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Ministry of Food, Agriculture and Fisheries
The Danish Food Industry Agency



European Commission
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The Danish AgriFish Agency
Center for Arealtilskud
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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. We have the following replies to the comments:

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: Additional text has been inserted in the measure description 213a in the RDP amendment proposal. 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 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. With regard to the baseline conditions, the measure implements art. 11.3 of the Directive.

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/rdonl/yres/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).

Text to section 5.3.5.5 has also been updated as a result of the introduction of the 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: Reference is made to the resubmitted RDP amendment proposal in which the specification has been inserted.

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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 (cf. the section ""Criteria for compensation"). 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. Additional information regarding the methodology of the impact assessments has been provided in the measure description.

With regard to the compensation level, the basis of their calculation and the criteria used to differentiate between support levels was provided in the expert note by the University of Copenhagen (annex 5h). It has been decided that 75 % of the farmers must be fully compensate for their losses. In order not to overcompensate, three rates of compensation have been calculated:

- 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.
- The second rate of compensation are given to 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 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.
- The third rate is meant to compensate areas which were previously permanent pasture because it is too wet to plough and sow normal crops. Only grass can be produced for grazing or harvesting as fodder. After the reduced watercourse maintenance, no crops can be harvested and often grazing is also not possible due to high ground water level or even frequent flooding.

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 af-

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ected. 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: Additional text has been inserted in the measure description. 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 has been withdrawn from the RDP amendment proposal.

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: It now appears in the resubmitted RDP proposal that support under the two measures may not 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 has been corrected in the resubmitted proposal.

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.

In the resubmitted proposal, awaiting the impact assessments, it is stated that the measure is expected to lead to a reduction in nitrogen and phosphorous usage in the period, where the measure is proposed.

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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, and has been withdrawn from the resubmitted proposal.

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 figure has been corrected in the resubmitted proposal.

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. A description of the present measure has now been inserted in section 5.3.5.5 of the RDP proposal.

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.

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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.

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 existing 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 has recently been introduced in the proposal for national law on mandatory buffer zones to be adopted, as areas for which compensation is foreseen. The legal proposal does not foresee support for reestablishment of Christmas trees, neither is this the case in the resubmitted proposal.

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.).

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 recently, which is expected to be

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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.

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 previous reply.

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 previous reply.

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: In accordance with article 46 in Commission Regulation (EC) no 1974/2006, revision clauses will be inserted in the agreements made under measure 214d (border strips), regarding areas eligible for support under measure 213b, so to ensure that the agreements are adjusted the baseline requirements and compensation levels proposed under measure 213b, hereunder the mandatory requirements to manage the areas in question as cultivation-free buffer zones. Hence, the possibility of overlap and risk of multiple overcompensation will not occur. Clarification on the demarcation between the two measures and reference to revision clauses has been inserted in the description of the measure.

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).

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Health 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 this requirement, which is planned to be carried in an unaltered way, based on yearly random on-the-spot controls of the area receiving support, carried out by experienced controllers, who shall verify visually if the support commitment is met.

A maximum stocking rate as a means of regulating 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.