

Dear Niels Peter Nørring

By letter of 2 December 2011, the Danish Agriculture and Food Council has written to the Danish Nature Agency requesting that the consultation period applicable to the supplementary consultation on the changes to the draft river basin management plans be extended to four weeks.

In the draft for the final river basin management plans, a number of changes have been made compared to the previous consultation versions. The Nature Agency therefore now submits the draft changes to the river basin management plans for a brief supplementary consultation *concerning changes regarding certain sections of watercourses*. The consultation is open to authorities and citizens whose properties will be affected by the changes to the river basin management plans. Under s. 30 of the Danish Act on Environmental Objectives, such consultation differs from the previous public consultation in that only authorities and citizens directly affected will be heard. The Nature Agency therefore assesses that there is no basis for altering the consultation period. See the enclosed appendix for an elaboration.

[...]

Yours sincerely

[*signed*]

Helle Pilsgaard

Vice Director

The Danish Nature Agency

Memorandum

Appendix

Memorandum on the supplementary consultation – process and legal basis

The supplementary consultation on changes to the draft river basin management plans has been initiated on the basis of the provision set out in s. 30, paragraphs 1 and 2, of the Danish Act on Environmental Objectives, which reads as follows:

Section 30. If, in connection with the adoption of the final river basin management plan, changes are made to the published proposal which fundamentally affect other authorities or citizens than those who caused the change by way of objection, the river basin management plan may not be adopted until the parties concerned have been given the opportunity to make a statement. The Ministry of Environmental Affairs will fix a deadline therefore.

Consequently, the general public is not consulted on the total revised draft river basin management plans. In such case, the Danish Nature Agency would obviously agree that a longer deadline was required, but this is only a focused consultation process for the purpose of allowing a few authorities and citizens to make a statement on the changes to the extent that they are significantly affected thereby.

In practice, this means that the individual land owner must be offered the opportunity to make a statement on changes that will affect his or her property, but, as a general rule, not other changes, and the Nature Agency is therefore of the opinion that the consultation period fixed meets the requirement laid down by s. 30 of the Act on Environmental Objectives.

In this connection, the Nature Agency points out that the provision concerning a supplementary consultation process provided for by s. 30 of the Act on Environmental Objectives is a nationally applicable rule which is not based on obligations under the Water Framework Directive. For this reason alone, the Nature Agency disagrees that the consultation period cannot raise any questions relating to the harmonization with the Water Framework Directive. Taking into consideration that this is, as mentioned, not a public consultation on the total revised draft river basin management plans, the Nature Agency further finds that the consultation period does not raise any harmonization issues with respect to the Aarhus Convention.

Based on the river basin management plans resemblance general governmental regulation, the Nature Agency ultimately finds that no questions may be asked regarding the link to the inquisitorial procedure within administrative law.