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**L'AGRICULTURE ET LES EXIGENCES DU DÉVELOPPEMENT
DURABLE – AGRICULTURE AND THE REQUIREMENTS OF A
SUSTAINABLE DEVELOPMENT – DIE LANDWIRTSCHAFT UND
DIE ANFORDERUNGEN AN DEREN NACHHALTIGE
ENTWICKLUNG**

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This report is written 'à titre personnel' and does not necessarily reflect the
governmental position.

1. In which way does the concept of the sustainable development reflect itself in your country's legislation?

The concept of "sustainable development" covers at least three distinct aspects.

The first aspect concerns sustainability in the sense of "environmentally sound". Economic activities in this respect should be carried out in such a way that – among other things – they do not lead to pollution of the soil, water or air, they do not place an undue burden on, far less exhaust, natural resources, and do not cause harm to flora and fauna.

The second aspect concerns sustainability in the sense of "economically achievable", in other words, operational management that can be perpetuated and guaranteed in the long term. The third aspect concerns sustainability in the sense of social justice, and particularly a balanced distribution of access to and use of natural resources, the creation of equal opportunities for access to national and international markets, and the like.

To put it another way: sustainable development is a matter of striving for a fusion of human welfare, a healthy environment and a thriving economy: people, planet, profit. This means social-economical development that can be sustained on a global scale over the generations.

As such, the concept of sustainable development is not an object of legislation. However, various aspects are reflected in Dutch legislation. Particularly the "planet" aspect, i.e. sustainability from the point of view of the protection of nature and the environment, is reflected in legislation, starting with the Dutch Constitution (*Grondwet*). Article 21 of the Constitution states: "The concern of government is directed towards the habitability of the country and the protection and improvement of the human environment." There is formal legislation (acts of parliament) in the field of the physical environment, including the *Wet milieubeheer* (environmental management Act), *Wet bodembescherming* (Act on soil protection), *Meststoffenwet* (Act on manures and fertilisers), and in the fields of animal welfare including the *Gezondheids- en welzijnswet voor dieren* (animal health and welfare Act), and nature conservation: *Flora en Faunawet* (flora and fauna Act), and the *Natuurbeschermingswet 1998* (Act on nature conservation).

A broad strategy has been drawn up for Dutch policy on sustainable development, which is discussed later in this document. A large number of different actions are proposed under this strategy, which are very diverse in nature. They are concerned partly with substantive rules, or rules under criminal or administrative law, and partly with milder instruments such as subsidies, provision of information, etcetera.

1.1 . Which are the legislative levels of such regulations: constitution, act, other ways of regulation?

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1.2. Does the realization take place by means of act, plan, administrative measures or by means of other mechanisms?

The legislative level of regulations depends very much on the subject matter. Binding standards are generally addressed in formal legislation (acts of parliament), and where necessary further elaborated at lower regulatory levels (royal or ministerial decrees). Acts of parliament are also used to lay down criminal sanctions for contravention of the regulations. Binding standards may consist in direct rules of conduct such as orders or prohibitions. Of course, certain activities may only be permitted if they have first been evaluated by government bodies, and requirements have been set for authorisations or exemptions. In such cases an applicant may be required to have an external expert assess the proposed activities and issue a report. For example, an environmental impact assessment is required when applying for a licence for certain activities.

This requirement, laid down in the *Wet milieubeheer* (Dutch Environmental Management Act) and the *Besluit milieu-effectrapportage* (Decree on environmental impact assessment), arises from the European Council Directive of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (85/337/EEC).

Subsidy options for socially desirable activities are often established by Royal or Ministerial Decree.

1.3. Which of the above measures (1.2.) do you consider most efficient?

This is not a question that can be answered in general terms. Government efforts in the area of sustainable development aim to change the behaviour of legal persons. There are various ways of affecting such change. Public awareness can be raised by simple actions such as the provision of information, or by government setting a good example. If the desired behavioural change places a greater burden on individuals, particularly in administrative terms, (the desired behaviour may demand more time, money or effort than the existing behaviour), other instruments come into play. Subsidies can be used to ease or obviate relative competitive disadvantages arising from changes in behaviour. Depending on the urgency and/or extra burdens of behavioural change, binding standards may also be required to achieve the desired effect. The Dutch programme to promote sustainable development includes examples of all these types of government intervention. (See also point 2).

