

New agricultural legislative package announced

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Introduction

On December 22 2015 the government and its supporting political parties agreed to put forward a new legislative package on foodstuffs and agriculture. Described as a 'paradigm shift' for environmental regulation within the agricultural sector, the package aims to introduce more specific regulations with a view to realising the potential of Danish agriculture fully.

Attracting little fanfare on publication, scientists have since stated that the numbers behind the proposal are misleading and that the package will have larger environmental impacts than first assumed when presented to Parliament. The subsequent uproar resulted in the prime minister almost calling for a new general election, which was averted only by the resignation of the incumbent minister for the environment and food.

This update aims to identify some of the key measures proposed in the package and the points of criticism that have been raised.

Legislative measures

In order to realise the package's potential, several key areas of existing environmental regulation have been revised.

Nitrogen

Instead of a general regulation allowing each farmer to release the same amount of nitrogen into the environment, the new package builds on a principle of differentiated emission quotes. A quota will be set for each coastal water area based on a number of factors, including the retention ability of the soil in each specific area.

This new specific regulation model will be implemented in 2018/19.

Marginal zones and fringes

Another aim of the new specific regulation model was to repeal the law on marginal zones that stipulated that farmers could cultivate no less than nine metres from lakes and streams in order to protect waterways.

On January 21 2016 this aim was achieved when Parliament voted to repeal the law.

However, a large number of the existing marginal zones are expected to remain, as they provide an easy way for farmers to live up to the EU demand of a 5% environmental focus area.

In addition, the demand for a two-metre fringe along waterways as a result of the Act for the Protection of Nature will remain unchanged, as it contributes to the implementation of the EU

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Nitrates Directive.

Fertilisation

In order to protect the environment, farmers have had to use less fertiliser than is optimal for growth. The caps on fertiliser use have now been lifted, with two-thirds of the reductions lifted in the 2015/16 growing season and the remaining one-third to be lifted in the 2016/17 growing season.

Smart implementation of EU regulations

The political parties also agreed to a higher degree of 'neighbourhood checks' in the implementation of new EU regulations, in order to combat unnecessary over-implementation.

Voluntary measures

The political parties behind the package agree that the new regulation model should have no negative impact on the environment. In order to keep this promise, the package proposes new voluntary and collective measures to minimise nitrogen emissions. Examples of these measures are the establishment of wet areas and reforestation.

Criticism and relationship with EU regulations

The package came under fierce criticism a few months after its release. The criticism focused mainly on two areas:

- that the calculation of the environmental impact of the package was flawed; and
- that the proposed measures are not compliant with EU regulation.

The Ministry for Environment and Food has calculated that Denmark will reduce its nitrogen emissions during the next five years as a result of the proposed package. The method of calculation was criticised by scientists who believe that the ministry did not take into account outside factors. Further, the ministry was criticised for its calculation of the 2016-baseline effect because it included the effects of the previous three years.

The ministry believes that the proposed measures fully comply with the EU directives relating to the protection of the environment, including waterways. However, due to the paradigm shift, the ministry has stated that a full legal assessment of the package's relationship with EU regulations cannot be carried out. If the European Commission raises concerns over the new regulation model, the political parties behind the package are willing to adapt it to meet EU requirements.

Several Danish non-government organisations and opposition parties believe that the package is non-compliant with EU regulation, specifically:

- the EU Water Framework Directive – criticism relates to the nitrogen emissions calculation, as this directive imposes an obligation to keep the water environment in good ecological condition and reduce nitrogen emissions;
- the EU Habitats Directive and the protection of Natura-2000 areas – the main point of concern is that the increased use of fertiliser will have a negative impact on endangered species of flora and fauna; and
- the EU Nitrates Directive – it is claimed that the increased use of fertiliser will have a negative impact on the level of nitrate in groundwater and other water environments.

To combat any negative environmental effects, the government has proposed to implement voluntary measures. It is questionable whether the European Union will accept this as a valid argument, as the authorities bear the burden of proof that general protection against negative environmental impacts has been established – a burden that may be hard to lift with a voluntary measure.

However, a prominent environmental law scholar has stated that it is likely that the package on foodstuffs and agriculture complies with EU law, because it amends a legislative regime that is likely contrary to EU law.

Comment

It remains to be seen whether the European Commission will take action against the proposed measures, but several non-government organisations have already written to the European Commission expressing their concerns over the environmental impacts of the new legislative package.

Should the European Commission be of the same opinion as the non-government organisations, it will not be the first time that Denmark is found to be non-compliant with EU environmental regulations. In 2014 it was found not to have lived up to its obligation under the EU Water Framework Directive when it failed to enact valid water plans.

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