zones and how this would be in conformity with the method for calculation of support for those areas, e.g. in those cases where the farmer is allowed to maintain a crop on the area (i.e. grass or an already existing perennial crops).

Repurchase option in contracts on land purchase for environmental projects (216, 323)

Where the original owner enjoys a particular advantage as described in the procedure for auctioning the land with a repurchase clause, one of the conditions of the state aid guidelines is that no bid may be accepted which is below the price established by a skilled, independent asset valuer.

Operations on low-lying agricultural areas (125, 216, 323)

A more complete description in the RDP text would be appropriate. In particular, the nature of the extensive cultivation allowed on the areas should be described and justified in relation to the objectives of the measure (including the protection of peatland habitats).

Reference should also be made to the very similar operations under measure 216e, which provides support for restoration of wetlands and natural hydrological conditions on agricultural land. In fact, the new measure seems to be almost identical to the sub-measure on natural hydrology in 216b, except for two elements. Firstly, the instrument under measure 216b is targeted the promotion of bio-diversity (in Natura2000 areas). Secondly, it offers the possibility of 20 year contracts under measure 214e as an alternative to state purchase of the land. On the first point, the difference in targeting does not exclude a certain overlap between the two measures, and clarification of the demarcation between the two is therefore needed. On the latter point, Article 71(3) of Regulation (EC) No 1698/2005 establishes that land purchases can only involve more than 10 per cent of total costs of an operation in exceptional and duly justified cases concerning environmental protection. The proposal does provide justification for the use of the land purchase instrument (permanent changes, long-term environmental effects), and the instrument is also already in use for similar types of operations under measures 216 and 323 of the Danish RDP. However, the new proposal goes further than the existing measures. Rather than treating land purchase as the last resort after providing the farmer with the option of a multi-annual contract, land-purchase is now

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proposed as the standard instrument. While this may not be excluded, a more explicit justification for this choice might be called for.

In addition, the wording inserted in measures 216c and 323a seems to imply the possibility of supporting land purchases related to all the activities of measure 216a in this way, which is perhaps not intentional and definitely not justified in the proposal. This should also be clarified.

Finally, it would be relevant to mention the number of hectares expected to be covered by the measure.

Afforestation of agricultural land (221)

Some minor clarifications are needed. Concerning the state aid notification, the correct reference (SA.35189 (2012/N)) should be added to table 9b of the RDP. In the proposed text there is also a reference to the State aid notification for a national scheme which is not relevant for the RDP (Østerild scheme). This should be deleted. Concerning the calculation of support, some words have been inserted which could be read as suggesting that the standard payment for establishment covers also 'normal maintenance'. It should be clarified that this payment can in fact only cover establishment costs, whereas maintenance is paid separately. Concerning the additional premium for certain large projects it should be clarified that the total payment does not exceed the actual establishment costs.

Finally, the definition of eligible areas is deleted from the text concerning beneficiaries. Although it is clear from the table setting out the support rates which areas are eligible, it is recommended that this is also clearly stated in the text.

Technical assistance for preparatory actions concerning programming period 2014-2020 (Chapter 16)

Justification is needed for different types of activities under the new Article 41a (c) of Regulation (EC) No 1974/2006. Preparatory activities for the next programming period should only be financed if directly linked to activities of the current RDP and necessary to ensure continuity and smooth passage. In addition, as long as the modification of Regulation (EC) No 1974/2006 has not yet been adopted, this should be reflected in the text.

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Mr. Pedro Tarno
Head of Unit
European Commission
DG for Agriculture and Rural Development

The Danish Agrifish Agency /
Center for Agricultural Subsidies
15. January 2013

Annulment of the Danish river basin management plans and consequences for the implementation of the compensation scheme to mandatory buffer zones

On 6 December 2012 the Environmental Board of Appeal (*Natur- og Miljøklagenævnet*) annulled the Ministry for the Environment's decision of 22 December 2011 to adopt 23 Danish river basin management plans.