1.4. The principle of sustainable development has no binding force. What measures can therefore be taken in order to ensure application and observation of the latter?

That the principle as such has no binding force does not mean that there are no instruments available to ensure progress in the area of sustainable development.

First of all, various actions in the field of sustainable development are included in the policy and legislation of the European Union, for example in the Habitats Directive. Member States are required to legislate in such a way that projects and activities that could have a significant detrimental effect on the quality of designated habitats may not be carried out unless a suitable assessment has first established that they will not endanger the natural characteristics of a protected habitat area. Since this concerns the implementation of a European Directive, the European Commission monitors proper compliance by the Member States. Where necessary the Commission can bring a Member State before the Court of Justice of the European Union under article 258 of the Treaty on the Functioning of the European Union.

In addition to enforcement by the Commission, there are mechanisms at national level that promote compliance with such legislation. This applies both to legal standards based on European obligations and to purely national standards. To stay with the example of the Habitats Directive: in implementation of the Directive, article 19d of the Dutch 1998 Nature Conservation Act requires prior permission from the provincial authorities for projects or activities which could have a significant detrimental effect. Interested parties can object if they consider such permission has been wrongly granted and, if the objection is overruled, can appeal to the administrative court.

Compliance with statutory regulations can also be promoted at national level by making contravention a criminal offence. This happens in the case of Dutch implementation of the Habitats Directive. It is a criminal offence to undertake without the necessary permissions projects or activities which could have a significant impact on the natural characteristics of a protected habitat area. It is punishable by up to 6 years imprisonment or a fine of up to 760,000 euros, and may incur additional penalties and measures such as shutting down the operation for up to a year and/or the removal of an unlawfully obtained advantage.

The use of instruments other than the setting of statutory legislation is not guaranteed by the European Commission and the national courts. Of course,

when implementing its own strategy on sustainable development the Government is subject to political scrutiny. The Government regularly reports to Parliament on the progress of its policy programme. Parliament debates with Government on the basis of these progress reports. Stakeholder organisations will of course also seek to influence the debate, by providing Parliament with information from their organisations.

International political forums (EU, OECD, UN) also periodically discuss progress made by different member countries in the area of sustainable development.

1.5. Are there in your country specially designed political institutions (ministries, councils, commissions etc.) for the promotion of the sustainable development? What are the means by which the aims can be achieved? What do you think about the effectiveness?

Such specific institutions do not exist in the Netherlands. The Minister for Infrastructure and Environment plays a coordinating role within the Dutch Government, but Dutch strategy comprises a multitude of actions in different areas so that different ministries take primary responsibility for various elements of the strategy. It is also worth noting that Gerda Verburg, the then Minister of Agriculture, Nature and Food Quality, chaired the UN conference on sustainable development in 2009.

2. Are the principles and the specific aims of the sustainable development or the sustainable agriculture specified in strategies, plans or in legal disposals?

The previous government drew up a strategy for sustainable development. For the time being this is still valid; a new monitoring regime has been announced for 2011, following on from a previous evaluation of results in 2009 carried out by a number of government advisory bodies. I do not know whether the strategy will be amended or replaced as a result. A global description of the existing strategy is given below.

The strategy includes actions that address the following themes:

Theme 1 : Climate change and water

Climate change and increasing pressure on land use confront the Netherlands with issues of water management and water resources management. This is a traditional Dutch area of strength, which means the Netherlands can also make

an international contribution. Actions on this theme cover both protection against flooding and local water shortages.

Actions include the following:

- Taking climate change measures as part of Dutch land use planning,
- Integrating climate-proofing into Dutch development cooperation programmes.
- In at least three countries in which the Netherlands is involved in development cooperation programmes, providing support for the acquisition of knowledge on adaptation in the water sector, adapting existing national (water) plans to climate change and identifying a priority programme for investment in adaptation.
- Promoting innovation projects to benefit adaptation to climate change and water quality in relation to agriculture.

