



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

Ministeriet for Fødevarer, Landbrug og Fiskeri
NaturErhvervsstyrelsen
Center for Arealtilskud – Bæredygtighed
Att.: Enhedschef Steen BONDE
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