



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR AGRICULTURE AND RURAL DEVELOPMENT

The Director-General

Brussels,
TF/lvdz/D(2013) 1917090

Concerning: Your letter of 4 June 2013 concerning the annulment of the river basin management plans and the implementation of the compensation scheme for mandatory buffer zones in Denmark

Dear Mr Bonde,

I refer to your letter of 4 June concerning a further delay in the implementation of river basin management plans in Denmark and the consequences for the implementation of the compensation scheme under Article 38 of R1698/2005 in the Danish RDP (measure 213).¹

First of all, I should draw your attention to our reply of 23 May² to your letter of 2 May³ concerning the possibility of paying compensation to farmers before the adoption of new river basin management plans, where it is explained that payments are not possible under measure 213 in the absence of valid river basin management plans.

Indeed, I would like to remind you that under the terms of Regulation (EC) No 1974/2005⁴ and Regulation (EC) No 1698/2005⁵ the measure can only provide compensation for costs resulting from restrictions that are in accordance with river basin management plans implemented in the areas concerned. The absence of valid river basin management plans means that an important legal prerequisite for the implementation of measure 213 of the Danish RDP currently is not in place.

**Ministeriet for Fødevarer, Landbrug og Fiskeri
NaturErhvervsstyrelsen
Center for Arealtilskud – Bæredygtighed
Att.: Enhedschef Steen BONDE
Nyropsgade 30
1780 KØBENHAVN V
DANMARK**

¹ Ares(2013)1791472

² Ares(2013)1266460

³ Ares(2013)1019697

⁴ OJ L 368, 23.12.2006, 15–73 (as amended).

⁵ OJ L 277, 21.10.2005, 1–40.

Furthermore, this situation can be expected to persist for an extended period of time as according to your letter the final content of the river basin management plans will be determined only in the autumn of 2014. In this situation I would like to commend the Danish authorities for the decision to provide compensation under a national scheme for 2012 and 2013 in line with state aid rules and postpone the application of the RDP measure until 2014.

In reply to your request for clarification with regard to the possibility of paying compensation under the measure for the entire 2014, even though the new river basin management plans will only be in place in the autumn of that year, I can refer to our letter of 26 February⁶, which describes a scenario (scenario 2) in which it would be possible for the Danish authorities to pay compensation with retroactive effect once the adoption of the new river basin management plans has been completed.

The letter of 26 February concerned a situation where the river basin management plans would be adopted already in 2013.

However, I can confirm that, provided all the conditions listed in the letter are fulfilled and new river basin management plans have indeed been adopted in the autumn of 2014, it should be possible for the Danish authorities at that time to pay the compensation from 1 January 2014 with co-financing from the RDP.

In these circumstances the conditions listed in the letter should be read as referring to the period actually covered by payments under the RDP, i.e. from 1 January 2014. Hence, in line with the second scenario described in our letter of 26 February, payments could be made under the measure for the entire 2014 provided that:


- the envisaged RBMPs can indeed be adopted in 2014 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 1 January 2014 under the envisaged new RBMPs should be the same as those requirements for which beneficiaries would have been compensated as of 1 January 2014 in the absence of an annulment of the RBMPs and there is no interruption in the implementation of these restrictions;
- and the necessary controls are carried out as required under Regulation (EU) No 65/2011 for the whole period.

I would like to point out that in light of the legal uncertainty concerning the RDP measure, which will persist until the moment when the new river basin management plans have been adopted, any procedures initiated by the Danish authorities before that date, such as calls for applications etc., would be at the own risk of the national authorities in as far as they might create legitimate expectations on the part of potential beneficiaries.

⁶ Ares(2013)253663

Finally, I should say that the present opinion is provided on the basis of the facts set out in your letter of 4 June 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,



Jerzy PLEWA