



Report to the Public Accounts
Committee on the Ministry of Food,
Agriculture and Fisheries' administra-
tion of the EU agricultural subsidies

April
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Rigsrevisionen submits this report to the Public Accounts Committee in accordance with section 17(2) of the Auditor General's Act, cf. consolidated act no. 3 of 7 January 1997 as amended by act no. 590 of 13 June 2006.

The report concerns section 24 of the Fiscal Act. The Ministry of Food, Agriculture and Fisheries.

In the period when the study was conducted the Ministry was headed by the following ministers:

Hans Chr. Schmidt: August 2004 - September 2007

Eva Kjer Hansen: September 2007 -

I. Introduction and main findings

1. The report is about the Ministry of Food, Agriculture and Fisheries' ("the Ministry of Food") administration of the EU's agricultural subsidies under the so-called Single Payment Scheme which took effect after the Common Agricultural Policy (CAP) reform in 2005. Rigsrevisionen initiated the examination because the value of the Single Payment Scheme in Denmark is substantial – approximately DKK 7.2 billion in 2007. Furthermore, the Single Payment Scheme is EU funded which means that Denmark may be liable to repay part of the funds to the EU if the administration is considered inadequate.

2. The EU CAP reform was implemented by Council Regulation 1782 of 29 September 2003. Among other things, the reform introduced two significant changes to the administration of the agricultural subsidies: The better part of the subsidy payments are now dependant on the size of the farmland. (The processing of the applications is being examined in section III of this report.) Secondly, applicants must now comply with a number of standards concerning the agricultural production. These standards are known as the cross-compliance requirements and they are described in more detail in sections IV and V of this report.

3. The Danish Food Industry Agency ("the Food Agency") has the overall responsibility for the administration. The Danish Plant Directorate is conducting spot-check inspections in order to ascertain the correctness of the data on farmland size which the farmers have entered in their application forms. The Ministry of Food has developed a control framework to ensure that the individual farms are complying with the cross-compliance requirements. Part of the control is conducted on the basis of risk analyses. The Danish Plant Directorate, the Danish Veterinary and Food Administration ("the Food Administration") and the municipalities are responsible for the control which should be based on risk analyses. The Food Agency, the Danish Agency for Spatial and Environmental Planning and the Danish Forest and Nature Agency are responsible for the development of a few risk analyses.

4. The objective of the study was to determine whether the Ministry of Food's administration of applications under the Single Payment Scheme and the cross-compliance control is satisfactory. The report answers the following three questions:

- Does the Food Agency's process Single Payment Scheme applications in a qualified and timely manner?
- Has the Ministry of Food organised the control of cross-compliance requirements in a satisfactory manner?
- Has the Food Agency ensured that the control of cross-compliance is conducted in a satisfactory manner?

Cross-compliance concerns the requirements to, for instance stable systems, ear tagging and permanent pastures along water courses.

MAIN FINDINGS AND CONCLUSIONS

Rigsrevisionen finds that the Food Agency does not in all cases have access to updated information on the size of the farmland which applicants are claiming payment for under the Single Payment Scheme. Rigsrevisionen therefore recommends that the Food Agency should aim to procure more updated information. Rigsrevisionen is of the opinion that the Ministry of Food's administration of the cross-compliance control is not entirely satisfactory. The Ministry has in recent years implemented initiatives to improve the cross-compliance control, but not all deficiencies have been remedied by these initiatives. The Ministry of Food should consider a more effective organisation of the cross-compliance control.

This overall assessment is based on the following findings:

The size of the eligible farmland cannot be immediately determined from many of the applications under the Single Payment Scheme. The Food Agency has set ambitious targets for the processing time and these have been achieved for most of the period.

- In approximately one third of the applications which Rigsrevisionen reviewed, the Food Agency questioned the correctness of the size of farmland indicated in the applications. The reason is that the Food Agency does not have access to updated information on the size of the farmland, for instance because the applicants do not always report changes in the size of farmland to the Agency. Rigsrevisionen recommends that the Food Agency, taking into consideration the technical and financial aspects, should aim to increase, for instance the frequency of physical measurements or the use of satellite images in order to procure more updated information on the size of the eligible farmland.
- In some instances, the Food Agency uses the results of the measurements performed by the Danish Plant Directorate to determine the size of farmland. The Food Agency should make the measurement method applied by the Danish Plant Directorate available to the applicants and thereby enable them to provide correct data in their applications.
- The Food Agency has for most of the period achieved the targets set for processing time, which means that payments have been made to the applicants earlier than required by the Council Regulation. However, the targets set for 2008 were not achieved.

The Ministry of Food's organisation of the cross-compliance control has not been entirely satisfactory. The Food Agency should have entered agreements with the municipalities on the implementation of the control. Furthermore, acting in accordance with the control framework is consuming excessive resources.

- The Ministry of Food has no authority over control authorities outside the ministerial remit and is therefore unable to ensure that the control is conducted in compliance with the Council Regulation. The Food Agency has therefore made an agreement with the authorities concerning the implementation of the control. However, these agreements were not made till 2007 and they do not include the municipalities. Rigsrevisionen is of the opinion that the Food Agency should have made agreements with all the control authorities when the reformed CAP became effective.