The annulment was based solely on the ground that the period of time fixed for a supplementary hearing (8 days) was too short and thus contrary to Section 30 of the Environmental Aims Act.

As a consequence, the Ministry will now carry out a supplementary hearing in accordance with the Environmental Aims Act, and, subsequently, adopt a new decision concerning new river basin management plans. This decision is expected in the first half of 2013.

Presently, several Danish authorities are involved in a thorough and complex examination of the potential legal consequences of the annulment.

In this note, the AgriFish Agency describes a particularly urgent problem relating to the continued application of the compensation scheme approved by the Commission concerning the establishment of buffer zones.

Based on the description below, the Agency hopes that the Commission will acknowledge the urgency of the matter, and that the Commission will therefore be willing to enter into a swift and constructive dialogue with a view to finding a practical solution in line with the aims and principles of both the Water Framework Directive and the Rural Development Programme for Denmark.

1. The buffer zones Act and the Compensation Scheme

A key concern for the AgriFish Agency is whether the annulment of the river basin management plans will adversely affect the effective and timely establishment of buffer zones provided for in the Act on Buffer Zones (Act no 591 of 14 June 2011 as amended by Act No 563 of 18 June 2012).

In essence, the Act provides for the establishment of up to 10 meters of mandatory cultivation-, spraying- and fertilizer-free buffer zones along all open streams and ponds with a surface area of more than 100 m². The Buffer Zone Act is an important part of the implementation of Article 11(4) of the Water Framework Directive.

The Act entered into force on 1 September 2012.

The Danish AgriFish Agency

The Environmental Board of Appeal's annulment of the decision to adopt the Danish river basin management plans does not affect the validity of the Act.¹

However, for the Parliament, the introduction of the buffer zones was explicitly subject to the establishment of an appropriate compensation scheme for the affected farmers pursuant to Council Regulation 1698/2005. Accordingly, and in accordance with Articles 36(a)(iii) and 38 of Regulation No 1698/2005, the AgriFish Agency has applied for, and the Commission has approved, such a compensation scheme.

Under the approved scheme, farmers are to apply for compensation from February 2013, and payments are expected to fall due by the end of 2013. The approved measure provides for farmers to be eligible for compensation from the entering into force of the Act, i.e. from 1 September 2012.

2. The Problem and Three possible solutions

Due to the wording of some of the provisions in Council Regulation 1698/2005 and Commission Regulation 1974/2006, the Agency is uncertain about the extent to which the compensation scheme is linked to the existence of valid river basin management plans.

As a consequence, the AgriFish Agency is uncertain about whether the annulment of the river basin management plans might be considered to preclude the applicability of the compensation scheme, and, if so, how best to solve this problem without delaying the establishment of buffer zones.

Obviously, the effective and timely implementation of the buffer zones could be seriously undermined if the compensation scheme cannot be fully applied with effect from the entering into force of the Act, i.e. from 1 September 2012.

Generally, the Agency takes the view that in the specific situation, a practical solution must be found, which best reconciles and furthers the aims and content of, on the one hand, the Water Framework Directive, and, on the other hand, Regulation 1698/2005.

In this light, the Agency has developed three possible solutions, which can be summarised thus:

First Solution: The invalidity of the river basin management plans does not affect the validity and proper application of the compensation scheme relating to buffer zones.

Second Solution: The invalidity of the river basin management plans entails that the compensation scheme is (temporarily) no longer in compliance with Regulations 1698/2005 and 1974/2006. The adoption of new river basin management plans will "repair" this and restore the compensation scheme. It will be possible to apply for compensation throughout 2013, but payments will not be made before the new plans are in place.

¹ The annulment of the river basin management plans has some derived effects on the scope of the obligation under national law to establish Buffer Zones. However, the geographical areas eligible for compensation under the scheme will not be extended.

