

Developments in the Netherlands: what's new in rural law

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1. Introduction

In this paper I will give an overview of recent developments in agricultural / rural law in The Netherlands. At first it might be useful to give a short update on the items that were discussed in the CEDR-conference of Luzern 2013 (par. 2). After that I will consider two themes that have aroused political and legal activity: land consolidation (par. 2) and – under the umbrella ‘phosphates and nitrates’ the recent developments in the regulation of dairy farming (par. 3).

2. Luzern update

In Luzern the following subjects were introduced: the developments in the Manure Act, the downturn of agricultural organizations, the pursuit of a system for sustainable livestock, and the evaluation of tenancy law. The Manure Act deserves a complete paragraph (par. 4).

The abolition of the Public Economic Bodies has been effectuated from January 1/2015.¹ The public law powers of the bodies – for instance on animal welfare and plant disease controls - have been transferred to the Ministry of Economic Affairs². The private law affairs of the bodies, such as marketing, public relations, research etc. may be taken over by the producers-organizations or branches-organizations according to the new CAP.³ In the Netherlands these organizations are –except in the sector of vegetables and fruit - rather a new item. A major setback is that non-members cannot easily be forced to contribute to financing these activities.⁴

The system for sustainable livestock of the province of Brabant came into force. The system is based on the land use planning: a farm can only expand the operation – in the sense of building new stables – if it meets demands in the field of sustainability (land-based animal holding, animal welfare, animal health, openness to the public, etc.). These demands are higher than the normal legal standards on these fields.⁵ In literature the system has been criticized because some of these demands cannot be based on the Act on Spatial Planning, because they have nothing to do with the goal of this act, for instance on animal welfare.⁶ In the meantime there is some case-law, that does not make optimistic about the legal

¹ Stb. 2014, 571.

² In some case also to the Ministry of Environment and Infrastructure.

³ Vo. 2013/1308.

⁴ Only by a generally binding declaration.

⁵ See: Willem Bruil – De Brabantse Zorgvuldigheidsscore Veehouderij, Agr. R. 2013, p. 13 e.f.

⁶ Paul Bodden - De Brabantse Zorgvuldigheidsscore Veehouderij: een zorgvuldig bestuurlijk instrument? Agr.r. 2013, 0. 369.

sustainability of the Brabant system.⁷ The example of Brabant has in the meantime been followed by other provinces, such as Groningen.

The evaluation of the Land Lease Act did not lead to any activity in legislative work. In 2014 the evaluation report was completed⁸ and immediately heavily criticized. Organisations of tenants thought the presented system in the report much too liberal and organisations of land owners found it not liberal enough. This could have been expected but the organizations sat together and agreed on another legal system of land lease with several possibilities for lease contracts,⁹ but afterwards second thoughts came up, and at the moment there is a great silence. If the organisations really agree on new land lease regulations this provides an important input for political decisions by government and parliament.¹⁰ If not, we probably have to deal with the existing land lease act, with the hybrid system of two forms of contracts, one very liberal and the other with strong protection instrument for tenants.

3. Land Consolidation Act

The Land Consolidation Act has also been evaluated.¹¹ This was necessary in the framework of a major legislative operation which must lead to the integration of some thirty formal acts in one Code for the Physical Environment. The Zoning Act, the Environmental Management Act, Nature Conservancy Act are involved as well as all kind of acts on land use, agricultural and other. Before integrating all these acts, they are evaluated: are the acts still necessary and if yes, must they be altered before putting them in the Code?

The use of land consolidation has declined steadily in recent decades. From 2007 on only eight new land development projects were initiated for strengthening agricultural, nature and water objectives and provinces have no concrete plans for the use of the instrument. The fact remains that most provinces want to have the instrument on hand. There are still tasks in the rural area for which decisive powers eventually are required, for example on challenges like water management and Natura 2000. With the decreasing use of land consolidation an important issue is that the instrument is associated with long-term, complicated and expensive processes. The lack of support of agriculture for deploying the instrument contributes to this. Some provinces find land consolidation a too heavy instrument for the remaining interior assignments in the rural areas. After the changes in the Land Consolidation Act compared with the old one (1985) and recent process innovations in land consolidation, projects can be completed within four years, little compromising the negative image of land consolidation. A rather popular mode of consolidation is the re-allotment of agricultural land on the basis of a consolidation-agreement, i.e. voluntarily, between land owners. This form of consolidation is subsidized by the government.

⁷ Afdeling Bestuursrechtspraak Raad van State, 21 januari 2015, ECLI:NL:RVS:2015:84, Agr. r. 2015/5794 m.nt. Paul Bodden (Reusel-De Mierden).

⁸ Willem Bruil – Evaluatie pachtregelgeving, Wageningen 2014.

⁹ Valk c.s. – Het akkoord van Spelderholt, Agr. r. 2014, p. 307 e.f.

¹⁰ Kamerstukken II, 2014/15, 27924, nr. 63.

¹¹ Froukje Boonstra, Willem Bruil, Robert Jan Fontein en Wim de Haas – Evaluatie landinrichtingsinstrumentarium Wet inrichting landelijk gebied, Wageningen 2015.