- Rigsrevisionen is of the opinion that the Food Agency's executive order should include a listing of the institutions which are actually responsible for the implementation of the control.
- Acting in accordance with the control framework is consuming excessive resources because the control authorities are conducting identical tasks and performing more cross-compliance controls than required. The cross-compliance controls are treated as national checks which should have been made in any circumstance, but the cross-compliance control may include additional requirements that are to be subjected to control, and the results of the control are to be reported in a specific format. The Food Agency is currently looking into the possibilities of carrying out a centralized risk analysis of the municipal area as the municipalities are conducting most of the control.
- The Ministry of Food has specified a number of cross-compliance requirements to ensure good agricultural and environmental standards, but the Ministry has not been able to document its selection of requirements.
- The Ministry of Food should aim to ensure that the assessment of compliance with the cross-compliance requirements becomes less dependent on estimates. However, around 50 per cent of the requirements concern legislation within the jurisdiction of other ministerial remits, and the Ministry has therefore contacted these ministries with a view to making the requirements more measurable. Rigsrevisionen is of the opinion that the Ministry should follow up on its enquiries.

The Food Agency has not ensured that the cross-compliance control is conducted in an entirely satisfactory manner. The Food Agency has taken initiatives to improve the control, but the risk analyses which provide the basis for the control are still not adequate.

- Up to 2007, the risk analyses which were available to the control authorities were generally inadequate and they were developed too late in the process. Against that background, the Food Agency has intensified its review of the risk analyses which have subsequently improved. However, the risk analyses developed by in particular the municipalities are still inadequate.
- The Food Agency did not till 2007 ask for documentation of the control in a control report, as prescribed by the Council Regulation. Due to the significance of this matter, Rigsrevisionen is of the opinion that the requirement for documentation should have appeared from the Agency's executive order when the CAP reform took effect.
- Generally, the Food Agency has not secured information on the control results which were available when subsidy payments were due, which could have ensured payment of the correct subsidy.
- Up until 2008, the Food Agency in many instances assured the quality of the cross-compliance control without having access to the necessary control reports from the control authorities. Since the beginning of 2008, the Food Agency has intensified its quality assurance activities. The Food Agency now also procures control reports in the instances where the cross-compliance requirements have been violated.

II. Introduction

A. Background

The purpose of the reform was to separate subsidies from production in order to encourage the production of agricultural products demanded by consumers rather than those leading to the highest subsidy.

5. The report is about the Ministry of Food, Agriculture and Fisheries' ("the Ministry of Food") administration of the EU's agricultural subsidies under the so-called Single Payment Scheme which took effect after the Common Agricultural Policy (CAP) reform in 2005. Rigsrevisionen initiated the examination because the value of the Single Payment Scheme in Denmark is substantial – approximately DKK 7.2 billion in 2007. Furthermore, the Single Payment Scheme is EU funded which means that Denmark may be liable to repay part of the funds to the EU if the administration is considered inadequate.

6. The EU CAP reform was implemented by Council Regulation 1782 of 29 September 2003. Among other things, the reform introduced two significant changes to the administration of the agricultural subsidies: The better part of the subsidy payments are now dependant on the size of the farmland. (The processing of the applications is being examined in section III of this report.) Secondly, applicants must now comply with a number of standards concerning the agricultural production. These standards are known as the cross-compliance requirements and they are described in more detail in sections IV and V of this report.

In Denmark, the reform has been implemented so that it will not significantly change the subsidies paid to individual farms. Accordingly, subsidies are granted on the basis of the amounts granted prior to the reform.

7. Subsidy applications must be submitted to the Food Agency each year. The Food Agency then evaluates whether the land concerned is eligible for subsidies and has been correctly measured. A physical check during which the Danish Plant Directorate measures the land may form part of this evaluation. Once the land data have been approved and the applicant meets the other subsidy conditions, subsidies are disbursed. Subsidies will be reduced if applicants apply for subsidies for areas whose size has been overstated. The Food Agency is responsible for the payment of subsidies.

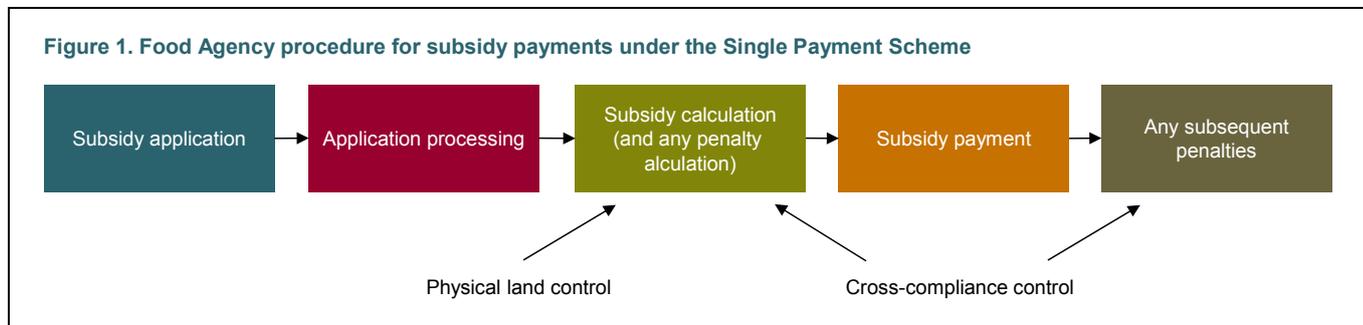
After the reform, applicants must also comply with a number of cross-compliance requirements relating partly to the provision of favourable and healthy conditions for the livestock on the land concerned. In 2008, there were 108 requirements relating to the environment, animal welfare and public, animal and plant health. The cross-compliance requirements in these areas have already been implemented in Danish legislation. The Ministry of Food has laid down a further five requirements for good agricultural and environmental condition, and these are all termed cross-compliance requirements in this report.

