

# Agribusiness 2021

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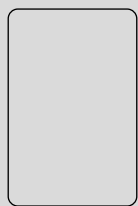
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Breia L Schleuss**

Faegre Baker Daniels LLP

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Lexology Getting The Deal Through is delighted to publish the fifth edition of *Agribusiness*, which is available in print and online at [www.lexology.com/gtdt](http://www.lexology.com/gtdt).

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Sarah L Brew, Jacob D Bylund, John P Mandler and Breia L Schleuss of Faegre Baker Daniels LLP for their continued assistance with this volume.



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# Netherlands

Jan Holthuis and Philip ter Burg

Buren NV

## OVERVIEW

### Regulation

#### 1 | What is the regulatory environment for meat and poultry?

The regulatory environment for all food processors in the Netherlands is primarily shaped by EU legislation on food hygiene and food safety (eg, the EU General Food Law Regulation), which has been implemented into Dutch law. The Animals Act sets the main framework on requirements relating to the food safety of meat and poultry, under which are regulations related to storage and transport.

The meat and poultry sector is regulated on behalf of the Ministry of Agriculture, Nature and Food Quality by the Netherlands Food and Consumer Product Safety Authority (NVWA). The NVWA supervises, among other things, animal and plant health, animal welfare, and the safety of food and consumer products.

#### 2 | What is the regulatory environment for all other human food?

The regulatory environment for all food processors in the Netherlands is primarily shaped by EU legislation on food hygiene and food safety, which has been implemented into Dutch law. Human food that does not concern animals or foodstuffs of animal origin is basically covered by the Commodities Act. The NVWA monitors the safety of food.

### Relevant organisations

#### 3 | What are the main non-governmental organisations and non-profit organisations in the agribusiness sector in your jurisdiction?

There are a variety of non-governmental organisations and other non-profit organisations that are active in the food and agribusiness sector in the Netherlands. Nearly every subsector has at least one organisation that aims to promote the interests of the subsector, and promote international trade and innovation. A selection of agricultural sector organisations are:

- the Dutch Federation of Agriculture and Horticulture – an entrepreneurial and employers' organisation representing and promoting around 50,000 agricultural businesses;
- the Netherlands Crop Farming Union – an industry organisation promoting crop farmers in the Netherlands;
- the Netherlands Poultry Farmers Union – an industry organisation promoting poultry farmers in the Netherlands;
- the Dutch National Federation of Food Industry – represents and lobbies on behalf of 500 companies and 20 industry organisations in the food industry;
- Seed Valley – a regional organisation in the north-west of the Netherlands with the aim of fostering collaboration between companies and local governments active in the fields of plant breeding, seed technology and associated services; and

- Regio Foodvalley – a regional organisation aimed at boosting innovation performance by fostering collaboration between businesses, knowledge institutions and (local) government.

## LAND ACQUISITION AND USE

### Legislation

#### 4 | Identify and summarise the enacted legislation addressing agricultural property transactions in your jurisdiction. Outline how farmland is typically held.

The Netherlands has over 2 million hectares of agricultural land, which means that about 54 per cent of the overall surface of the Netherlands is used for agricultural purposes. The average price of a hectare of agricultural land was €61,900 in 2019. Prices vary greatly per region. Generally prices are highest in Flevoland and lowest in Friesland.

The land in the Netherlands is devised according to government spatial planning. Land-use plans are the most important tool in spatial planning. These plans set down where construction may take place, what may be built, the size of the structure and what it may be used for. The land that is designated for agricultural purposes may not be used for other purposes such as housing.

There are no restrictions in respect of the acquisition of agricultural land by a foreign party. Transfer of ownership is not specifically regulated under Dutch law. The general provisions on immovable property apply, which, in essence, means that the ownership of land is transferred through a notarial deed.

Most agricultural land usage rights in the Netherlands are acquired by a specific agricultural lease regulated in Book 7 of the Civil Code. A distinction must be made between establishing the lease and transferring the lease. Establishing the lease requires approval of the lease contract by the Agricultural Tenancies Authority. The lessee can transfer the lease to direct family members without the consent of the lessor upon application to the agricultural tenancies division of the district court.

An agricultural lease agreement must, in principle, be concluded for a definite period of time, being 12 years for farms and homesteads and six years for separate land or buildings. Lease agreements for longer terms are allowed but only if a clear termination date is included in the agreement.