The evaluation report concludes that there is no need for major changes in the regulations and that the Land consolidation Act should be integrated in the Code as mentioned. A big issue in The Netherlands at this moment is the possible introduction of consolidation instruments for the built-up area.

4. Phosphates and nitrates

The Netherlands are hosting a lot of pigs, poultry and cattle. Being the second exporter of agricultural products in the world evidently presents economic advantages, but all these animals also provide for environmental problems. The most important issues at the moment are: the emission of nitrogen (ammonia) and the production of manure (nitrogen, phosphates).

The European framework is constituted by the Nitrate Directive and the Habitat Directive. The Nitrate Directive sets a maximum to the kilos of nitrogen from animal manure that can be used on the land. Given this maximum – which is implemented in The Netherlands by way of the Manure Act - the available land and the number of animals results in a surplus of manure. Only part of this surplus can be transported to crop farmers (who receives also money for that). What happens with the rest, nobody knows. On the basis of the Habitat Directive – implemented by the Nature Conservancy Act - Natura 2000 areas have been established.

Indirectly the extinction of the milk quota in 2015 has had a big effect on dairy farming, not only after March 31 – in some media called ‘liberation day’ – but already in anticipation, during recent years. In 2013/14 the Dutch milk production increased above 4% of the national milk quote and in 2014/15 the production raised another 4,1%,¹² the number of cows from 1,55 million to 1,57 million. About 70% of the Dutch dairy farmers has built new stables or planned to do so in short future. Not only economic problems arise from this increase of milk-production – added to Russian import restrictions and a stagnation in Chinese markets – but it also has increased the phosphate production by animals overall.

Pigs and chickens from 1984 on were subjected to limitations by the obligation to own so called production-rights for pigs or for poultry. These rights initially were distributed on the basis of earlier production in a reference period – not unlike the introduction of milk quota in 1984 – and could furthermore be obtained by buying the rights from stopping farmers. The goal of the system was that there should be not more animals than there were before, to prevent the problem of the manure surplus to worsen. The production rights – being changed in their legal appearance from time to time – were criticized by farmers, mainly because they could not increase their number of animals without having to invest in buying these rights. They claimed that this money could better be spent, for instance on environmental measures. The plan was to abolish the production right system for pigs and poultry in 2015. This has not happened yet, because the Dutch government is afraid that the result could be an enormous increase of the number of animals and hence a problem with the manure. For cows a comparable production ceiling also existed from 1986 to 2006, but is was abolished at the time because a decrease of cattle was foreseen.

¹² Kamerstukken II, 2014/15, 33979, nr. 99.

In 2014 a new system was introduced: a duty to process the animal manure that could not be used on the land according to the standards.¹³ This system is applicable for all animals, also for cows. For dairy farms an additional obligation was introduced in 2015:¹⁴ farms with a surplus of phosphates – with a production higher than the production in 2013 must also process that surplus. This has effects for the farms that expanded after 2013. This new instrument was meant as a production ceiling.

Government, parliament and dairy sector attach great importance to the so-called land-based dairy farming. i.e. the number of cattle should relate to the available farm land, to prevent the dairy sector from intensifying (like pigs and poultry did before). The regulation to that aim is in preparation at the moment. Essential is that a maximum is set to the percentage of the manure that may be processed, so the farmer is obliged to buy more land if he has not enough for the use of the manure if he wants to expand. The system is rather complicated.

A third stage of regulation (processing, land-based) has been announced: a production ceiling for phosphates. The Netherlands obtained a derogation from the EU for the use of manure up to 230 kg nitrogen pro hectare. One of the conditions was that the national production of phosphates must not exceed the level of 2002.¹⁵ This ceiling is in danger because of the mentioned expansion of dairy farming. The government will introduce a new production instrument: phosphate-rights. Again dairy farmers will get a production ceiling, on the basis of their production in 2014, attached to a prohibition to expand beyond that. Again they can buy production rights from other farmers. In fact we are – after a short period of joy – back to limitations and costs.

The problem of Natura 2000 sites is that the most threatening development is the deposition of nitrogen. A big part of this deposition originates from animal farming. In fact the real deposition on the sites exceed the critical deposition load that has been set. The result is that if a farmer wants to hold more animals and erect extra buildings the necessary permit was denied if the deposition of nitrogen increased. In large regions of The Netherlands were locked for further expansion of animal farming. The government developed a new instrument: the “Programmatic Approach Nitrogen”. General measures are taken, such as improvement of water management in the Natura 2000 sites, and sharpening of the ‘best available techniques’, on the basis of which a decrease of nitrogen deposition can be foreseen. In the meantime permits can be granted as long as a computer-programme sees space for increasing of deposition in a certain area.

¹³ Act of 18 december 2013, Stb. 576.

¹⁴ Joost de Rooij – Mestverwerking of mestbeperking? Recente ontwikkelingen rond de Meststoffenwet , Agr.r. 2014, p. 385 e.v.

¹⁵ For dairy farming: 84,9 kg, phosphate.