



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR AGRICULTURE AND RURAL DEVELOPMENT

The Deputy Director-General (responsible for Directorates D, E and F)

Brussels,
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[Art. 4.1 (b) - privacy]

Thank you for your letter of 5 September 2018 addressing a number of issues on which you seek clarification, following also a meeting held in DG AGRI. Please find below DG AGRI's replies. I sincerely apologise for this late reply, which is due to the special complexity of your question that required contribution from several sectors, including exchanges with the Danish authorities.

I. 'Longer update cycle for land parcels for areas within multiannual contracts'

In your letter you are asking, if it would be possible to have a longer LPIS update cycle - e.g. 5 years – specifically in areas with wetland projects or other areas with multiannual contract, without it having an impact on the minimum percentage of controls for all farms.

The Land-Parcel Identification System is a unique system within the Integrated Administration and Control System (IACS). Pursuant to Article 36(3) of Regulation (EU) No 809/2014 the Danish Authorities can only reduce the minimum control sample for certain schemes under direct payments in accordance with Article 34(2)(a) of the same Regulation (i.e. control sample between 1 % and 1,25 %), under the condition that they systematically update the identification system for agricultural parcels, within a period of maximum 3 years, covering per year at least 25% of the eligible hectares.

II. 'Allow pro rata on extensive areas which are under multiannual contracts'

You explain that in Denmark, wetland areas - although used as grassland for pasture under multiannual contracts - are typically classified as arable land and therefore the pro-rata approach (Article 10 of Regulation (EU) No 640/2014) cannot be applied. You raise the question whether in such cases a farmer could have those areas under multiannual commitments re-classified from arable land into permanent grassland, despite the fact that such land would normally remain arable land during the commitment. You refer to the guidance document that establishes the status of areas under multiannual commitments as 'frozen', and the 5-year calculation for permanent grassland starts/restarts the year following the end of the commitment period. Re-classifying such areas as permanent grassland would imply the use of the pro-rata approach on all the areas used for pasture, which would make the handling of ineligible features easier.

[Art 4.1 (b) privacy]

In line with the Article 4(1)(h) of Regulation (EU) No 1307/2013, land used to grow grasses that has not been included in the crop rotation of the holding for five consecutive years or more, will automatically become permanent grassland.

For the areas where farmers have undertaken a commitment under the Rural Development programs; agri-environment measure or agri-environment-climate measure, in the form of converting their arable land into grassland for the commitment period, at the end of this period such land will not be directly classified as permanent grassland under Article 4(1)(h) but, it will maintain its status from before starting the commitment.

However, as described in the recently revised guidance document on permanent grassland¹, in case of long term commitments that started before 2005, provided that the Member States can establish with certainty the status of the land, Member States shall take into account the status of the land during the five years preceding the start of the commitment for the classification of the land. In that case, land covered by grass during the five years preceding the start of the commitment shall be classified as permanent grassland.

However if the member State cannot establish with certainty the status of the land, or the land does not fulfil the requirements to be classified as permanent grassland, it shall be classified as arable land. In case the land is classified as arable land, the five years' calculation starts the year following the commitment period (year 1) in line with the point 3.4. of the above mentioned guidance document.

III. 'Make it simple to use article 32 in project areas'

In your letter, you request confirmation that a farmer can claim the entire project area with the use of the exemption in Article 32(2)(b) of Regulation (EU) No 1307/2013 and avoid the annual assessment of the fulfilment of eligibility criteria.

We have been informed that the Danish authorities have issued new Guidelines² in 2019 that do address the issue of the area eligibility and the use of the exemption provided in Article 32 of Regulation (EU) No 1307/2013. Therefore, in regards to this question, I would like to refer you to the Danish Paying Agency.

IV. 'First year of new wetland project-precise mapping impossible- farmers spend many resources on adjusting maps the following years'

You propose to postpone the date of the application for the 20-year agri-environment-climate (AEC) commitments from 1 September to 21 April of the following year. You argue that "the physical establishment of the project" which is necessary to start the 20-year AEC commitment, is not finalised by 1 September. It is thus not possible to finalise the maps outlining the precise area of the commitment, which may imply – in the case of mismatches - administrative penalties.

As stipulated in Article 13 of Regulation (EU) 809/2014, Member States shall establish the final date for the submission of applications for support and payment

¹ DS/EGDP/2015/02-Rev: Guidance document on the implementation by member states of permanent grassland provisions in the context of the payment for agricultural practices beneficial for the climate and the environment (greening)

² Brugerguide til Internet Markkort 2019

claims no later than 15 May. Therefore, setting the date of the application on 21 April for the 20-year commitment would be in line with this provision.

I take this opportunity to clarify one aspect: it appears that in your case, the implementation of the 20-year AEC commitment starts before the project is physically established. According to Article 28(6) of Regulation 1305/2013, the payment shall compensate beneficiaries for all or part of the additional costs and income foregone, resulting from the commitments made. In other words, the payment to the beneficiary for a given commitment can be granted for the period starting at the moment when the commitment is actually being implemented, hence leading to income losses and/or additional costs. Launching an application and granting payments before the project is physically put in place and therefore can be subject to that commitment, creates an inherent risk of error in relation to both the size and the eligibility of the area.

These features demonstrate that the commitment period should begin only at the moment when the commitment is implementable on the delimited area (corresponding to that of the project).

V. Lump-sum compensation

You also request further improvements in granting the aid in order to reduce the number of layers of support on the same area: from the current three layers (direct aid, 20-year AEC commitment and 5-year AEC commitment) to maximum two (without 20-year commitment). Please be reminded that the current legal framework (Article 28(6) of Regulation 1305/2013) provides for the possibility to grant one-off payments for commitments aimed at renouncing commercial use of areas. This possibility could apply to your 20-year AEC commitments and would simplify the multi-layer structure of the support provided to the areas concerned.

The present opinion is provided on the basis of the facts as set out in your letter of 5 September 2018, 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 sincerely,

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