Each year, the Plant Directorate, the Danish Veterinary and Food Administration ("the Food Administration") and the municipalities physically check compliance with the requirements. These authorities carry out the checks partly on the basis of their own risk analyses. The Food Agency, the Danish Agency for Spatial and Environmental Planning and the Danish Forest and Nature Agency are responsible for preparing some of the risk analyses. As the body with overall responsibility for administering the Single Payment Scheme, the Food Agency monitors the checks made. Non-compliance with the cross-compliance requirements

In 2005 and 2007, subsidies to approximately every third farm were reduced after compliance control of cross-compliance requirements.

may reduce the subsidies paid to the farm. If subsidies have already been disbursed, the Food Agency will claim full or partial repayment from the recipients of subsidies paid.

Figure 1 illustrates the procedure for subsidy payments under the Single Payment Scheme.



8. In 2008, there were approximately 56,700 subsidy recipients under the Single Payment Scheme and by the end of March 2009, subsidy payments amounted to DKK 6.7 billion. The payment of subsidies has not been completed yet. In 2007, DKK 7.2 billion were paid to 59,100 recipients. Subsidies are fully reimbursed by the European Commission ('the Commission'). Accordingly, the Single Payment Scheme has significant financial implications, and inadequate administration may give rise to claims from the EU for full or partial repayment of subsidies.

9. Following a visit to Denmark in 2006, the Commission pointed out that in several cases, cross-compliance control had not been carried out on the basis of a satisfactory sample of applicants. In addition, the control had not been satisfactorily documented. As a result of this criticism, the Commission proposes that Denmark repay subsidies in the amount of DKK 42 million for the years 2005-2006. Rigsrevisionen has not included this issue in its examination because the EU has not yet made a final decision in the matter.

B. Objective, delimitation and method

10. Rigsrevisionen considers it essential to examine whether the Ministry of Food's administration of Single Payment Scheme applications and cross-compliance control is satisfactory. The report answers the following three questions:

- Does the Food Agency's process Single Payment Scheme applications in a qualified and timely manner?
- Has the Ministry of Food organised the control of cross-compliance requirements in a satisfactory manner?
- Has the Food Agency ensured that the control of cross-compliance is conducted in a satisfactory manner?

11. The examination is limited to the part of the Single Payment Scheme administration that concerns application processing and the control of compliance with cross-compliance requirements.

The examination has not assessed how the level of subsidies was determined when the Single Payment Scheme was introduced in Denmark. Furthermore, the examination does not include a separate audit of the case-processing system "CAP Long Term", which the Food Agency is developing for processing applications.

The examination relates to the period from 2005 up to and including 2008 to the extent data are available.

12. The examination is based on interviews with the department of the Ministry of Food, the Food Agency, the Plant Directorate, the Food Administration, the Forest and Nature Agency and the Agency for Spatial and Environmental Planning. In addition, Rigsrevisionen interviewed agricultural industry organisations, agricultural consultants, Local Government Denmark, and researchers from the University of Copenhagen and Copenhagen Business School.

13. For the purpose of the examination, Rigsrevisionen reviewed 66 subsidy applications under the Single Payment Scheme, risk analyses that form the sampling basis for applications subject to control, and documentation related to 75 spot checks during 2005-2007. In addition, Rigsrevisionen participated in a spot check of a farm carried out by the Food Administration. The examination is also based on the review of CAP reform material, including the statutory framework, public authority agreements, memoranda and information material.

14. A draft report has been submitted to the Ministry of Food. The Ministry of Food has subsequently obtained comments from the Ministry of the Environment and Local Government Denmark. These comments have been incorporated in the report to the widest possible extent.

III. Processing Single Payment Scheme applications

MAIN CONCLUSION

The size of the eligible farmland cannot be immediately determined from many of the applications under the Single Payment Scheme. The Food Agency has set ambitious targets for the case-processing time and these have been achieved for most of the period.

15. Rigsrevisionen has examined whether the Food Agency has established a qualified and fast procedure for processing applications under the Single Payment Scheme. For this purpose, Rigsrevisionen has examined whether the Food Agency:

- has based its determination of land size on updated figures
- has set ambitious case-processing targets and achieved them.

Determining land size

16. Applications for Single Payment Scheme subsidies must be submitted once a year to the Food Agency, which is responsible for payment of subsidies. The application must give precise data regarding the size of the land that the application concerns. If the size of the land has been overstated in the application, subsidy payments are only made in respect of the land approved. If excess land size accounts for more than 3%, or 2 ha, an administrative penalty is imposed on the applicant. The size of the penalty depends on the excess amount of land.

17. Approval of land size assumes that the applicant has measured the land correctly and only included eligible farmland. This requires applicants to estimate which parts of the land can be considered farmland according to the regulation. However, the nature of the land may change from one year to another, and in such cases applicants typically have to make new measurements before submitting an application.

18. Initially, the Food Agency compares all application data on land size with the data already held by the Agency. A few applications are sampled for partly risk-based spot checks during which the land is measured physically. Applications not sampled for spot checking and whose land data correspond to those held by the Food Agency are approved.

However, the Food Agency's comparison of land data may mean the applicant's land data cannot be approved in the first instance. The Agency has disputed the correctness of the land stated in applications in approximately one-third of the applications reviewed by Rigsrevisionen. The problems identified concerned deviations between the Agency's data and those submitted by the applicants.

The deviations may reflect that the Food Agency's area data are not always fully updated because, as mentioned earlier, the land may change character from one year to another. The Agency's area data are updated primarily on the basis of the Plant Directorate's physical measurements, data provided by applicants and aerial land photos. The Agency uses aerial photos to assess the characteristics of the land. However, not all land is subject to annual physical measurement by the Plant Directorate, and the aerial photos used may be up to 2½ years old.

If an applicant disagrees with the Food Agency about the size of the land, the Agency will usually ask the Plant Directorate to measure the land concerned in order to have a fully updated measurement.

