CONSIDERATIONS REGARDING THE REGULATION OF THE PLANT PROTECTION AND OF THE PHYTOSANITARY QUARANTINE IN THE EU MEMBER STATES

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Summary: The legislation, by means of its institutions may and must be put in the service of the interests related to the protection of plants, of water and land ecosystems. The national legislation which has implicitly become European legislation harmonized with the international one, focuses on the protection of the natural environment and of the one created by man, the protection of life on Earth. Within this large context, the intervention of the law maker in most countries is directed with realism toward the new and ever changing challenges in this domain, thus giving birth to a set of State bodies, as well as non-governmental bodies, which are charged with the protection of plants, of humans and of life against the harmful influences of pollution of any kinds.

GENERAL CONSIDERATIONS

The Directive no. 2000/29 of the European Council regarding the Measures of protection against the introducing of organisms harmful to plants and vegetal products in the European Community, and against their dissemination in the Community, establishes the phytosanitary regimen of the Community, for the present and for the future, without fundamentally altering the structures. Its provisions concern the moves across borders, the inter-Community exchanges and the imports coming from outside the Community, respectively. As a result of the implementation of this Directive, significant progress has been witnessed in the domain of the phytosanitary quarantine outside the Community (third party countries).

Each Member State appoints a single central authority – for coordination and contacts in issues regarding the plant protection, in the context of this Directive. (Article 1,(b) ). The unique, central authority informs the Commission of Official Bodies in charge in that particular Member State (Article 2 (g) ).

The Member States put in application the laws, regulations and administrative provisions necessary in order to comply with this Directive, beginning with the first day of their accession.

The provisions of this fundamental Directive (2000/29), as the ones from the other directives already mentioned, are to be found as it will be further indicated, within the Romanian legislation in effect, as a consequence of the implementation of the process of legislative harmonization of the national legislation to the Community Acquis.

The following desiderata are met by means of this Directive:
- it forbids the introduction of the harmful organisms that have been presented in Annex I;
- it forbids the introduction of the plants and vegetal products presented in Annex I, if these are contaminated with harmful organisms relevant for Romania;
- it forbids the import of plants/vegetal products from certain countries (Annex III);
- it provides for special requirements for the introduction of plants/vegetal products from other countries (Annex IV);
- it introduces the system of passports for the plants/vegetal products and other such articles (Appendix B to Annex V);
it introduces the phytosanitary certificate and the procedure regarding the import of plants/vegetal products and other such articles, originating from the Third World countries. (Appendix B to Annex V);

-it stipulates the obligation to notify the appearance of a harmful organism, such as those presented in Annex I or Annex II, or the appearance of a new pest absent as yet; it also provides for the measures to be taken in order to eradicate or prevent its further dissemination;

- the EEC’s financial contribution to cover the Member States’ expenses entailed by the program for the eradication/prevention of the dissemination of the new harmful organisms introduced.

General principles of phytosanitary quarantine regarding the international trade

These principles, established in 1993 within the O.E.P.P (– European and Mediterranean Plant Protection Organization) are the following: sovereignty, necessity, minimal impact, modification, transparency, harmonization, equivalence, disagreement settlement.

The particular principles include: cooperation, technical competition, risk analyses, risk management, unharmed zone, intervention in case of urgency, notification of the non-conformity (EOPP Recommendations, 1994).

All these general and particular principles of the phytosanitary quarantine, drawn up and made official within the O.E.P.P., on the initiative of International Trade Organization (I.T.O) have attained more currency than ever before in the present stage of international economic development in which International Trade plays a role of utmost importance. The internationalization of the economic exchanges triggers off an internationalization of legislation. Thus, the emergence of the necessity to set up an international instrument which would put into force the observation of the magistracy and of the phytosanitary legislation, and which would defend the free exchange principles within the trade activity on one hand, and the sanitary and phytosanitary provisions regarding the health of plants, humans and animals. (THE HEALTH OF PLANTS, no.7 and 54) (LEAOŢĂ, 2000-2002).

Any market needs the free circulation of wares and of law regulations which would assure the fundamental requirement of trade: the legal security of transactions covering all the aspect regarding the phytosanitary quarantine. This is one of the basic constituents of the health of plants, humans and animals.

The principle of free trade carries a fundamental importance to contemporary economy, and the unlimited freedom of trade can only be fully manifested on the basis of decisions, conventions, agreements and treaties. These instruments for the liberalization of trade exchanges are based on two fundamental principles:

1. The non-discrimination principle, which applies by means of three international arrangements:
   a) the general clause on the treatment of the most protected nation;
   b) the clause of mutual treatment;
   c) the clause of national treatment which interdicts any discrimination between the autochthonous wares and the imported ones.

2. The principle of customs’ disarming, implying the substantial reduction of customs rights and other taxes upon the import/export, on a reciprocity basis.

As a result of the Marrakech Agreement, (following the multinational commercial negotiations within the Uruguay round, 1995) the other international legal instruments (agencies) included in the Final Act of negotiations, by means of their compulsory character – they too may have immediate consequences upon the implementation of the sanitary and phytosanitary measures included in SPS Agreement and upon the technical obstacles of trade, comprised in the OTC Agreement.

