



> Postbus 20401 2500 EK Den Haag

European Commission
DG Sanco
Unit 7
Dr. R.P. Baayen

**Dep. of Agriculture, Fisheries
and Agribusiness**
Phytosanitary Affairs

Prins Clauslaan 8
's-Gravenhage
Postbus 20401
2500 EK Den Haag
www.minInv.nl

Contact
M.J. Gerritsen-Wielard
*EU-co-ordination Phytosanitary
Affairs*

T 070-3785782
m.j.gerritsen@minInv.nl

Date November 1 2010
Re The Netherlands' reaction to the 2010 EU Commission report: Evaluation
of the Common Plant Health Regime

Dear Robert,

With reference to your invitation to give views on the recommendations and options raised in the Working Document of the Conference "Towards a new plant health law" held on the 28th September 2010 herewith I send you the Dutch response. We have a few general remarks on some important issues for the phytosanitary system as a whole, as well as specific comments with regard to the individual recommendations. This reaction reflects our initial view on the recommendations and options that are presented. At a later stage of the process, when there will be a better understanding of the impact of the different options for the future, the Netherlands will take a final position on the options as presented.

General

First of all we would like to express our appreciation for the excellent work that has been done by the European Commission and the Food Chain Evaluation Consortium (FCEC) in the framework of the evaluation of the plant health system. The evaluation report provides for a very comprehensive and solid base for discussions on the reform of the European phytosanitary regime.

Before giving our comments on the individual recommendations we would like to take the opportunity to discuss some key points that in our view should be considered regarding the future plant health system.

Better regulation

The evaluation report draws attention to some shortcomings in the system. To address these shortcomings the report puts forward a number of proposals, which are mostly directed towards doing 'more, better, stricter'. This could lead to an even stricter and more complex phytosanitary regime and would therefore seem to lead towards increased (administrative) workloads for the public and private sector. In fact, the principles of "better regulation" (making things simpler and more effective, doing away with unnecessary regulations, etc.) should be guiding, leading to a "better, simpler and more efficient and effective" phytosanitary system.

Points of attention in this context are:

- Create flexibility in legislation in order to keep the plant health regime up-to-date and geared to the actual phytosanitary situation (e.g. smooth transition of harmful organisms between different categories, replace detailed rules by more general rules, focus only on the goal to be reached).
- Legislation should facilitate and not impede trade on the internal market: tightening of rules shouldn't lead to increase of administrative burden for the private and public sector (e.g. make use of knowledge and efforts of the private sector in inspection activities, responsibility sharing between public and private sector, eliminate rules where possible)
- Differentiation: if the goals of the new plant health regime are clear, possibilities for differentiation in phytosanitary measures could arise (e.g. differentiation in control measures, tailored to the local phytosanitary situation).

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Financial aspects

The principles of "Better regulation" will become even more important in view of the actual financial situation in a number of member states: many of the member states are facing economy measures in many cases leading to further cutting down available resources. At the same time, several of the report's proposed modifications would require additional financing (expansion of scope, expansion of solidarity regime, a financial instrument for emergency situations). In our view this is a serious cause for concern, especially since the report indicates that capacity and funding are already inadequate to the demands of the current plant health system. It is certainly open to doubt whether the various EU Member States and the European Commission will make additional funding for a new system available.

Solutions should therefore be sought by which the limited means and capacities available are employed so as to organize and equip the European phytosanitary system as efficiently and effectively as possible. Risk-based prevention and prioritization are important instruments by which the regime can be made more intelligent and risk-oriented.

Prevention at import

Import requirements are an important instrument to protect the European Community against introduction and spread of harmful organisms. According to one of the principles of the International Plant Protection Convention (IPPC) it is the responsibility of the exporting country to guarantee that the consignment meets the phytosanitary requirements of the importing country. The import inspection then serves as an audit on the guarantee given by the NPPO of the country of export. It is a fact of life that import inspections can never fully prevent the introduction of harmful organisms in the European Community. Rather than across-the-board tightening of all inspections at import stage, import inspections should be organized in a more intelligent way in order to exploit the limited inspection capacity in the most efficient and effective way. This could be reached by arranging the import inspections more risk-based: import inspections could be intensified where necessary, and the intensity could be decreased where possible. Inspection should pay most attention to the organisms or commodities/systems with the highest risk, being determined on the basis of Pest Risk Analyses/Commodity pathway analysis (see *specific remarks on recommendation 4*).