19. Spot checks of applications are made by land measurements derived from satellite images taken by the Faculty of Agricultural Sciences or by the Plant Directorate's physical land measurements. If the satellite image results deviate from the data provided by the applicant, the Plant Directorate will make one or more supplementary physical measurements. The spot check may show that the applicant failed to measure the land correctly or included non-eligible land, in which case the application will not be approved.

However, an applicant's measurement may be rejected because it does not correspond to that made by the Plant Directorate. The Food Agency considers the Plant Directorate's measurement to be correct, but does not inform the applicant of the measuring method used by the Plant Directorate.

The Ministry of Food has disclosed that it is considering making the measuring method used by the Plant Directorate available to applicants. However, the Ministry of Food believes that the degree of uncertainty resulting from using another measuring method will not produce a measurement deviating by more than 3% or 2 ha from those made by the Plant Directorate. Therefore, the uncertainty will not reduce the subsidy amounts.

Target for case-processing time

20. Under the regulation, applications for subsidies must be filed before the end of April, and subsidies must be paid from 1 December in the application year until 30 June the following year.

21. From the time the scheme was established, the Food Agency has set subsidy payment targets that are considerably more ambitious than those stated in the regulation. In 2005, the Agency's target was for all subsidies to be authorised for payment before year-end, and no less than 85% before 1 December. The target was achieved. Overall, the target for 2006 was identical to the 2005 target and was almost fully achieved. However, in 2007, the target was adjusted downwards so that only 95% of subsidies were to be authorised for payment by 31 December and 87% by 3 December. These targets were achieved. The same target was set for 2008. The Food Agency has stated that the target for the first payment was achieved regarding 87% of the applications, whereas only 92% of the applications had been authorised for payment by the end of the year. Accordingly, the target was not achieved.

22. According to EU rules, subsidies cannot be paid until the land size has been finally determined and it has been established that the other subsidy conditions have been satisfied. Applicants sampled for land spot checks may risk a delay in the payment of subsidies if the Plant Directorate fails to carry out all checks before the time when the Food Agency can start making payments according to the regulation.

As from 2008, the Plant Directorate and the Food Agency have exchanged information electronically for the purpose of the control. Rigsrevisionen's review of cases has shown that this reduces case-processing time. So far, the Food Agency has scanned in the relevant documents for the control, after which the scanned files are transmitted electronically to the control authorities. The Plant Directorate reports the results of the control to the Food Agency

by ordinary mail. Rigsrevisionen's review showed that an average of 23 days elapsed from the Plant Directorate's physical control had been completed until its results were reported to the Food Agency.

23. The Food Agency is developing a new IT-based case-processing system ("CAP Long Term") for administering EU schemes. The initial phase of the system should have been operational during the first quarter of 2008, but has been delayed. The system is not expected to be fully commissioned until the beginning of 2010. Until then the Food Agency will use the existing case-processing system ("CAP Short Term"), which was adjusted for use in the transitional period after the CAP reform.

The Food Agency has stated that the new system is being developed primarily to replace the existing case-processing system, which is outdated. However, although the new system is not expected to significantly improve case-processing efficiency, it will be more user-friendly for applicants. The Food Agency does not expect the new system to reduce case-processing time.

Assessment

24. In approximately one third of the applications which Rigsrevisionen reviewed, the Food Agency questioned the correctness of the size of farmland indicated in the applications. The reason is that the Food Agency does not have access to updated information on the size of the farmland, for instance because the applicants do not always report changes in the size of farmland to the Agency. Rigsrevisionen recommends that the Food Agency, taking into consideration the technical and financial aspects, should aim to increase, for instance the frequency of physical measurements or the use of satellite images in order to procure more updated information on the size of the eligible farmland.

25. In some instances, the Food Agency uses the results of the measurements performed by the Danish Plant Directorate to determine the size of farmland. The Food Agency should make the measurement method applied by the Danish Plant Directorate available to the applicants and thereby enable them to provide correct data in their applications.

26. The Food Agency has for most of the period achieved the targets set for processing time, which means that payments have been made to the applicants earlier than required by the Council Regulation. However, the targets set for 2008 were not achieved.

IV. Framework for cross-compliance control

MAIN CONCLUSION

The Ministry of Food' organisation of the cross-compliance control has not been entirely satisfactory. The Food Agency should have entered agreements with the municipalities on the implementation of the control. Furthermore, acting in accordance with the control framework is consuming excessive resources.

27. Subsidy recipients under the Single Payment Scheme must comply with a number of cross-compliance requirements for agricultural production. The Ministry of Food has organised the related control in accordance with the EU regulation. This means that the Ministry has appointed authorities to be responsible for preparing the risk analyses that form the basis of spot checks and for carrying out quality assurance of the control. The Ministry is also responsible for the administration of the drafting of guidelines setting out which requirements must be controlled and how any non-compliance should be evaluated.

Rigsrevisionen has examined whether the Ministry of Food has created a satisfactory framework for controlling cross-compliance requirements. To assess this Rigsrevisionen has examined whether:

- control procedures have been organised to ensure that duties are performed in compliance with the regulation and to avoid excessive resources being used for the control
- the selected cross-compliance requirements are well-founded and measurable.

A. Organising control duties

Assigning control duties

28. Issued in 2004, Regulation No. 796 stipulates that the specialised national authorities who already carry out control in the relevant areas must handle cross compliance control. This is part of the general control of compliance with Danish legislation, of which the cross-compliance requirements also form part. However, the regulation also leaves an option for the national payment authority – in Denmark, the Food Agency – to assume these duties if it is capable of carrying out the control as effectively as the specialised authorities.

The Ministry of Food has decided to decentralize the control duties to the authorities already carrying out control in the areas concerned according to Danish legislation.