The lessor who intends to offer agricultural land for sale has an obligation to offer the land to the lessee first. Since the lessor must offer the value of the land under leased conditions (which depresses the market value of the land), land lease operations in the Netherlands are less attractive.

### Non-agricultural land rules

- 5 | Outline any rules related to use of farmland for non-agricultural uses.

Designated agricultural land cannot be used for other purposes. An application for a change of purpose is rarely granted by the local government.

### Lending

- 6 | What special rules are important to agricultural lending in your jurisdiction?

No special regulations apply to agricultural lending.

### Publicly controlled property

- 7 | Describe any rules relating to public control of farm property in your jurisdiction. What enacted legislation governs them?

There is no specific regulation related to public control of farm property.

### Foreign ownership restrictions

- 8 | Are there any restrictions on foreign ownership of farm property in your jurisdiction? What enacted legislation governs them?

There are no restrictions.

## GOVERNMENT PROGRAMMES

### Support programmes

- 9 | Does the government provide agriculture support programmes to producers, processors or agriculture-related businesses and organisations? Outline the programmes and how they are generally accessed.

The EU Common Agricultural Policy (CAP) programme, which primarily subsidises farmers through direct income support, is implemented in the Netherlands by the Netherlands Enterprise Agency, part of the Ministry of Economic Affairs and Climate Policy. In 2018, through the CAP, €720 million was made available as direct income support (decreasing to €701 million in 2020). Additionally, a joint programme funded by the CAP and the Dutch government allocated €115 million (2018) to rural development. The CAP makes another €150 million available for emergency relief for the agricultural sector as well as promoting market competitiveness.

In addition, the Dutch government has included both the food and agribusiness sector as well as the horticulture and propagation materials sector as one of its nine top economic sectors. Businesses in these sectors are eligible for government support to stimulate technological development by facilitating collaboration between the private sector, knowledge institutions and the government. The objective is, among other things, to improve the international competitiveness of the sectors. Various financial and other incentives are available to agricultural companies established in the Netherlands, including the Research and Development (Promotion) Act (WBSO), innovation credits and the Dutch Good Growth Fund.

The WBSO (a research and development (R&D) tax credit) aims to provide entrepreneurs with incentives that lower wage costs for R&D and other R&D costs and expenditures, such as prototypes or research equipment to invest in R&D. Innovation credits are available to support risky innovation projects that do not qualify for ordinary bank loans.

The Dutch Good Growth Fund provides financial support for investment, collaboration and exports to emerging markets by Dutch companies.

### Incentives for foreign investors

- 10 | Are there any programmes addressing assistance or government incentives for investment by foreign ownership in agribusiness?

While there are no government programmes that provide assistance or government incentives for investment by foreign ownership in agribusiness, any business that is established in the Netherlands and fulfils the relevant criteria is eligible for benefits, subsidies and incentives available to other (Dutch) companies. Therefore, foreign-held Dutch agricultural companies are eligible for the same subsidies as domestically held companies.

## FOOD SAFETY, CERTIFICATION PROGRAMMES, ANIMAL SAFETY AND DISEASE

### Livestock legislation

- 11 | List the main applicable enacted legislation for primary processors of live animals.

At the EU level, the 1976 European Convention for the Protection of Animals kept for Farming Purposes lays out general conditions for all species of animals kept for the production of food, wool, skin, fur or for other farming purposes. Article 3 mandates that 'animals shall be housed and provided with food, water and care [...] appropriate to their physiological and ethological needs'. Article 4 protects the freedom of movement of animals, and article 5 regulates the lighting, temperature, humidity, air circulation, ventilation and other environmental conditions.

Based on this European Convention, Council Directive 98/58/EC gives general rules for the protection of animals of all species kept for the production of food, wool, skin or fur or for other farming purposes, including fish, reptiles of amphibians. Article 2 mandates that all animals whose welfare depends on frequent human attention shall be inspected at least once a day. Article 7 protects the animals' freedom of movement, and article 10 requires that breeding procedures (natural or artificial) that are likely to cause suffering or injury must not be practised, although there are exceptions to this. Article 21 further states that no animal shall be kept for farming purposes unless it can reasonably be expected, on the basis of its genotype or phenotype, that it can be kept without detrimental effect on its health or welfare.