Third Solution: The invalidity of the river basin management plans entails that the compensation scheme is no longer approved by the Commission. The Agency notifies and the Commission (re)approves the compensation scheme once new plans have been adopted. It will be possible to apply for compensation under the scheme throughout 2013, but payments will not be made before the new plans are in place.

2.1 First Solution

The first solution requires an interpretation of Regulations 1698/2005 and 1974/2006, which entails that the (temporary) invalidity of the river basin management plans does not have any consequences for the validity of the compensation scheme relating to the buffer zones.

This solution by which the validity of the river basin management plans is wholly detached from the application of the compensation scheme is obviously the simplest and preferred option, since it would cause the least damaging effects to the establishment of the buffer zones and the least uncertainty for the farmers.

This solution would also be in line with the aim and context of Article 38 of Regulation 1698/2005 and the Water Framework Directive, since it would create the best conditions for the continued establishment of buffer zones, which is an important part of the implementation of the Water Framework Directive. Moreover, in the Agency's view, there is no legal or factual interdependence between the river basin management plans and the buffer zones, and thus there is no reason to link the buffer zone compensation scheme to the existence of river basin management plans.

However, admittedly, some provisions in the relevant regulations could be read to the effect that the existence of river basin management plans is a precondition for the setting up of a compensation scheme pursuant to Article 38 of Regulation 1698/2005:

For example, Article 50(1) and (5) of Council Regulation 1698/2005 reads as follows:

" 1. Member States shall designate the areas eligible for payments provided for in Article 36(a)(i), (ii) and (iii) as well as in Article 36(b)(i), (iii), (iv) and (vi), taking into account paragraphs 2 to 5 of this Article.

...

5. Natura 2000 agricultural areas designated pursuant to Directives 79/409/EEC and 92/43/EEC and agricultural areas included in river basin management plans according to Directive 2000/60/EC shall be eligible for payments provided for in Article 36(a)(iii)."

Moreover, Articles 26a(2) and 34(1) of Commission Regulation 1974/2006 provide:

"Article 26 a

...

2. Support pursuant to Article 38(1) of Regulation (EC) No 1698/2005 linked to Directive 2000/60/EC shall be provided only with regard to the cost incurred and the income foregone that result from disadvantages related to specific requirements that:

- (a) were introduced by Directive 2000/60/EC, are in accordance with the programmes of measures of the river basin management plans for the purpose of achieving the environmental ob-*

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jectives of that Directive and go beyond the measures required to implement other Union legislation for the protection of water;

...

Article 34

1. Agricultural areas referred to in Article 50(5) of Regulation (EC) No 1698/2005, which are included in river basin management plans in accordance with Directive 2000/60/EC, shall be eligible for payments pursuant to Article 38 of Regulation (EC) No 1698/2005, if a relevant river basin management plan is established and implemented in those areas."

If the Commission, on this basis, does not consider it possible to interpret the Commission's approval of the compensation scheme to the effect that it is unrelated to the validity of the river basin management plans, the Agency proposes the following Second Solution:

2.2 Second Solution

If the invalidity of the river basin management plans entails that the compensation scheme is no longer in compliance with Regulations 1698/2005 and 1974/2006, the Agency takes the view that the adoption of new river basin management plans will "repair" this and restore the compensation scheme without the need for a new Commission approval of the scheme.

New river basin management plans will be adopted as soon as a proper supplementary hearing has been carried out. When these new plans are adopted, they will cover the period of 2010-2015. Thus, like the annulled plans adopted in December 2011, the new river basin management plans will cover the whole period in which the obligation to establish buffer zones (i.e. from 1 September 2012) has applied.

Accordingly, the approved compensation scheme will be fully functional and can be applied with effect from 1 September 2012 once the new river basin management plans are adopted.

Under this solution, farmers can apply for compensation throughout 2013, but no payments can be made before new valid plans are adopted.

In essence, the Second Solution entails that, even if the requirement of river basin management plans has not been complied with during the period in which the plans were invalid, the adoption of new river basin management plans would repair this temporary shortcoming without the need for a new Commission approval.