Theme 2: Sustainable energy

An effective approach to climate change depends on reducing CO₂ emissions at national, European and global level. Actions include promoting sustainable electricity options (wind energy on land, wind energy at sea, geo-energy, biomass), striving for international regulation, coordinating measures to combat climate change and investing in sustainable energy in developing countries.

Theme 3: biofuels and development cooperation

Use of biomass as a source of energy can contribute to sustainable energy supplies. However, large-scale use of biomass can also have a detrimental effect on biodiversity and the food supply, particularly for populations in developing countries, as well as negative impacts on climate. The Dutch Government therefore seeks to apply sustainability criteria to the production of biomass and establish these criteria at European and World level. Sustainable production is promoted in bilateral cooperation with producer countries, with action to support sustainable production and improve the sustainability of the production chain.

Theme 4: Restricting CO₂ emissions

The transition to an entirely sustainable energy supply will take a long time. Meanwhile the use of fossil fuels is unavoidable. That use must therefore be made as clean as possible by means of carbon capture during the combustion of fossil fuels and subsequent transport and storage of the CO₂ in the soil (CCS: carbon capture and storage). In 2015 a start should be made on large-scale CCS

demonstration projects. The European emissions trading system must be designed to provide the correct incentives and legal preconditions for this development. It is also necessary to seek public support and to transfer both existing and future knowledge to partners in the EU and beyond.

Theme 5: sustainable construction

The Government signed an agreement with market participants in early 2008 (*Meer met minder* "Doing more with less") with the aim of a 30% energy saving by 2020 in 2.4 million existing residential and other buildings and promoting the construction of 10,000 new buildings per year with an energy consumption of at least 45% below than the statutory requirement. Exemplary projects provide the public, stakeholder organisations and politicians with visible and tangible evidence of sustainability in construction.

Another aim is the dissemination of knowledge about innovations and best practice with regard to sustainability in construction.

Theme 6: Biodiversity, food and meat

Production of animal proteins (meat and dairy) takes a heavy toll on the ecosystem: it takes up space and impacts on biodiversity, water consumption etcetera.

Exports of cattle feed are a growing source of income for developing countries, but in some cases they lead to unsustainable production at the expense of people and the environment.

If there is no change in policy, increasing global consumption will increase the pressure on the ecosystem and impact on food security. Providing solutions to this problem requires not only more efficient production, but also, we expect, a shift in consumption from the current animal proteins to sustainably produced animal and vegetable proteins.

The Netherlands has considerable expertise in plant breeding and processing, so the Dutch agri-food sector and knowledge institutions can contribute to the desired transition. Greater account must be taken of animal welfare, climate effects and landscape in the development of livestock farming. The Government will make agreements with the sector concerning energy saving targets and reductions in greenhouse gas emissions. It has also announced plans to support the development and application of system innovations in livestock farming and to support more sustainable soya production in developing countries. Efforts will be made to raise awareness among consumers of the impact of their own diet on health, the environment and animal welfare.

In addition to action on the above themes, the Dutch strategy for sustainable development also targets the operational management of government itself. Central government employs some 100,000 people, owns around 10,000 cars, uses around 4 million m² floor surface in office buildings and its acquisition budget runs to around 40 billion euros per year. This purchasing power is used partly for sustainable development. Government offices must achieve energy savings of 2% per year, with the ultimate aim of a 25% reduction by 2020 and a climate-neutral energy supply by 2012.

The Government practices sustainable purchasing across the board, to create a better market for sustainable products and services.

The Government follows the “cradle to cradle” principle in the design and construction of new buildings, and in a proportion of its purchases, such as acquisitions of office furniture and furnishings.