29. Cross-compliance requirements relate to legislation in other ministerial remits, including that of the Ministry of the Environment.

In some EU countries control is centralized, while in others, it is carried out decentrally by specialized control authorities or by a combination of the two.

The current executive order on cross-compliance stipulates which authorities are responsible for the control procedure, including the sampling of farms for control on the basis of risk analyses and performance of the physical control. Table 1 illustrates this assignment of duties.

Table 1. Outline of control authorities

	Control authority	Number of requirements
Environment	Municipalities	18
	Plant Directorate	11
Health	Plant Directorate	14
	Food Administration	20
Animal welfare	Food Administration	45
Good agricultural and environmental condition	Plant Directorate	5

Source: Executive order on cross-compliance.

The table shows that control duties have been assigned to the Plant Directorate, the Food Administration and the municipalities and that cross-compliance requirements in the environmental and health areas are being controlled by more than one control authority.

30. However, in several cases the actual assignment of control duties differs from the executive order, because in some cases the authorities have agreed on a different assignment of these duties. This applies, for example, to the Forest and Nature Agency and the Agency for Spatial and Environmental Planning, both of which, according to agreements, conduct risk analyses for some of the cross-compliance requirements within the jurisdiction of the Ministry of the Environment. Another example is the executive order provision according to which the Plant Directorate is referred to as the authority responsible for controlling the requirements relating to good agricultural and environmental condition. However, although the Food Agency is responsible for the control of these requirements, it has made an agreement with the Plant Directorate to perform the control, whereas the Food Agency conducts the risk analysis.

The Ministry of Food has stated that the executive order is intended to communicate which authority performs the control and not which authority is responsible for the control. However, Rigsrevisionen is of the opinion that the executive order should also state the actual assignment of responsibilities.

Basis of control framework

31. The Food Agency holds the overall responsibility for regularly monitoring whether control procedures are performed according to the provisions of the regulation. This responsibility puts the Food Agency under an obligation to take steps to rectify any inadequate control.

The Food Agency issued executive order no. 1519 of 22 December 2004, which lays down the detailed content of cross-compliance control and stipulates that its results must be reported to the Food Agency in special formats. The executive order specified which authorities were to perform the control by referring to the authorities appointed to perform control in the same areas under national legislation.

32. The municipalities, the Forest and Nature Agency and the Agency for Spatial and Environmental Planning, do not fall under the Ministry of Food. Accordingly, the Food Agency has no authority to order them to remedy any deficiencies established by the control. Until 2008, this also applied to the Food Administration, previously part of the former Ministry for Family and Consumer Affairs. Such authority could be provided through an executive order issued by the ministries concerned. However, to date, no such executive orders have been issued.

Instead, the Food Agency has complied with its obligation referred to earlier by entering into agreements with the relevant control authorities. The control agreements specify the control duties and performance requirements. In 2007, the Food Agency entered into control agreements with the authorities, except the municipalities, stipulating the details of the control duties. The Ministry has not elaborated further on the background for not entering into agreements with the municipalities.

Resource consumption for the control framework chosen

33. The Ministry of Food finds that the control framework chosen leads to economies of scale because control authorities may, for example, check cross-compliance requirements and carry out control according to other national legislation during the same spot check. Thus, a spot check both carries out a national control procedure and performs cross-compliance control.

However, the Ministry of Food has not conducted a general analysis of the budget or resources to identify whether organising the cross-compliance control differently would have been more economical.

34. Rigsrevisionen's examination showed that the way the control is organised results in excessive resource consumption.

First, the chosen decentralized control framework means that roughly 100 control authorities carry out identical tasks such as risk analyses, spot checks and the reporting of cross-compliance control results. Data transmission between the IT systems of the various control authorities is difficult. In practice, this means that control authorities report the results of the control not only to their own IT system, but also to the Food Agency's reporting system. In addition, all control authorities must acquaint themselves with the control guidelines and cross-compliance control instructions. Decentralized control also requires more coordination on the part of the Food Agency.

Second, the control framework chosen means that more spot checks are carried out than are necessary. The cross-compliance requirements that individual control authorities are responsible for controlling relate partly to the same farms. Accordingly, such farms form part of several of the populations from which the authorities sample their subjects for spot checks. Because all samples amount to no less than the required 1% of the population relevant for any given authority, for instance more farms are generally selected for sampling than if a central authority had handled the sampling. The control performed by the municipalities also increases the volume of spot checks beyond the necessary figure. This reflects that approximately a quarter of the municipalities have fewer than 100 farms, which equals one spot check on less than one farm. Overall, the control performed by the municipalities will therefore exceed the 1% minimum requirement stated in the regulation. Table 2 shows the number of implemented and required controls in Denmark.

Table 2. Cross-compliance controls on farms during the period 2005-2008 (Number)

	2005	2006	2007	2008
Applicants	70,008	62,172	59,100	56,700
Farms actually controlled	2,853	4,305	2,609	-
Controls required	700	622	591	567

Note: Figures were calculated in February 2009. The Food Agency has not finally calculated the number of 2008 controls. The number of controls required is calculated on the basis of the regulation requirement that 1% of the farms applying for subsidies must be subject to control.

Source: The Food Agency.

The table shows that more than four times as many farms were subject to cross-compliance control than required, which is a consequence of the decentralized framework chosen by the Ministry of Food.

35. In a memorandum from 2007 to the Food Agency, the Plant Directorate recommended the establishment of a separate specialized body of controllers to check all cross-compliance requirements. According to the memorandum, centralized control would reduce the number of farms controlled and ensure more uniform grading throughout the country. Moreover, centralized control would cut resource consumption, ease farmers' administrative burdens and ensure more efficient implementation of control.