In particular, the scheme will comply with Article 50(5) of Council Regulation 1698/2005 and Articles 26a(2) and 34(1) of Commission Regulation 1974/2006 according to which the existence of valid river basin management plans appear to be a precondition for a compensation scheme based on Article 38 of Regulation 1698/2005.

It should be emphasised that the Agency has thoroughly considered whether, as a matter of principle, this Second Solution might give rise to concern because one of the conditions relating to the compensation scheme is complied with retroactively.

However, in the Agency's view, the regulations do not, as a matter of principle, preclude such a solution.

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Moreover, the Agency believes that a number of specific circumstances support the conclusion that, in this particular case, the requirement of existing river basin management plans can be complied with retroactively once the new plans have been adopted:

First, generally, the Second Solution would be in line with both the Rural Development Programme and the Water Framework Directive, since it would allow for the continued implementation of this part of the Water Framework Directive without compromising compliance with the eligibility criteria under the Rural Development Programme.

Second, the Buffer Zone Act remains valid irrespective of the validity of the river basin management plans, and the compensation scheme aims to facilitate the implementation of a part of Denmark's obligations pursuant to the Water Management Directive.

Third, the Commission has already approved the compensation scheme with reference to Article 38 of Regulation 1698/2005, and the substantive conditions for this approval would not be affected.

Fourth, the obligation to establish buffer zones and the compensation scheme are inextricably linked, and the establishment of buffer zones is, in turn, inextricably linked to the implementation of the Water Framework Directive.

Fifth, the grounds for annulment of the river basin management plans do not concern the content of the plans. It was due to a formal requirement in national law concerning the deadline for the supplementary hearing.

Sixth, undoubtedly new plans will be adopted, probably in the first half of 2013.

Seventh, the circle of beneficiaries under the compensation scheme will remain the same, regardless of the content of the new river basin management plans. Thus, overall, there is no possibility for the beneficiaries - or the Danish authorities - to abuse the compensation scheme through the enactment of measures (new plans) with retroactive effects.

Eighth, the Second Solution would also be in line with the rationale behind the Court's recent decision of 11 September 2012 in the case C-43/10, *Nomarchiaki Aftodioikisi Aitoloakarnanias and Other* (sixth question).

For these specific reasons, the AgriFish Agency takes the view that Regulations 1698/2005 and 1974/2006 do not prevent the continued implementation of the compensation scheme concerning buffer zones, as long as payments are not made before new river basin management plans are adopted.

Obviously, the Second Solution would cause some uncertainty among the affected farmers, because payment of compensation would depend on a future event over which they have no control, i.e. the Danish authorities' adoption of new river basin management plans.

If the Commission considers this Second Solution to be contrary to Regulations 1698/2005 and 1974/2006 and to the approval of the scheme, the Agency believes that, at the very least, the Third Solution must be acceptable:

2.3 Third Solution

The Third Solution assumes that the invalidity of the river basin management plans entails that the compensation scheme is no longer approved by the Commission, since a condition for the Commission's approval is the existence of the (now invalid) river basin management plans adopted in December 2011.

This solution requires that, once new river basin management plans have been adopted, the Agency will notify a modification to the approved compensation scheme in accordance with Article 6(1)(c) and 9 of Regulation 1974/2006.

On the basis of this notification, the Commission will (re)approve the original compensation scheme, including its application with effect from 1 September 2012. Thus, farmers will be able to apply for compensation under the scheme throughout 2013, but payments will not be made before the new plans are in place. This solution would ensure that the Commission has duly examined whether all eligibility criteria are complied with before the scheme is finally approved. Thus, as a matter of principle, this approach would clearly be in line with Regulations 1698/2005 and 1974/2006.

For the reasons provided above under the Second Solution, the Agency believes that in this specific situation, the Commission could approve the compensation scheme with effect from 1 September 2012, so that all farmers having incurred extra costs or foregone revenues as a result of the establishment of buffer zones since that date would be able to apply for compensation.