3. Which do you consider the difficulties or preferences realizing the principal aims of a sustainable development:

3.1. to ensure the food health guarantee; the preservation of the environment and the mineral resources, which the agriculture needs;

Food safety is not the primary concern in the Dutch situation. Of course there are impurities in the physical environment, but not of such a nature as to affect the soundness of food produced in the Netherlands. The quality of water used in agriculture and air quality are also not such that the products present any direct threat to health. The most significant soil pollution with hydrocarbons, heavy metals and the like are not found in rural areas in the Netherlands. The central environmental problem, seen in the light of the broader concept of sustainability, and also the greatest problem for sustainability in the Dutch context, lies in livestock farming. Dutch livestock farming is particularly intensive. Great numbers of farm animals are kept in a relatively small area of agricultural land. The mineral emissions (from animal manure) exceed what can responsibly be used on agricultural land. The sector depends for part of its livestock feed requirement on imported feeds (and consequently minerals), while the domestic production of animal feeds also places a heavy burden on the available space. The size of the herd also raises issues about husbandry systems in relation to animal welfare. Increasing use of antibiotics in intensive livestock farming is an ever-growing problem, partly because bacteria gradually develop resistance, which can ultimately present a threat to human health.

In view of the nature and gravity of the mineral problem, binding standards are to be established, initially at national level and later (mainly) under the Nitrates Directive. Increasingly stringent standards have been applied in the

Netherlands since 1984 in relation to maximum permissible quantities of animal manure to be applied to a certain area, the times of year when it is permitted and the method of application. The provisions concerning the methods and times of application are based on the *Wet Bodembescherming* (Soil Protection Act), while the application standards (stipulating maximum quantities) are based on the *Meststoffenwet* (Manures and Fertilisers Act). Non-compliance with the codes of conduct is a punishable offence; fairly recently the enforcement regime has been further strengthened with the introduction of administrative fines and periodic penalty payments. Ancillary to the regulation of the use of manure there is regulation of the size of the herd. At the outset of the Dutch manure policy (1984) an act was introduced to restrict pig and poultry farming. It set boundaries to the size and growth of livestock numbers at farm level, which are still in place in the current *Meststoffenwet* in the form of *dierrechten* (animal production rights) in the pig and poultry sectors. Manure production rights have also been in place in the Netherlands for many years for cattle as well as for smaller sectors such as ducks, rabbits, and animals bred for fur.

For emissions of ammonia and greenhouse gases in livestock farming there are binding provisions that are enforceable under criminal law, concerning not only the quantity of emissions but also the site of the facility and the design and equipment of the stalls.

In relation to animal welfare too, partly on the basis of EU directives, there are binding provisions enforceable under criminal law, concerning the amount of space allocated to animals in the stalls, the presence of animal toys, the amount of natural light entering the building, etc.

The binding standards that apply to the environment and animal welfare constitute a radical intervention in the management practices of farmers. For example, they restrict options for optimising the scale of production from a business-economic perspective, while the farmer is required to make significant investments in technical equipment and animal housing, or make extra efforts in terms of time, care and attention, to meet the standards for animal welfare or environmental standards regarding the use of manures (soil injection etc.). These factors drive up his investment and cost price, which he has to factor in to his onward pricing. On the other hand, consumers also make demands concerning the sustainability of the products they buy in the supermarket, but are rarely willing to accept the higher prices this would inevitably entail.

These and other factors put pressure on enforcement of the binding environmental and animal welfare standards, and the Government cannot restrict its activities to setting standards. There is therefore an abundance of “softer” government intervention in this area. As already indicated under point 2, information and awareness campaigns are organised on food-related sustainability issues. Another option is to use targeted subsidies to encourage farmers to build integrated sustainable stalls (i.e. stalls equipped to higher

environmental and animal welfare standards than the statutory minimum). The Netherlands has also earmarked a proportion of EU funds available for direct income support, as referred to in Regulation (EC) 73/2009, for this purpose, using the facility provided in article 68 of the Regulation.

3.2. support the feasibility of the agricultural activities and improve the quality of life of the farmers and the society in general;

As the comments under point 3.1 may indicate, binding standards have been set in a number of fields with the aim of improving the sustainability of agriculture, but these standards drive up the cost price and put pressure on margins. When it comes to the commercial and economic basis for agriculture however, in my view, offering support in the form of relatively untargeted income support as is now familiar, particularly through the single payment scheme, is not the most obvious course of action. Greater impact could after all be expected from aid schemes with appropriate incentives to improve the sustainability of farm management. Examples include the various schemes for rural development under Regulation (EC) nr. 1698/2005, such as agri-environmental commitments, diversification, etcetera, which, in addition to the development of the agricultural holding, also aim to have an effect on the agricultural holding as part of its physical environment and the role of agricultural activity in the rural community.

