



REGULATING THREATS POSED BY INVASIVE ALIEN SPECIES: HARNESSING THE FULL POTENTIAL OF “OTHER LEGAL INSTRUMENTS”

Prof. Dr Han Somsen

Scope: Focus on 'Other Legal Instruments'

EU and international legal instruments, outside the realm of nature conservation law:

- trade-related rules and inspections when goods cross borders;
- International travel excluded (subject to a specific code of conduct);
- Marine vectors covered to the extent covered by border inspection regimes;
- GMOs excluded (specific regimes in force)

'Other Instruments' in EU law: principle of integration

Article 11 TFEU:

Environmental protection requirements **must** be integrated into the **definition** and **implementation** of the Union policies and activities, in particular with a view to promoting sustainable development.

Article 114(3) TFEU

The Commission, in its proposals envisaged in paragraph 1 concerning health, safety, environmental protection and consumer protection, will take as a base a high level of protection, taking account in particular of any new development based on scientific facts. Within their respective powers, the European Parliament and the Council will also seek to achieve this objective.

Pertinent EU competences

Exclusive:

The conservation of marine biological resources under the common fisheries policy;

Shared:

(a) internal market;

(b) agriculture and fisheries, excluding the conservation of marine biological resources;

(c) environment;

(d) transport;

(e) common safety concerns in public health matters, for the aspects defined in this Treaty.

Pertinent EU competences (2)

Coordinating/Supportive Action

- (a) protection and improvement of human health;
- (b) industry;
- (c) culture;
- (d) tourism;
- (e) education, vocational training, youth and sport;
- (f) administrative cooperation

Specific EU Instruments: European Border & Coastal Agency (Frontex)

Aim:

*manage the crossing of the external borders efficiently and address **migratory challenges** and potential future threats at those borders, thereby contributing to addressing serious crime with a cross-border dimension and ensuring a high level of internal security within the Union.*

Preamble suggests wider potential:

when implementing European integrated border management, coherence with other policy objectives should be ensured, including the proper functioning of cross-border transport.

Specific EU instruments: **Veterinary Inspections**

Live plants (and certain plant products) must be accompanied by an official phytosanitary certificate issued by competent authority of the third country in conformity with the International Plant Protection Convention (IPPC) before they are introduced into the Union.

- **D 2000/29/EC on Protective Measures against the Introduction into the Community of Organisms Harmful to Plants or Plant Products and against their Spread within the Community:** *lists organisms harmful for plant life*
- **Reg 2016/2031 on protective measures against pests of plants**, to come into force 14 December 2019: *Elements relating to the natural environment and the effects of pests on native plants, biodiversity and ecosystem services. The introduction into, movement within, and release into the respective protected zones of protected zone quarantine pests will be prohibited.*
- **Live animals and products of animal origin** (e.g. meat, eggs and fish), **and animal products not intended for human consumption** (e.g. semen and embryos), can only enter the EU through **approved border inspection posts (BIPs)**, under strictly harmonised import conditions. BIP staff carry out **mandatory documentary and physical controls**.
Once a consignment has satisfactorily undergone these checks, a Common Veterinary Entry Document (CVED) is issued allowing the goods to be released for free circulation.
- **The Commission Inspection Service of DG Health and Consumers, the Food and Veterinary Office (FVO), carries out inspections**, in both Member States and third countries, to ensure EU legislation is respected.

Specific EU instruments: Veterinary Information and Alert Networks

- **The Trade Control and Expert System (TRACES):** on-line information on import consignments of live animals and animal products. Helps veterinary authorities react quickly to possible health emergencies.
- **A Rapid Alert System for Food and Feed (RASFF):** allows urgent notifications to be sent round-the-clock when food or feed presenting a serious risk is detected.
- **EUROPHYT,** enables the exchange of information when plants and plant material are intercepted for failure to meet EU plant health requirements

IAS, INTERNATIONAL TRADE AND SANITARY AND PHYTOSANITARY STANDARDS: SPS Agreement

Members shall ensure that any sanitary or phytosanitary measure is applied only to the extent necessary to protect human, animal or plant life or health, is based on scientific principles and is not maintained without sufficient scientific evidence, except as provided for in paragraph 7 of Article 5 (Art. 2,2)

IAS measures are ‘sanitary and phytosanitary measures’.

Presumption of legality if national measures are based on:

- *Codex Alimentarius* Commission for food safety;
- IPPC for plant health, or;
- the OIE for animal health, including zoonotic diseases.

These bodies rarely address IAS, meaning that there are no internationally recognized standards, meaning these may be hard to justify.