Internal market

For internal market trade the target should be a simple and robust system with the smallest possible administrative workload for companies and government, without giving up traceability and reliability (*see specific remarks on recommendation 7*).

Control measures/emergency action

In case of an outbreak of a harmful organism it is crucial to take prompt and proportional action. Compulsory development of contingency plans, for a limited number of organisms having a high potential risk for the EU, could contribute to a better preparation on emergency situations.

As (phytosanitary) circumstances may vary between Member States it could be helpful to introduce more flexibility for measures tailored to the specific local circumstances (national contingency plan), so that the most proportional steps can be taken (*see specific remarks on recommendation 6*).

Monitoring

A good overview on the pest status of the most important harmful organisms in the Community is essential to ensure that:

- phytosanitary measures taken are still fit for purpose,
- the limited resources are spent on the right organisms.

A more harmonized way of monitoring, for a limited number of high risk organisms, allowing a uniform interpretation of the inspection results, and development of common principles and guidelines on EU-level would be useful for that purpose. (*see specific remarks on recommendation 5*).

Harmful organisms

Clear, evident criteria for (different categories of) harmful organisms should be formulated. Moreover, the system needs a regular mechanism to periodically re-evaluate the risks of harmful organisms to keep the risk-based approach up-to-date and to ensure proper categorization of harmful organisms and smooth transition of organisms between categories. Re-assessment of the current list of harmful organisms is highly recommended (*see specific remarks on recommendation 3*).

Responsibility sharing

Within the future phytosanitary regime both the government and the industry should have strong incentives for adopting risk-limiting behaviour. Closer, smarter collaboration between government and industry could lead to better results and to better prospects of tackling the raising plant health risks, posed by globalization and climate change. In parallel with the Regulation EC/178/2002 (General food Law), the plant health regime should describe more precisely the role and responsibility of the private sector.

In general the plant health regime should, where appropriate considering the objective pursued, attune to the food, feed and veterinary legislation, including Directive 882/2004/EC (e.g. the laboratories).

Efforts put by growers and traders in activities that contribute to protection of the Community could be taken into account when applying official inspections. In this way the resources of the Plant Health service can be used most effectively, paying most attention to the companies with the highest risk. This could also be an

incentive for growers and producers to pay more attention to plant health issues and more responsibility sharing between public and private sector. In the interaction between government and stakeholders other than legal instrumentation could be considered, such as accreditation systems and voluntary certification schemes.

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Overview

The evaluation report deals with a lot of important subjects, only partly reflected in the recommendations. If the discussion on the new system is focussed on the recommendations there is a risk that the overview of the system gets lost and certain subjects may be neglected. It would be advisable for the design of a new system not only to consider the recommendations but also to have a broad review of the objectives and the plant system as a whole and to assess to what extent the system as it is, is sufficiently geared to future challenges and developments.

Response per recommendation:

1. Invasive alien species/ plants

Extension of the scope to inclusion of invasive plants that are directly or indirectly harmful to indigenous plants or plant communities (the biodiversity effect) could be considered. It is important to explore whether the mechanisms of the Plant Health regime are applicable to invasive plants. In all cases, decisions on the inclusion of a certain invasive plant in the regime should be founded on a Pest Risk Analysis, and the measures adopted should be, above all, cost-effective. This extension should include not more than a limited number of invasive plants not yet found in the EU. As soon as an invasive plant has entered the EU, it should be considered to what extent measures remain useful and cost-effective.

Anyway it is not clear who is included in the 'broad range of stakeholders' mentioned in the report.

Further expansion of the scope to organisms with an effect on public health or of invasive animals with an impact on indigenous plants seems to be undesirable. This would touch on the policy responsibilities and involvement of other departments.

No suggestions for new options.

Impact Assessment (IA): agreed to include in IA

2. Natural spread

Upon the outbreak of a harmful organism, eradication or control measures need to be invoked, regardless of the pathway of the organism's introduction (either via human action or natural spread). To remove ambiguities and interpretative differences between Member States with regard to scope in this matter, it could be useful to include a more explicit description of natural spread in the regime. Natural spread is, however, inevitable and cannot be entirely prevented. We will simply have to learn to live with certain organisms. The point is to continually assess whether the eradication or control measures adopted in a given situation still remain effective, and whether their costs are still outweighed by their benefits.