In addition, specific EU directives have been enacted for pigs (Council Directive 2008/120/EC), broiler chickens (Council Directive 2007/43/EC), egg-laying hens (Council Directive 1999/74/EC) and dairy cattle and calves (Council Directive 2009/119/EC), the rules of which have been implemented in Dutch law.

The Netherlands is a leading country with regard to animal welfare in Europe. The Animals Act is the main piece of legislation in the country for animal welfare. This Act, applicable to kept animals, with some general articles applicable to all animals, formally recognises animal sentience and the 'intrinsic value' of animals.

Article 1.3, paragraph 2 of the Animals Act provides that the intrinsic value of animals means the recognition of the integrity and well-being of animals as sentient beings. Paragraph 3 sets the foundations of care for animals based on the principles of the Five Freedoms of Animal Welfare as adopted by the World Organisation for Animal Health. As such, the full spectrum of animal sentience, including expressing natural behaviours and not simply a recognition of pain and suffering, is formally recognised in Dutch law. The protection of the Act applies to animals that are kept, except where the context requires otherwise; however, it appears that the recognition of sentience extends to all categories of animals (including wild animals).

The Netherlands Food and Consumer Product Safety Authority (NVWA) is tasked with enforcing these rules. No distinction is made between meat for domestic consumption and meat for export.

### Food safety regime

#### 12 | Describe food safety regulations for meat and poultry products, and all other food products in your jurisdiction.

The food safety regime in the Netherlands is principally based on the EU Regulation (EC) No. 178/2002 (the EU General Food Regulation), which lays down general principles, requirements and procedures that underpin decision-making in matters of food and feed safety, covering all stages of food and feed production and distribution.

One of the basic principles of the EU General Food Regulation is the responsibility for food safety placed on the 'food and feed operators' (including agricultural companies), as they are in the best position in the production chain to ensure compliance with all relevant safety regulations.

In addition to the EU General Food Regulation, there is a large and diverse body of European legislation on various topics. Some legislation prescribes general rules for all products (horizontal legislation). The scope of other legislation is limited to specific products or product groups (vertical legislation).

Dutch food safety laws are a tapestry of acts of Parliament, local regulations, ministerial orders and regulations by semi-public trade organisations. The basis is the Commodities Act, which acts as a framework law, under which a variety of decrees and regulations have been issued that relate to the production and preparation of food, labelling, testing, hygiene, trading and selling to consumers. However, for meat and poultry, the Animals Act sets the main framework on food safety requirements.

Compliance and enforcement of product quality or food safety regulations in all parts of the production chain, including the issuing of permits and the conducting of inspections and investigations relating to food safety and animal welfare, is largely the responsibility of the NVWA.

### Safety enforcement

#### 13 | What enforcement can take place in relation to food safety? What penalties may apply?

The primary method of enforcement in food supply chain safety is through administrative procedures. Within the NVWA, the General Inspection Service is the enforcement agency with police-like investigative authority. A Regulatory Framework provides the underlying principles for the NVWA's enforcement authority.

Typically, violations of food safety regulations are subject to administrative fines (up to €870,000 under the Commodities Act) and retractions of permits. However, certain more serious violations are also liable to criminal prosecution, which may result in criminal liability of both legal persons and natural persons, the latter including the possibility of arrest and jail.

### Product certification

#### 14 | Describe any certification programmes and regulations for genetically modified foods and organic foods.

The Netherlands ratified the Cartagena Protocol on Biosafety 2002 on 8 January 2002, and it entered into force on 11 September 2003.

The Netherlands has made use of the possibility granted under Directive (EU) 2015/412 to prohibit the cultivation of EU-admitted genetically modified (GM) crops in the Netherlands. This means that no GM crops are cultivated in the Netherlands.

A permit is required for the following activities involving GM crops:

- experiments in containment (contained use): these include experiments in a laboratory or greenhouse;

- experiments involving deliberate release into the environment, for instance, field tests of GM crops; and
- cultivation, production, import or export of new GM crops (market authorisations).

Applications for a permit are handled by the Bureau for Genetically Modified Organisms (the GMO Bureau), a department of the Ministry of Infrastructure and Environment (MIE). Applications for market authorisations take longest as these are reviewed by the GMO Bureau, the European Commission and all other EU member states.