3.3 the participation of the public in the adoption of resolutions. Does a specific right on access to information concerning the environment exist?

This is indeed the case, as a direct result of the Aarhus Convention and the associated European Directive 2003/4/EC on public access to environmental information.

Dutch legislation was amended to reflect this on 14 February 2005. In particular the *Wet openbaarheid van bestuur* (on Public Access to state information) has since then been designed to increase access to environmental information. This applies particularly to business and production data of companies. Until that time access to such information - provided confidentially by companies to the government - was always refused, to protect the competitive position of the companies concerned. The amended regulation means that, where requested, information must be provided on emissions into the atmosphere. In the case of environmental information other than data on emissions, the administrative body to which the request is made must weigh the interests of public access to environmental information on the one hand against the interest of confidentiality of the company concerned.

4. Which do you consider the best measures to be taken in order to lead to a sustainable agriculture? Which experiences has your country made?

4.1. The financial aids? In which form (investments, support, from European funds and/or help by the government)?

Aid, in whatever form, cannot be applied in relation to meeting binding standards as laid down in EU or national law. Financial instruments on the other hand are particularly suitable for encouraging farmers to adopt management practices that exceed the statutory requirements in terms of sustainability.

A very significant example of these instruments are the subsidies for agri-environmental measures as referred to in Regulation 1698/2005 (rural development). In the Netherlands a series of agricultural methods that benefit the environment and nature, and which exceed the statutory requirements, are eligible for subsidy under this regulation with co-financing from the European Agricultural Fund for Rural Development (EAFRD).

Subsidies for investments are another example of financial instruments. In view of the limited funding available, subsidy schemes that use a tendering system are the most effective when it comes to achieving actual improvements; after all, such a system ranks incoming applications for aid according to their potential contribution to the objectives of the subsidy scheme concerned. Such subsidy schemes are by nature more labour-intensive for both the applicant and the administering body. There are a number of investment subsidies, provided for in the *Regeling LNS-subsidies*, that work in this way, such as aid for investment in sustainable animal housing. An alternative to this system is to ensure that eligible investments are clearly specified, and of course that only those investments are eligible which lead to a higher level of sustainability than required by the applicable legislation. Each application that meets the specification is subsequently eligible for subsidy. By this means the available budget can be allocated in the sequence in which the applications are received.

4.2. Which do you consider the most stimulating criteria for the approval of such supports? What do you think of the principle of conditionality and its conversion?

Conditionality as such has no direct impact on improving the sustainability of agriculture. After all, the unique feature of this principle is that meeting the existing standards in areas such as environment and animal welfare becomes a condition for obtaining certain types of aid under the CAP. The principle may thus be an extra incentive to comply with those standards, but the standards should be observed and upheld per se, irrespective of this principle.

4.3. Do special legal regulations exist in your country in relation with the professional training and with the aim to increase the salaries according to the capacities and the professional abilities? Does one organize certain forms of professional training and advice centers in your country?

There is no such special regulation in this field in the Netherlands. Training and information provision are primarily the concern of the sectors themselves. There are however subsidy schemes for business information services, in particular under the Farm Advisory System provided for in Regulation 73/2009 on direct support schemes.

5. Which role plays the democratization of the social relations and the participation of the public in the adoption of resolutions in the process of the sustainable development? Which are the legal consequences of a decrease of the participation of the public?

5.1. Do the international conventions with the EU and/or with your country, as well as, the European regulations and the territorial regulations concerning the access of the public to information and the access to the judiciary, become actually applied?

Yes. See point 3.3 on public access to information.

5.2. Do legal guarantees and sanctions exist for the case that these rights get breached? Is there any jurisdiction on the subject? Is an inclusion of the public and the non-government organizations realistic in case of adoption of resolutions? Do obligatory legal procedures exist concerning this matter?