In the Agency's view, such an approach would be cumbersome and entail an even greater degree of uncertainty for the farmers, since compensation would depend on both the adoption of new river basin management plans and on the Commission's new approval.

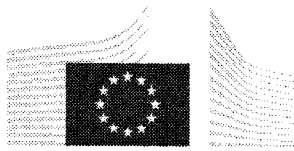
If this third solution is, nevertheless, the preferred option by the Commission, the Agency would request from the Commission, already at this stage, a statement that, as a matter of principle, the Commission would be willing to approve a notification from the Agency, which entails applying the compensation scheme from 1 September 2012 once the new river basin management plans have been adopted.

A timely and effective implementation of the compensation scheme related to the establishment of buffer zones is a key concern for Danish farmers and the national authorities. Due to the urgency of the matter, We therefore hope that the Commission will be willing to enter into a swift and constructive dialogue based on the suggested solutions presented in this letter, and that arrangements be made without delay for a meeting to take place in the near future between the Commission and our Agency on this subject.

Best regards,



Steen Bonde
Head of Unit



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR AGRICULTURE AND RURAL DEVELOPMENT

The Director General

Brussels,
TF/lvdz/D (2012) 207924

Concerning: Annulment of the Danish river basin management plans and consequences for the implementation of the compensation scheme for mandatory buffer zones

Dear Mr Bonde,

Reference is made to your letter of 15 January 2013 (Ares (2013)104770) in which you ask for the opinion of the Commission services on the possible consequences of a recent annulment of the Danish River Basin Management Plans (RBMPs) for the implementation of a measure in the Danish RDP under Article 38 of Regulation (EC) No 1698/2005.

In your letter the following background information is provided:

- The 23 RBMP under the Water Framework Directive (WFD) for Denmark were adopted on 22 December 2011.
- As part of the implementation of Article 11(4) of the WFD, 10-metre wide cultivation, spraying and fertiliser free buffer zones have been established along all watercourses and lakes above 100 m² in Denmark. The buffer zone requirement is implemented through an Act of Parliament which went into force on 1 September 2012.
- In order to provide compensation to farmers for the disadvantages resulting from the buffer zone requirement a measure was introduced into the RDP in 2012 in accordance with Article 38 of Regulation (EC) No 1698/2005. Under this measure farmers will be able to claim compensation for the period beginning at the entering into force of the requirement on 1 September 2012. Applications for compensation should be submitted in spring 2013 and payments are expected to fall due by the end of 2013.
- On 6 December 2012 the Environmental Board of Appeals (EBA) declared the RBMPs null and void. The Decision of the EBA was based solely on the fact that the

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Nyropsgade 30
1780 KØBENHAVN V
DANEMARK

time period fixed for a supplementary public hearing in 2011 (8 days) was too short and thus contrary to Section 30 of the Environmental Aims Act.

- As a consequence of the decision of the EBA, the Danish authorities will now carry out a supplementary public hearing and subsequently adopt a new decision concerning new RBMPs. This decision is expected in the first half of 2013.
- In the meantime the Buffer Zone Act remains in force, as the EBA's decision to annul the RBMPs does not affect the validity of the Act.

On this basis the question raised is to which extent the compensation scheme under Article 38 of Regulation (EC) No 1698/2005 is linked to the existence of valid RBMPs and, more specifically, if the annulment of the RBMPs might be considered to preclude the applicability of the compensation scheme.

In the letter three scenarios are presented:

- (1) No consequence: The measure can be applied irrespective of the existence of RBMPs.
- (2) Temporary non-compliance: The compensation scheme is temporarily not in compliance with the Regulations, but the situation can be repaired by the adoption of new RBMPs. The scheme can be applied as provided for in the RDP. Compensation can still cover the whole period from September 2012. No payments will be made before the new RBMPs are in place.
- (3) Annulment/need for resubmission: The compensation scheme is considered not to have been approved by the Commission. Denmark will have to resubmit a programme modification to reinsert the measure in the RDP. In this case the scheme can be applied as provided for in the new measure. Compensation can still cover the whole period from September 2012. No payments will be made before the new RBMPs are in place.