- The SPS sanitary and phytosanitary agreement- has set the following objectives:
  - to eliminate the procedure of having recourse to scientifically ungrounded regulations (on the basis of some special phytosanitary norms), with the intention to unjustifiably reduce the commercial exchanges;
- the uniform interpretation of the measures referring to the dangerous quality of phytosanitary regulations and the setting up of a legal framework which would allow the mutual recognition of the taxation procedures and of the regulations regarding phytosanitary control.

This agreement attempts to accomplish the following: to prevent the use of unjustified measures which aim at protecting the commerce with plants and vegetal products; to guarantee a proper health condition of plants; to make sure that the sovereign right of the Member States is not misused for protectionist purposes, and thus, to be an obstacle for international trade.

- The OTP Agreement – or the agreement nominating the technical obstacles in commerce, refers to other aspects of the regulations imposed by the State public authorities or by the institutions, with the purpose of securing the quality of its exports, and for the protection of the health of plants, humans and animals, subject to the fact that these measures should not form a means of arbitrary, unjustified discrimination, or a restriction disguised as a trade regulation. This agreement endeavors to regulate the sanitary and phytosanitary measures, but it also incorporates the technical prescriptions resulting from the measures regarding the perilousness of food products, the protection of the health of plants, humans and animals, the maximum acceptable levels of pesticide residues, the reviews, the product labeling.

The drawing up and entering into force of the newly reviewed text of the International Convention for Plant Protection (CIPV), will have a decisive impact upon the implementation of the principles and objectives of the SPS Agreement of the I.T.O., forming together the main elements of the legal basis for the phytosanitary quarantine. (VONICA, 2002).

The implementation of the phytosanitary legislation in our country.

Our country has vast surfaces of agricultural field, with proper soil and favorable climate conditions, and that represents an optimal prerequisite for the obtaining of large amounts of good quality crops.

One also possess a satisfactory network of specialists in agriculture, horticulture and biology, highly trained staff in the domain of plant protection, who carry out their activities being directly involved in the processes of production, teaching and research, in the leadership and technical bodies of agriculture, and which support the implementation of the technical measures necessary for the performance of a correct, sustainable agriculture.

Considering that the drawing up of the phytosanitary legislative system in our country has already had a tradition, that the specialized bodies of the national system for plant protection and phytosanitary quarantine have accumulated a vast experience in this domain, that the autochthonous and foreign chemistry industry provide sufficient amounts of phytosanitary use products, that we have European norms and regulations in this domain, one could appreciate on the whole, that the diverse and complex phytosanitary activities are performed in satisfactory conditions. (OROIAN, I. şi col., 2003).

Next, we particularly refer to one of the main activities, namely, the Phytosanitary Control which the Phytosanitary Police body performs in the domains of plant protection, phytosanitary quarantine, in the utilization of phytosanitary use products, and in the domain of environment protection. Starting from the consideration that these actions express most significantly the activity and the efficiency of the phytosanitary measures undertaken with the purpose that the agricultural production might be more and more satisfactory from the quantitative and qualitative perspectives, and competitive at the international level, and so that the trade might be profitable, and the condition of life might improve, but all these, in a relatively acceptable rhythm.

As one analyzes the results obtained lately in agriculture and forestry, one can find out that the agricultural and forestry yield, for as much as quality and quantity are concerned, do not satisfy the internal requirement and it is not competitive within the trade with other
countries. Among the causes responsible for this situation should be inefficiency to protect the plants and forests in our country, due to the implementation of ineffective measures.

One of the fundamental measures which the bodies in charge of the plant protection is undertaking, is the phytosanitary control of the plants and vegetal products intended for internal use and for the export. Generally, such controls are realized upon the notification of producers, in the cases when problems emerge that affect – more or less – the normal development of plants, and endanger the yield expected. Such controls are required upon notification of the damage caused by common pests, or by pests of quarantine or non-quarantine regimen, as for instance the grasshoppers, (*Locusta* spp.), the cereals’ bed bugs, (*Eurygaster* spp.), the meadow caterpillar (*Pyrausta sticti-calis*), the hunchbacked beetle (*Zabrus tenebrioides*), the Colorado beetle, (*Leptinotarsa decemlineata*), the corn duckling (*Tanymecus dilatti-collis*), the grey weevil of beets (*Bothynoderes punctiventris*), the root’s nematode (*Meloidogyne incognita*), the common red spider (*Tetranychus urticae*), the occidental trips (*Frankliniella occidentalis* Pergam), the worm of the maize roots (*Diabrotica virgiferea* le Conte), the midge of the hothouse plants (*Liriomyza trifolii* Burgess) and so on.

**CONCLUSIONS**

1. The provisions of this fundamental Directive (2000/29) and those of the other regulating norms in the domain, may be found within the Romanian legislation currently in effect, as a consequence of the implementation of the process of legislative harmonization of the national legislation to the Community Acquis, in this domain. The Member States put into force the laws, regulations and administrative provisions necessary in order to comply with this Directive, beginning with the day of their accession.

2. The trade across borders also triggers off an internationalization of legislation, bringing about the emergence of an international instrument which should ensure the observation of phytosanitary and quarantine legislation, and which should defend, on one hand, the principles of the free exchange within the trade activities, and the sanitary and phytosanitary provisions regarding the health of plants, humans and animals, on the other hand.

3. The agricultural and forestry yield, for as much as quality and quantity are concerned, do not satisfy the internal requirements and it is not competitive within the trade with other countries; a main cause responsible for this situation is the inefficiency to protect the plants and forests in our country, owing to the implementation or failure to implement improper measures, even though they are properly regulated.

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