There is public involvement in decision-making at two levels.

The first level, that of general legislation, concerns political decision-making in representative bodies such as the national parliament and the municipal councils. Ultimately decision-making at this level is reserved for these democratically elected bodies and there is no general right to public participation as such. Naturally the Dutch Constitution guarantees the rights of association and free assembly and the right to demonstrate, and there are abundant opportunities to influence the political process through public debate, for example via the media. Increasing use is made of IT, for example, in recent years central government has increasingly set up internet consultation when new bills have been introduced.

At the second level, that of decision-making on the basis of general legislation, for example with regard to the granting of licences and exemptions,

a statutory consultation procedure has been established under article 3.10 ff of the *Algemene wet bestuursrecht* (General Administrative Law Act). This procedure provides for a period (generally 6 weeks) for perusal of draft decisions. During this period interested parties can air their opinions verbally or in writing. If they feel their views are not adequately reflected in the final decision they can object to the administrative body responsible for the decision. The administrative body's ruling on that objection is subsequently open to appeal to the administrative court, which enables the interested parties to challenge the validity of the decision. Jurisdiction in Dutch administrative case law is fairly diverse, but the main legal procedure is that via the administrative division of the courts and in higher appeal the Administrative Law Division of the Council of State.

Non-governmental organisations can also be designated as interested parties in this context. Article 1.3(2) of the General Administrative Law Act (*Algemene wet bestuursrecht*) states in this context that where the interested party is a legal person, their interests are assumed to include the general and collective interests which they champion particularly by virtue of their objectives and as demonstrated by their actual activities.

6. The first step in the direction of a sustainable development demands to include the environment and to respect its necessities in the development process. Another approach suggests the integration of the sustainability in the economic issue. Is the connection between the application of the preventative measures, with the idea of the pollutant who has to pay, inseparable? How are these principles applied in your country? Which are the rules, the procedures and the jurisdiction in that issue?

The principle of the polluter pays is already generally expressed in the precautionary principle, which in the Netherlands is incorporated into art. 1.2 of the *Wet milieubeheer* (Environmental Management Act). The general duty of care for the environment according to that article also implies that in any case anyone who knows or should have known that his actions could have a detrimental effect on the environment will, as far as can reasonably be expected of him, desist from that action, or take sufficient measures to prevent detrimental environmental impact or to limit or rectify any impact arising.

It follows from this that the costs of compliance with a number of general rules concerning environmental protection, in order to meet the conditions attached to a permit to carry out certain environmentally damaging activities, must be met by the person concerned.

A particular elaboration of the principle of the polluter pays can also be found in Chapter 17, Title 2 of the *Wet milieubeheer* on environmental liability, see also point 9.4 below.

The polluter pays principle also occurs in fiscal law in the form of extra taxes for polluting products and incentives for sustainable alternatives.

7. Which are the main instruments available to protect the environment and to improve the quality of the environment, the landscape and the mineral resources (instruction, authorisation, approval)? One could say in this respect: the water resources necessary for the agriculture (application of the directive concerning the water); the soil (the directive concerning the contamination of soil); the biological variety (the directive Natura 2000); the preservation of the landscape (the directive concerning the preservation of the landscape in Europe).

Environmental law in the Netherlands is based on a system of rules on conduct (orders and prohibitions), often supported by a system of permits or licences whereby, in principle, prohibited actions are subject to prior testing to assess the effect of such proposed actions on the environment.

The protection of the landscape is largely regulated by the *Wet ruimtelijke ordening* (Spatial Planning Act). Planning developments that could impact on the characteristic features of a particular landscape can be discouraged. For this purpose the qualities to be preserved can be described in a land-use plan with accompanying provisions concerning permitted uses and associated restraints. The land-use plan can stipulate that action which would affect landscape elements cannot be taken without prior permission.

8. How do you estimate the role and the importance of the participation of the social market participants (producer, public and private institutions, labor unions) concerning the political decision-making, the elaboration of plans concerning the regulation of sustainable agriculture? Which are the forms of participation in your country? Which social influence does this form of participation have? Is it of importance, not so important or does it not exist at all?