Precautionary principle does not appear to form part of the Agreement (*EU Biotech*)

IAS, INTERNATIONAL TRADE AND SANITARY AND PHYTOSANITARY STANDARDS: The IPPC

Objective : “... securing common and effective action to prevent the spread and introduction of pests of plants and plant products, and to promote appropriate measures for their control

- Covers natural flora;
- Targets vehicles, aircraft and vessels, containers, storage places, soil and other objects or material that can harbour or spread pests;
- Fosters international cooperation, and is the spider in a web constituted by National Plant Protection Organizations (NPPOs);
- International Standards adopted by the Interim Commission on Phytosanitary Measures (ICPM);
- Specifically on IAS:Recommendation ICPM-7/2005.

IAS, INTERNATIONAL TRADE AND SANITARY AND PHYTOSANITARY STANDARDS: The OIE

- Adopted the Terrestrial Animal Health Code and Aquatic Animal Health Codes:
‘science-based recommendations for disease reporting, prevention and control and for assuring safe international trade in terrestrial animals (mammals, birds and bees) and aquatic animals (amphibians, fish, crustaceans and molluscs) and their products’;
- Mission to prevent the *‘introduction and spread, via animals and their products, of agents that are pathogenic for animals and/or humans. Not concerned with ecological impacts of IAS.*
- Mandate expanded to *understanding the relationship between climate change and eco-system health, biodiversity loss, and the spread of diseases that impact on animal health and welfare. (6th action program)*

Future Role of OIE

OIE Working Group on Wildlife (est. 1995) can play significant future role:

- committed to ‘supporting and updating the notification mechanisms of wildlife diseases through the global information systems OIE WAHIS and WAHIS-Wild, while carefully considering possible impact of such notification by Members on the trade in domestic animals and their products, and to further promote data sharing at the international level on the GLEWS platform’.

BUT

- Role of OIE will ultimately also depend on definition of ‘health’.

IAS, INTERNATIONAL TRADE AND SANITARY AND PHYTOSANITARY STANDARDS: *The Codex Alimentarius*

- Standards, Codes of Practice, Guidelines and Recommendations adopted by the Codex Alimentarius Commission (CAC);
- main purposes :
 - protecting consumer health,
 - ensuring fair trading practices for food, and,
 - promoting coordination of all food standards work undertaken by international governmental and non-governmental organisations.
- concept of 'disease-free' or 'pest-free' areas not well-established, and the CAC therefore does not seem to have a mandate in regard to the control of IAS and the preservation of biodiversity.

IAS, INTERNATIONAL TRADE AND SANITARY AND PHYTOSANITARY STANDARDS: CITES

- See CITES Resolution. Conf. 13.10 (Rev. CoP14) 'Trade in Alien Invasive Species':
- Pursuit of policy on IAS through CITES can be operationalised, in particular, through:
 - a) a permit system;
 - b) an on-line database on international wildlife trade;
 - c) enforcement through trade bans.
- Implementation in EU through the EU Wildlife Trade Regulations, establishing a number of bodies at EU level, composed of national representatives and chaired by the Commission:
 - i.e. the Committee on Trade in Wild Fauna and Flora,
 - the Scientific Review Group and
 - the Enforcement Group,

IAS, INTERNATIONAL TRADE AND SANITARY AND PHYTOSANITARY STANDARDS: IHR

- Aim: *to prevent, protect against, control and provide a public health response to the international spread of disease in ways that are commensurate with and restricted to public health risks, and which avoid unnecessary interference with international traffic and trade;*
- Members notify any event with implications for international health (Art. 6 and 7).
- WHO takes into account reports from sources other than notifications or consultations which, after assessment, it communicates to the State Party in whose territory the event is allegedly occurring. (Art; 9(1))
- Notification of any international public health risk due to the movement of people, disease vectors, or contaminated goods. (Art. 9(2))
- The WHO in those cases is mandated to take precautionary action on behalf of the international community to mitigate the risks posed by the disease.

Conclusion: Breaking down the Human Health/Ecological Health Dichotomy?

- In the new epoch of the Anthropocene, a strict human/nature dichotomy on which conventional environmental law is based is no longer tenable
- AIS invites comparison with responses to epidemiological problems;
- Regulatory and institutional experiences gained with the WHO and IHR in particular could guide policy regarding IAS (see the WHO's success in containing SARS);
- The Standing Committee should continue and expand its leadership role in connecting these currently dispersed actors in ways that effectively establishes a 'collective IAS super-intelligence', similar to that of the WHO;

Conclusion: Breaking down the Human Health/Ecological Health Dichotomy? (2)

For this purpose:

- the SPS agreement should be streamlined with the IHR and its governance architecture (outbreaks of animal and plant pathogens would henceforth be reported in the same way as parties to the IHR report human disease outbreaks and take collective action to control their spread);
- Terminology should, in as far as possible, be harmonized;
- International institutional cooperation must be strengthened;
- Common overarching principles should be adopted.

Thank you for your attention

Thank you!