36. In March 2007, the Minister for Food, Agriculture and Fisheries approached the EU Commissioner for Agriculture precisely pointing out that a decentralized framework like that used in Denmark will sample more applicants for control than necessary. Consequently, the Minister proposed an amendment of the rules according to which all control authorities were only to sample an aggregate of 1% of the total number of applicants for spot checks. However, the rules were not subsequently amended.

37. The Ministry of Food has stated that although more applicants are sampled for control than required, the overall control workload does not increase because the cross-compliance control performed also counts as national control that would be implemented anyway.

However, Rigsrevisionen's examination has shown that performed cross-compliance control entails more work for the control authority than ordinary national control, because the higher number of requirements that may have to be checked increases the scope of cross-compliance control and because the control results have to be calculated by allocating grades that have to be reported to the Food Agency in a special format.

38. The Ministry of Food has stated that it is currently investigating the possibility of making a centralized risk analysis for the municipality area.

Assessment

39. The Ministry of Food has no authority over control authorities outside the ministerial remit and is therefore unable to ensure that the control is conducted in compliance with the Council Regulation. The Food Agency has therefore made an agreement with the authorities concerning the implementation of the control. However, these agreements were not made until 2007 and they do not include the municipalities. Rigsrevisionen is of the opinion that the Food Agency should have made agreements with all the control authorities when the reformed CAP became effective.

40. Rigsrevisionen finds that the Food Agency's executive order should include a listing of the institutions which are actually responsible for the implementation of the control.

41. Acting in accordance with the control framework is consuming excessive resources because the control authorities are conducting identical tasks and performing more cross-compliance controls than required. The cross-compliance controls are treated as national checks which should have been made in any circumstance, but the cross-compliance control may include additional requirements that are to be subjected to control, and the results of the control are to be reported in a specific format. The Food Agency is currently looking into the possibilities of carrying out a centralized risk analysis of the municipal area as the municipalities are conducting most of the control.

B. Cross-compliance requirements

Drafting the requirements

42. The cross-compliance requirements relating to the environment, animal welfare and health originate from regulations and directives whose requirements were already part of Danish legislation or have subsequently been embodied herein. The Ministry of Food has thus laid down the requirements in the form in which they appear in the national statutory framework.

43. The requirements for good agricultural and environmental condition, however, originate exclusively from ten norms stipulated in the regulation, within the scope of which member states must draft requirements that make allowance for national conditions.

The Ministry of Food has laid down five requirements relating to two of the ten norms. The Ministry found it appropriate only to lay down requirements regarding issues that constitute a genuine problem in Denmark and in respect of which the existing national legislation is inadequate.

44. Rigsrevisionen has asked the Ministry of Food to document which requirements for good agricultural and environmental condition may be relevant for Denmark. However, the Ministry of Food has been unable to provide such documentation.

Requirement measurability

45. The control authorities assess the extent to which individual farms have fulfilled the cross-compliance requirements. The gravity, extent and duration of any non-fulfilment forms the basis of the grade accorded to each cross-compliance requirement. The overall grading determines the reduction in subsidy.

Because the number of control authorities is 100, see the executive order on cross-compliance, it may be difficult to achieve uniformly graded evaluations. To ensure uniform evaluations, the Food Agency has drawn up guidelines in cooperation with the control authorities involved laying down criteria for judging whether the requirements have been fulfilled.

46. The examination showed that in some cases, control must be based on a concrete assessment, either because a requirement is unquantifiable or because the wording of the guidelines is to some extent unclear. One such example is the requirement that agricultural waste must not pollute ground water or cause significant nuisance or unhygienic conditions. However, the guidelines do not define significant nuisance or unhygienic conditions, nor do they state how the waste should be stored to prevent significant nuisance, etc.

The Ministry of Food has stated that it has not been possible to make the requirements more measurable because roughly half the requirements concern legislation under the jurisdiction of other ministries. The Ministry of Food has therefore contacted these ministries.

In Denmark, five requirements regarding good agricultural and environmental condition apply. Non-cultivated land must have ground cover. If the ground cover is destroyed, it must be restored. The land must be cut at least once every second year, it may not be irrigated or fertilized, nor may chemicals be used.

Assessment

47. The Ministry of Food has specified a number of cross-compliance requirements to ensure good agricultural and environmental standards, but the Ministry has not been able to document its selection of requirements.

48. The Ministry of Food should aim to ensure that the assessment of compliance with the cross-compliance requirements becomes less dependent on estimates. However, around 50 per cent of the requirements concern legislation within the jurisdiction of other ministerial remits, and the Ministry has therefore contacted these ministries with a view to making the requirements more measureable. Rigsrevisionen is of the opinion that the Ministry should follow up on its enquiries.

V. Carrying out cross-compliance control

MAIN CONCLUSIONS

The Food Agency has not ensured that the cross-compliance control is conducted in an entirely satisfactory manner. The Food Agency has taken initiatives to improve the control, but the risk analyses which provide the basis for the control are still not adequate.

49. The Food Agency is responsible for ensuring that control is performed according to the provisions of the regulation so that agricultural subsidies are disbursed correctly. In this connection, the Food Agency also has an obligation to take action if the control does not work as intended.

To evaluate whether this function has been handled satisfactorily, Rigsrevisionen has examined whether the Food Agency has ensured that:

- the sampling of farms for spot checks is based on selection criteria whose relevance is based on risk analyses
- controls have been performed and documented according to current requirements.

A. Sampling farms for control based on risk analysis

Risk analyses

50. According to Council Regulation 1782 issued in 2003, compliance with cross-compliance requirements must be controlled annually. Control is carried out by way of spot checks, comprising 1% of the farms applying for subsidies under the Single Payment Scheme. Spot checks are conducted at farms, 20-25% of which have been sampled randomly, whereas the remainder are sampled on the basis of selection criteria intended to identify subsidy recipients where the likelihood of discovering non-compliance is highest. The relevance of the criteria chosen must be justified by a risk analysis conducted by the control authorities.