A particular Dutch form of the involvement of social market participants is found in the role of the commodity boards (*productschappen*). These are public bodies with governmental powers, such as establishing regulations and collecting compulsory levies. There are commodity boards for various agricultural sectors, such as livestock farming, poultry farming, the dairy sector, arable farming and horticulture. The management of the boards is made up of representatives of employers' and employees' organisations in the sector concerned. Various commodity boards have regulations and aid schemes

concerning matters such as the environment, animal welfare and socially responsible enterprise.

9. Other factors for a sustainable agriculture

9.1. Does organic agriculture exist in your country? Which are the measures that can be taken in order to make the organic agriculture more attractive? Are these measures limited to politics, the plans or are there also instruments like the protected indication of origin, protected geographic designation or guaranteed traditional specialties? Is there a label for organic products? Do institutional aspects concerning the organic agriculture exist already?

Organic livestock farmers in the Netherlands can distinguish their products on the market, among other things by means of the EKO logo and the European logo which was introduced in 2010. These logos can only be used for products produced in accordance with the provisions of Regulation (EC) 234/2007 concerning organic production and the labelling of organic products.

9.2. The promotion of the biofuel. Which importance has the production and the use of biofuel in your country? Are there regulations which make the production interesting?

Biofuels are also a good example of a mix of compulsory standards and more incentivising instruments. Statutory regulations, partly in implementation of the relevant European directive, stipulate that 4.24% of fuel in the Netherlands must originate from renewable sources by 2011 and 4.5% by 2012. These biofuels must meet the EU sustainability criteria. The Netherlands has opted to take only small steps in the first years: 2011 and 2012 will add a half percent to the biofuel percentage. This provides more time for the development of more sustainable biofuel based on waste material. At the same time the Government is promoting electrical vehicles and biogas, partly through tax measures.

9.3. Can you find amongst the measures against the climate change also such to reduce the greenhouse gases caused by the agriculture (strategies, plans, disposals)?

Yes, for example there are programmes to encourage the development of low-emission animal housing.

9.4. Considering the problem of responsibility: see the directive No. 2004/35/EU from the 21.04.04 concerning the responsibility for the environment. Which do you consider the origin of this responsibility and the effectiveness of its application in your country?

The Directive was implemented in the Netherlands in article 17.6 ff of the *Wet milieubeheer* (Environmental Management Act). This concerns a risk liability regulated by public law and based on the precautionary principle (potential environmental damage must be prevented by the person causing it and at his expense), and the principle of the polluter pays, since the person causing significant environmental damage is required to repair any damage at his own expense. The risk liability also applies to the Government and is supplementary to other liability arrangements (including the normal civil law liability on the grounds of an unlawful act.).

The liability scheme is surrounded by the usual uncertainties. In principle it only applies to the market participants who carry out activities as described in annex III of the Directive. It is not at all clear to farmers whether their activities fall within the terms of this environmental liability scheme. If they do, it has far-reaching repercussions in view of the scale of the duties associated with it. In addition, in certain cases, (harm to threatened species and protected habitats) they are still subject to fault-based liability under the Directive, even where they fall outside the cases referred to in annex III.

10. Which are your suggestions, within the framework of the renegotiations of the CAP (2013-2020) to strengthen the instruments and the cooperation mechanisms within the EU, considering the aim of a sustainable agriculture or which other criteria should be considered?

The CAP can give a real boost to the process of improving sustainability. The suggestions of the European Commission in its Communication of November 2010 to direct the second pillar of the CAP more towards objectives such as climate, water, biodiversity etc. are a first step. In the coming CAP period direct income support in the first pillar will still be bound through cross compliance to the existing provisions in the field of health, environment and animal welfare. However, since cross compliance is aimed at existing EU standards, this does not have any extra stimulating effect. The impact of the first pillar, when it comes to promoting sustainable agriculture, could be greatly improved by making direct income support dependent in whole or in part on the issue of whether the farmer concerned, in addition to complying with the statutory requirements, delivers any special results over and above the statutory minimum which are compatible with the requirements of sustainable farm management.