Reply:

The **first Scenario** would require that there is no legal link between the Article 38 measure and the existence of valid RBMPs. However, such a link clearly does exist. Indeed, your letter quotes several provisions of Regulation (EC) No 1698/2005 and Regulation (EC) No 1974/2006 to this effect.

Regulation (EC) No 1698/2005:

Article 50(5): agricultural areas included in river basin management plans according to Directive 2000/60/EC shall be eligible for payments provided for in Article 36(a) (iii)

Regulation (EC) No 1974/2006:

Article 26a (2)(a): Support pursuant to Article 38(1) of Regulation (EC) No 1698/2005 linked to Directive 2000/60/EC shall be provided only with regard to the cost incurred and the income foregone that result from disadvantages related to specific requirements that were introduced by Directive 2000/60/EC, are in accordance with the programmes of measures of the river basin management plans for the purpose of achieving the environmental objectives of that Directive and go

beyond the measures required to implement other Union legislation for the protection of water.

Article 34(1): Agricultural areas referred to in Article 50(5) of Regulation (EC) No 1698/2005, which are included in river basin management plans in accordance with Directive 2000/60/EC, shall be eligible for payments pursuant to Article 38 of Regulation (EC) No 1698/2005 if a relevant river basin management plan is established and implemented in those areas.

In relation to the **second scenario**, it should first be recalled that under the principle of shared management, it is for the Member State to take all the measures necessary to ensure that subsidies are granted correctly and to prevent and deal with irregularities. In this context, your suggested approach would seem possible, provided the following conditions are fulfilled, i.e. that:

- the envisaged RBMPs can indeed be adopted with retroactive effect, as described in your letter;
- continuity of the conditions set out with regard to this measure in the annulled and the new RBMPs will be ensured;
- the restrictions for which compensation is paid under the measure remain in place, i.e. the requirements for which beneficiaries will be compensated as of September 2012 under the envisaged new RBMPs should be the same as those requirements for which beneficiaries would have been compensated as of September 2012 in the absence of an annulment of the RBMPs and that there was no interruption of implementation of these restrictions;
- and that the necessary controls are carried out as required under Regulation (EU) No 65/2011 for the whole period.

In relation to the **third scenario**, please note that Article 19(1) of Regulation (EC) No 1698/2005 establishes the general rule that rural development programmes can be adapted for the remainder of the programming period (i.e. in principle without retroactive effect). Any such adaptation would then be assessed by the Commission services on the basis of the information to be included in the modification proposal, and such assessment cannot be prejudged by the present letter.

The present opinion is provided on the basis of the facts as set out in your letter of 15 January 2013 and on the understanding that in the event of a dispute involving Union law it is, under the Treaty on the Functioning of the European Union, ultimately for the European Court of Justice to provide a definitive interpretation of the applicable Union law.

Yours sincerely,



José Manuel SILVA RODRIGUEZ



EUROPA-KOMMISSIONEN
GENERALDIREKTORATET FOR LANDBRUG OG UDVIKLING AF LANDDISTRIKTERNE

Direktorat K. Forbindelser mellem institutionerne. Kommunikation og dokumentation
Acting Director

Bruxelles, den **19 MARS 2013**
K/LN/K.2/VA D(2013) 394266

Vedr.: Deres begæring om aktindsigt — Ref GestDem nr. 906/2013

Vi henviser til Deres e-mail af 19/02/2013, hvori De begærer aktindsigt i de dokumenter, der blev registreret den 19/02/2013 under ovennævnte referencenummer.

Vi har identificeret 16 dokumenter, hvilke er opstillet i en liste vedlagt dette brev.

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Med venlig hilsen

Lene NAESAGER

Bilag: 17

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