Preparation of risk analyses is a requirement under the EU regulation and subsequently specified in the Ministry of Food's executive orders. In addition, the Food Agency has drawn up guidelines with instructions on how to conduct the risk analysis. Box 1 shows the principal risk analysis requirements.

BOX 1. FOOD AGENCY REQUIREMENTS FOR RISK ANALYSES

The risk analysis requirements under European Commission Regulation No. 796 issued in 2004, are as follows:

- Samples of farms subject to control must be drawn on the basis of a risk analysis. A minimum of 1% of the farms must be sampled for control of all requirements which the controller is responsible for controlling.
- The risk analysis must be made on the basis of current legislation, or, alternatively, current requirements.

Moreover, the Food Agency has informed the control authorities in writing as well as in its guidelines on cross-compliance control that the risk analysis must satisfy the following requirements:

- a specific analysis of previous experience gained from the control must have been conducted before farms are sampled for control.
- risk criteria must be relevant, and the risk analysis must justify why the established criteria are considered to pose a special risk in relation to compliance with requirements.

51. According to executive order no. 1519 of 22 December 2004, the Food Agency must be informed no later than on 15 May about the farms sampled by the control authorities for control on the basis of the risk analyses.

This date has been set because the application deadline for subsidies under the Single Payment Scheme is late April. However, in order to complete the required number of cross-compliance controls, control authorities already start the control at the beginning of the year, because the control year follows the calendar year. The later risk analyses become available, the fewer controls can be based on these risk analyses as assumed in the regulation.

52. As mentioned earlier, according to the executive order, the Plant Directorate, the Food Administration and the municipalities prepare risk analyses for the cross-compliance requirements they are responsible for checking. In addition, according to separate agreement, the Food Agency, the Agency for Spatial and Environmental Planning and the Forest and Nature Agency have also been tasked with conducting risk analyses in relation to controlling some of the requirements.

53. In late 2006, the Food Agency drew a sample of the control authorities' risk analyses from 2005 and 2006 for review. Since 2007, the Food Agency has subjected all risk analyses to review.

Rigsrevisionen has reviewed the control authorities' risk analyses. The review is supplemented by the Food Agency's evaluation and showed the following:

54. *The Plant Directorate* prepares an overall risk analysis for all the requirements the Directorate is responsible for checking. The risk analysis for 2005 was undated, and it is therefore unclear whether the spot check sample was drawn on the basis of the risk analysis. Nor was any justification given for the selection criteria used. In 2006, the sample drawn was solely based on a number of limited analyses and not, as required, on an overall analysis covering all requirements. The risk analysis was also dated too late. In the Food Agency's opinion, the 2007 risk analysis was not in the nature of an analysis proper and lacked justification for the selection of the three criteria that formed part of the analysis. Rigsrevisionen agrees with the Food Agency's evaluation. These deficiencies may be the reason that the Plant Directorate's own 2007 statement showed that more instances of non-compliance were established at randomly selected farms than at farms selected on the basis of a risk analysis.

Rigsrevisionen has not reviewed the risk analysis for 2008. The Food Agency has reviewed it and found no documentation of any proper justification for the criteria selected.

55. *The Veterinary and Food Administration* has prepared risk analyses for 2005-2008 concerning the cross-compliance requirements that the Agency is responsible for checking. However, these analyses lacked justification for the selection criteria used and were dated after the deadline fixed for drawing the sample. Consequently, it is unclear on which basis the sample was drawn. The Food Agency found that the risk analyses were not in the nature of proper analyses, and that the 2006 analysis did not comply with the EU regulation because it was not an overall analysis of all requirements to be checked by the Food Agency. Rigsrevisionen agrees with the Food Agency's evaluation.

56. *The Food Agency* reviewed *the municipalities'* risk analyses. In 2005, the Agency sampled the risk analyses of ten municipalities for review. The review caused the Food Agency to doubt whether the analyses satisfied the requirements of the EU and the executive order because half the samples were based on random rather than risk-based samples. Moreover, several of the analyses did not provide the information required by the executive order. The Food Agency reviewed seven municipalities' 2006 analyses, of which one municipality had sampled farms for control on a random basis. Two municipality analyses were dated after the deadline for drawing samples. Rigsrevisionen also reviewed the risk analyses submitted and established that on several occasions, the municipalities had failed to set up sampling criteria or justify them. On the basis of the deficiencies established, the Food Agency reviewed all 98 municipalities' risk analyses for the 2007 control year. The review showed that more than half the analyses did not satisfy EU requirements. More than one-third of the municipalities had not justified the relevance of the criteria on which the risk analyses were based. Rigsrevisionen agrees with the Food Agency's evaluation.

In 2008, the Food Agency also reviewed all municipal risk analyses and established that improvements had been made, since now only approximately one-fifth of the municipalities had failed to conduct a risk analysis and justify their choice of selection criteria. Rigsrevisionen has not reviewed the municipalities' risk analyses for 2008.

57. *The Agency for Spatial and Environmental Planning and the Forest and Nature Agency* (formerly combined in the Forest and Nature Agency) conducted risk analyses until 2007. In these analyses, one of the two selection criteria applied was not justified and did not seem relevant. Furthermore, the risk analyses were dated after the deadline for drawing samples. Since 2007, these two agencies have had their risk analyses prepared by the Plant Directorate, although they remain responsible for the task. Rigsrevisionen has not evaluated these risk analyses.