No suggestions for new options

IA: agreed to include in IA

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3. Regulated Non Quarantine Pests (RNQPs)

The EU's phytosanitary directive and the marketing directives are both concerned with plant health but have different goals: the former aims to prohibit the entry and contain the spread of harmful organisms within the EU, while the latter aims to guarantee the quality and health of propagation material in the beginning of the production chain.

Given the fact that RNQPs are often widespread, and that pest control in the production chain principally serves an economic interest, their inclusion in the marketing directives could seem to be a most appropriate choice. This option should definitely be included in the impact assessment (as an extra option iv). It would be most desirable to examine whether any synergy or coherence could be created between the phytosanitary directive and the marketing directives. This would involve a fundamental analysis of both regimes with regard to the aim of the two regimes and the responsibilities of governments and private operators. It is important that the two regimes are complementary, i.e. that overlap and inconsistency are prevented (organisms should solely be included in one regime), and that smooth transition of organisms from one regime to the other is guaranteed.

Furthermore, the review of the plant health regime also forms an excellent opportunity to carry out a thorough reassessment of the existing quarantine list. In order to employ available capacity as efficiently and effectively as possible, the regime should concentrate on those organisms and products which pose the highest risks, as identified on the basis of a thorough risk analysis.

Insert an new "Option iv" in the impact assessment:

- *If measures are to be taken solely with regard to the health of the propagating material, assign RNQPs to the marketing directives,*
- *and perform a thorough reassessment of the current list of harmful organisms.*

IA: agreed to include in IA

4. Prevention strategies at imports

The timely observation and identification of new risks that may arise from changing trade flows or from climate change is of crucial importance to the protection of the EU. Pathway analysis could contribute to this awareness, but also growers and traders could provide supplementary information that can be used to identify new risks.

As explained in the general comments above import inspection has its limitations. Import inspections alone are not enough to prevent the introduction of harmful organisms. If the EU is to be adequately protected against the introduction of harmful organisms, a multi-step approach must be adopted which starts with prevention in the country of export and if necessary includes strengthening the import requirements. Based on the IPPC principle that the importing country prescribes the requirements for import and the exporting country is responsible for the phytosanitary guarantee, the importing country could carry out random

import inspection audits to check whether these guarantees are being observed. If this system is entirely in order, it becomes unnecessary to inspect every consignment of plants coming into the country. If shortcomings are found, then measures should be taken, step by step, to enable the exporting country to bring about the necessary improvements: prompt notification of interceptions to the exporting country, supply with technical assistance, the tightening of agreements or sanctions, and so on, and in the last instance an import ban, temporary or not. It is also important that European phytosanitary requirements are adequate, formulated clearly and unambiguously for all other countries.

The health of plants for planting is of great importance, given the risks of a possible infection to the rest of the chain. This does not automatically mean that across-the-board tightening of surveillance is either desirable or necessary. The degree and intensity of import inspections should depend on the risks being avoided. Where the sector has put its own house in order, government may well suffice with less frequent import inspections. The wider introduction of reduced frequency checks is another way of achieving a more risk-based implementation of import inspection; this gives an opportunity to make the regime smarter and more efficient.

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Insert a new option:

- *Improve cooperation with the country of origin on the basis of the IPPC principle that the exporting country provides the phytosanitary guarantee: provide clear communications, notification, technical assistance, tightened measures, etc.*
- *Further develop the Reduced Checks system (risk-based import checks).*
- *Gear official import inspections to the initiatives which companies have already performed.*

IA: It is important to carry out an IA

5. Intra- EU surveillance

In addition to the general comments on this subject surveillance is also vital to the early detection of outbreaks and to the timely adoption of effective measures. Pest status is also an important factor in determining whether measures should be directed towards eradication or towards control. If an organism turns out to be widespread, this can be a reason to deregulate or to transfer the matter to the marketing directives.

In determining pest status, it is essential to make intelligent use of the information already held by the various parties involved (e.g. inspection services, laboratories).

(*Co-financing: see recommendation 9*)

No suggestion for new options

IA: agreed to include in IA

6. Emergency action

As explained in the general comments, to some extent compulsory contingency plans could be useful to address emergency situations. Stakeholders, too, should

take their responsibilities seriously, and report an outbreak of a harmful organism promptly so that rapid action can be taken.

