



Director Michael Niejahr  
European Commission - Directorate-General for Agriculture and  
Rural Development - Deputy Director-General, in charge of  
Directorates G, H, I - Legal, institutional and procedural matters  
(AGRI.DDG3.I)

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21. June 2021

## Publication of information relating to beneficiaries

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Dear Mr. Niejahr

It has been proposed to the Danish Minister of Food, Agriculture and Fisheries that information relating to beneficiaries mentioned in Article 111 of EU Regulation (1306/2013) should be published for more than two years.

The Danish Agricultural Agency has scrutinized the Judgement of the European Court (Grand Chamber) from 9 November 2010 in the Joined Cases C-92/09 and C-93/09 and the preambles (especially No. 78 and 83) of Regulation 1306/2013.

We have also scrutinized the Directive on open data and the re-use of public sector information, also known as the 'Open Data Directive' (Directive (EU) 2019/1024), and the Charter of fundamental rights of the European Union. The Danish Agricultural Agency has reached the conclusion that it would be a violation of the present EU legislation and the principle of proportionality, if Denmark as the only Member State decides to implement national rules with a publication period longer than two years.

We have based our conclusion on the following elements and would appreciate if the Commission could give us its view on this matter:

### Publication for two years

It is our understanding that the Commission has carefully considered certain elements of the Judgement from the European Court in the Joined Cases C-92/09 and C-93/09. The Commission has aimed to strike a balance between protecting beneficiaries in relation to publication on the one hand and on the other hand secure the public's right to know how EAGF and EAFRD funds are spent. The Commission has considered it proportionate to publish the information in Article 111 in Regulation No. 1306/2013 up to two years provided that a threshold rule was introduced so that only amounts above this threshold should be published.

As the structures of the member States' agricultural economies vary considerable and may differ significantly from the average Union farm structure, the application of different minimum thresholds that reflect the particular situation of the Member States should be allowed, as mentioned in preamble No. 83 in Regulation 1306/2013. However, the option concerning having special national rules does not include the length of the publication period.

As far as the Danish Agricultural Agency has been able to understand, the legislative preparatory text to regulation No. 1306/2013 does not indicate that the Member States can establish an individual publication period going further than two years. It is also our understanding that because the funds that we pay out under EAGF and EAFRD are EU funds and not national funds, it is EU legislation, which should apply.

Furthermore, The Commission carried out a proper investigation among the Member States before it established the two-year publication period. This was done in order to fulfill a principle that also the European Court stressed in relation to its judgement in C-92/09 and C-93/09: that economic conditions of individual persons should be respected and only published on the basis of careful consideration whether it is necessary and proportionate to publish the information. A principle that is also stressed in the Charter of fundamental rights of the European Union.

Our basic question is therefore if a publication period longer than two years could be seen as a violation of the proportionality principle of the European Charter?

Should you have any questions in relation to the above, please do not hesitate to contact us at [landbrugsstotte-geodata@lbst.dk](mailto:landbrugsstotte-geodata@lbst.dk)

Best regards

Jesper Loldrup  
Head of Division  
Agricultural Support & Geodata



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL FOR AGRICULTURE AND RURAL DEVELOPMENT

Deputy Director-General, in charge of Directorates D, E and F

Brussels  
AGRI.DDG2.D.1/CP/DVC(2021)5323005

Dear Mr Loldrup

Thank you for your letter of 21 June 2021 in which you ask whether it would be possible to publish the information relating to beneficiaries for more than two years.

For dissemination of beneficiaries' data, Article 111 of Regulation (EU) No 1306/2013 applies. In accordance with this Article, the information "*shall remain available for two years from the date of the initial publication*". Therefore, you came to the conclusion that a publication maintained for a longer period would be a violation of the EU legislation and of the proportionality principle of the European Charter.

We can confirm that indeed the publication period is restricted to two years; after these two years, there is no EU justification for publishing the data. Therefore the full access to information on agricultural subvention payments for a longer period would clearly not be covered by Article 111 of Regulation (EU) No 1306/2013.

The EU rules on processing and protection of personal data for the CAP are determined by Article 117 of Regulation (EU) No 1306/2013, while Article 86 of the General Data Protection Regulation (EU) 679/2016 (GDPR) allows access to official documents according to the laws of the respective Member State. Thus, it has to be decided by the Danish Authorities how this access might be granted respecting the GDPR.

The present opinion is provided on the basis of the facts as set out in your letter of 21 June 2021, expresses the view of the Commission services and does not commit the European Commission. In the event of a dispute involving Union law it is, under the Treaty on the Functioning of the European Union, ultimately for the Court of Justice of the European Union to provide a definitive interpretation of the applicable Union law.

Yours faithfully,

Mihail DUMITRU

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7. September 2021

### **Regarding publication of information relating to beneficiaries**

Thank you for your answer of 30 July 2021 to our question regarding the possibility for Member States to publish information relating to beneficiaries for more than two years.

You confirm that the publication period is restricted to two years and therefore the full access to information on agricultural subvention payments for a longer period is not covered by article 111 of Regulation (EU) No. 1306/2013.

As mentioned in our letter of 21 June 2021, in Denmark there is political interest in publishing the information relating to beneficiaries for more than two years under national rules.

Will it, in your opinion, be in contravention of article 111 of Regulation (EU) No. 1306/2013 to introduce under national rules a publication period for more than two years? It would of course have to be the responsibility of the Danish authorities to ensure that publication is carried out in accordance with the GDPR, the Charter and other relevant legal requirements.

Yours faithfully

Jesper Loldrup  
Head of Division, Agricultural Support & Geodata,  
The Danish Agricultural Agency



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AGRI.DDG2.D.1/CP/RD D(2021) 6358575

Dear Mr Loldrup,

Thank you for your letter of 7 September 2021 in which you declare your interest in publishing the information relating to beneficiaries for more than two years and you ask whether it would be possible to introduce, under national rules, a publication period for more than two years.

As mentioned in my previous letter in reply to your letter of 21 June 2021, any publication after these two years would clearly not be covered by Article 111 of Regulation (EU) No 1306/2013.

The present opinion is provided on the basis of the facts as set out in your letter of 7 September 2021, expresses the view of the Commission services and does not commit the European Commission. In the event of a dispute involving Union law it is, under the Treaty on the Functioning of the European Union, ultimately for the Court of Justice of the European Union to provide a definitive interpretation of the applicable Union law.

Yours faithfully,

Mihail DUMITRU

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