58. *The Food Agency* did not prepare risk analyses proper in 2005 and 2006 regarding the requirements for good environmental and agricultural condition. Similarly, the Agency sampled farms for control on the basis of criteria not targeted at controlling the requirements for good environmental and agricultural condition. In 2007 and 2008, the Food Agency conducted proper risk analyses. Rigsrevisionen's review of these analyses has not given rise to comments.

Assessment

59. Up to 2007, the risk analyses which were available to the control authorities were generally inadequate and they were developed too late in the process. Against that background, the Food Agency has intensified its review of the risk analyses which have subsequently improved. However, the risk analyses developed by in particular the municipalities are still inadequate.

B. Control performed

Control authorities' documentation of control

60. According to the regulation, each single check must be documented in a report stating, for example, which requirements are controlled and the extent and result of the control.

61. In 2006, the Food Agency spot-checked 52 control reports from 2005 and 2006 to ensure that the control had been documented. The Food Agency found that generally, the control reports did not satisfy the requirements of the regulation and the executive order because only 12 out of 52 control reports had no deficiencies.

62. Rigsrevisionen reviewed 75 control reports from the period 2005-2007 to evaluate whether the regulation requirements for documentation had been complied with. The review showed that in 9 out of 42 instances for 2005 and 2006, the control authorities' reporting did not satisfy the requirements of the regulation.

63. The Food Agency has taken steps to improve the control documentation by incorporating a stipulation in executive order no. 279 of 22 February 2007 that the control must be documented in a control report. Previously, the regulation's requirement for documentation by way of a control report was not included in the executive order. In addition, the Food Agency prepared a control report template that fulfils the requirements for control reports and, as stipulated by the executive order, must be applied by municipalities as from 2008.

However, Rigsrevisionen's review of control reports from 2007 showed that six of 33 reports were inadequate, failing, for example, in several instances to state the spot-check results.

Control authority reporting to the Food Agency

64. Under the regulation, the results of the control must be reported to the Food Agency in standard templates no later than two months after it took place. The standard templates form the basis of the Food Agency's determination of the subsidy to which the applicant is entitled.

Rigsrevisionen's review of 75 standard templates and the related control reports showed that templates had been submitted too late in 30 cases. Moreover, the Food Agency has stated that all control results for 2007 had not been reported until the end of December 2008. Accordingly, the Food Agency has not had access to the control results available at the time subsidies were paid and which could have formed the basis of paying the correct amount of subsidy. In addition, the Food Agency also needs the control results to enable repayment of part of the subsidy to be claimed as soon as possible after disbursement, if a farmer has failed to comply with any of the requirements.

Food Agency's quality assurance of control

65. Until 2007, the Food Agency approved most standard templates without first subjecting them to quality assurance. The Food Agency incorporated a requirement in executive order no. 279 of 22 February 2007 for the control authorities to operate a quality assurance system to ensure that control was performed and reported in compliance with the executive order.

The Food Agency has stated that from 2007 onwards, all standard templates established by the control authorities as not complying with the cross-compliance requirements have been sampled for quality assurance. The Food Agency also reviews sampled standard templates. The Food Agency has stated that quality assurance includes an evaluation of whether the control was performed in accordance with the requirements of the regulation and the executive order, for example, in terms of how non-compliance was assessed.

66. However, Rigsrevisionen's review of cases showed that the standard templates prepared by the control authorities do not include a description of the non-compliance and the grounds on which the evaluation is based. In addition, the control authorities are not including the

applicant's consultation response in the standard template. Consequently, the standard templates have not provided the Food Agency with sufficient information about the control to enable it to carry out proper case processing. Therefore, in case of complaints or doubt, the Food Agency has requested further material from the control authority, for example control reports. However, the review showed that the Food Agency did not possess control reports for one third of the standard templates and had thus carried out quality assurance on an inadequate basis. In consequence, in 2008, the Food Agency introduced a requirement in the executive order for control authorities to submit all control reports relating to the cases in which they had established non-compliance with the cross-compliance requirements. The Food Agency thus had a better basis for carrying out quality assurance of the control.

The Food Agency has stated that the authority to evaluate control results is vested in the control authorities. If the Food Agency is in doubt about the evaluation basis for the non-compliance, it contacts the control authorities for a re-evaluation of the control results. This means that control authorities need to subject their results to quality assurance.

67. The Ministry of Food has no authority vis-à-vis municipalities to ensure that control is performed and reported as required. The Food Agency has thus stated that its efforts in relation to the municipalities have primarily been advisory, e.g. the Food Agency has informed the municipalities how to perform the control at special seminars.

68. As mentioned earlier, the executive order on cross-compliance does not provide the Food Agency with authority to ensure that control authorities outside the jurisdiction of the ministry carry out cross-compliance control according to the regulation. The Food Agency has therefore entered into an agreement with all these authorities, except the municipalities. As stated in clause 39, Rigsrevisionen finds that the Ministry of Food ought to have entered into an agreement with the municipalities on the implementation of cross-compliance control.

Assessment

69. The Food Agency did not until 2007 ask for documentation of the control in a control report, as prescribed by the Council Regulation. Due to the significance of this matter, Rigsrevisionen is of the opinion that the requirement for documentation should have appeared from the Agency's executive order when the CAP reform took effect.

70. Generally, the Food Agency has not secured information on the control results which were available when subsidy payments were due, which could have ensured payment of the correct subsidy.

71. Up until 2008, the Food Agency in many instances assured the quality of the cross-compliance control without having access to the necessary control reports from the control authorities. Since the beginning of 2008, the Food Agency has intensified its quality assurance activities. The Food Agency now also procures control reports in the instances where the cross-compliance requirements have been violated.

Rigsrevisionen, 15 April 2009

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