However, emergency guidelines often contain a detailed description of the measures required to eradicate a given pest. They are by no means invariably applicable to the situation at hand, as the Netherlands discovered when tackling the Asian long-horned beetle in Boskoop. It turned out that in the Boskoop-situation more proportional eradication measures were available, where the EU-decision doesn't leave any room for differentiation even not for better (more effective) options. Some differentiation in solutions should be possible, so that measures can be tailored to the specific local circumstances phytosanitary situation (for instance via a national contingency plan) and the most appropriate and proportional steps can be taken to reach the aim. Of course aims should be defined at EU level, but the means and methods employed may differ between regions or Member States, provided that it can be justified that the chosen measures will achieve the EU-specified aim. Where measures are too detailed, ineffective or/and disproportionate, this damages the support from parties involved.

No suggestions for new options

IA: it is important to carry out an impact assessment.

7. Plant passports (PP) system

By and large the existing system works well. In view of the millions of plant passports issued each year the number of problems is relatively limited. Nevertheless some aspects of the system could be improved, e.g. recognisability of the plant passport document. Ideally the system would be simple and robust, with the smallest possible administrative workload for businesses and government, but without sacrificing tracing capacity and reliability. This recommendation lends itself to close cooperation with the stakeholders in the way ahead and to discuss responsibility sharing.

No suggestions for new options

Agreed to include in IA

8. Tightening the system of Protected Zones (PZ)

The Netherlands agree to review the present system and especially to consider the value of the IPPC's concept of the "pest free areas" for the new EU regime.

No suggestions for new options

Agreed to include in IA

9. Incentives

It is important that the plant health system provides adequate incentives for authorities and stakeholders to take their responsibilities seriously. There might be also other incentives than rather financial ones by laying down the responsibility of the sector (see food and feed law).

The current Dutch policy towards compensation for destroyed material due to

plant pests is that the occurrence/outbreak of plant pests is regarded inherent to plant production and trade and therefore considered a producer's/traders' risk. The sector itself is responsible for the creation of systems (e.g. mutual fund, insurances) for compensation of losses.

Furthermore the subject should be discussed in the wider perspective of costs and responsibilities (prevention and mitigation risks). Also the possibility to utilise article 68 of Council regulation 73/2009 (common rules for direct support schemes for farmers under the common agricultural policy) about the setting up of mutual funds to cover compensation for "economic losses" suffered by farmers and growers due to plant health measures could be considered. The option that e.g. surveillance and contingency planning should be eligible for co-financing needs further consideration together with the other options with financial implications.

No suggestions for new options.

Agreed to include in IA

10. Research and development and science advice

Cooperation and funding at EU level for plant health research must continue, and should focus on strategic subjects with wide application within the EU. Effective collaboration between Member States is needed, both transnational and European. From a statutory perspective, plant health is not solely the responsibility of government; the responsibility should be shared with other parties involved such as producers- and trade organizations. This is a common challenge and all those who handle the plant products in which harmful organisms can appear involved should help to fund research costs and set research priorities.

Pest Risk Analysis, economic impact assessment, and scientific and technical accountability will form the basis of an effective, efficient phytosanitary regime and instrumentarium in the EU. This is a matter of common importance to the EU and its Member States. Cost-benefit ratio is an important issue in consideration phytosanitary measures; measures must be cost-effective.

No suggestions for new options

Agreed not to include in IA

11. Diagnostics

The Netherlands approach the idea of establishing Reference Laboratories positively. If new legislation is needed, an impact assessment should be carried out.

12. Training

Not only training but also good communication and contacts between inspectors of different Member States could diminish differences in implementation between Member States. No new legislation seems to be needed.

13. EU/MS Emergency team

This recommendation needs further consideration to assess the added value. The Netherlands have reservations.

14. Communication and transparency

No further comments.

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15. Financial Framework

It is not very likely that the financial resources will increase in the coming years, on no account in the Netherlands. Therefore it is even more important to overview the whole regime and prioritise components of the system on the basis of risk assessment, to meet the objectives of the regime the best as possible. As explained in the general comments it is absolutely necessary to follow the guiding principles of 'Better Regulation' to improve the Plant health regime. Moreover a substantial part of the finances spent for the Plant Health regime in the Netherlands is paid by the stakeholders through fees, losses of destroyed material, etc.

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In this framework we would like to ask for a revision of the fee system in the present regime. In the Netherlands there is a wish for more flexibility in the cost recovery system for phytosanitary import controls falling under the "reduced checks" regime. In the present system it is not possible for governments to calculate cost recovery fees, so the industry pays either too little or too much.