The applicant must conduct an environmental risk analysis before applying for any of these permits, focusing on the risks of the proposed use for humans and the environment. This risk analysis must include:

- possible undesired side effects;
- the risk that these side effects will occur; and
- measures proposed to decrease this risk.

The MIE will check the risk analysis and will only grant a permit if the identified risks are negligible. The MIE is advised by the Committee on Genetic Modification (Cogem).

Applications for large-scale contained use or deliberate release permits are partially public as decisions are only made after a special administrative law preparatory procedure has been completed.

Applications for market authorisations at the MIE follow European procedures. The European Commission ultimately determines whether a GM crop can be introduced into the European market. After receipt and a first review of the application, the MIE will forward it to the European Commission. The application will then be sent to all other EU member states for consultation. The European Food Safety Authority conducts the risk assessment of a particular GM crop. For the Netherlands, additional risk assessments are completed by Cogem and RIKILT.

The Human Environment and Transport Inspectorate continuously monitors permit holders. If new facts arise that could have important consequences for the risks involved with the permitted use of GM crops, the MIE can order the permit holder to temporarily or permanently cease certain activities, or change the permit requirements.

For organic products, Regulation (EC) No. 834/2007 provides the legislative framework on the organic production and labelling of organic products. As of 1 January 2021, Regulation (EU) No. 2018/848 on the organic production and labelling of organic products will replace Regulation (EC) No. 834/2007. For organic products from outside the European Union, a certificate of control is required that can be applied for electronically.

As for novel foods, since 1 January 2018, Regulation (EU) No. 2015/2283 has been in force, replacing the Novel Foods Regulation (Regulation (EC) No. 258/97). It lays out detailed rules for the authorisation of novel foods, ingredients and processes. The new regime includes further clarification on the definition of novel foods – a centralised approval procedure at the EU level through the European Food Safety Authority.

On a domestic level, the Commodities Act Decree on Novel Foods and GMO applies.

### Food labelling requirements

#### 15 | What are the food labelling requirements, including the applicable enacted legislation, enforcement and penalties?

Food labelling requirements are laid down in the Commodities Act Decree on Information on Food Products, which implements Regulation (EU) No. 1169/2011 on the provision of food information to consumers. Mandatory information on a label must include the name of the food, a list of ingredients, quantity, allergens if so included in the product,

best before date, special storage conditions and conditions for use, name and address of the food manufacturer and country of origin, and nutritional information. This mandatory information must be presented in the Dutch language, with a minimum letter size of 1.2 millimetres. Labelling information may not be misleading, including suggesting health claims.

The NVWA is tasked with enforcing labelling requirements. Failure to comply with applicable regulations may result in an order to take products out of circulation and fines.

### Food animal legislation

#### 16 | List the main applicable enacted legislation regarding health of food animals, including transportation and disease outbreak and management.

EU legislation applicable to the health of food animals, including transportation, includes:

- Council Directive 64/432/EEC on animal health problems affecting intra-Community trade in bovine animals and swine;
- Council Directive 91/68/EEC on animal health conditions governing intra-Community trade in ovine and caprine animals;
- Council Regulation (EC) No. 1/2005 on the protection of animals during transport and related operations; and
- Council Regulation (EC) No. 21/2004 establishing a system for the identification and registration of ovine and caprine animals.

Domestic legislation is included in the Animals Act 2011, the Decree on Trade in Living Animals and the Decree on Keepers of Animals, which regulate the health of food animals, transportation, and disease outbreak and management. In addition, the NVWA has issued detailed rules concerning specific issues relating to animal welfare and transportation, including rules on housing and use of medicine.

The NVWA is also tasked with enforcing these rules.

### Animal movement restrictions

#### 17 | What are the restrictions on the movement of animals within your country?

At the EU level, welfare provisions for animal transport are laid out in Council Regulation (EC) No 1/2005. The Regulation defines the responsibilities of all actors involved in the transport chain of live animals entering or leaving the European Union. Article 3 (general conditions) provides that 'no person shall transport animals or cause animals to be transported in a way likely to cause injury or undue suffering to them'. Article 7 forbids long journeys (ie, exceeding eight hours) unless the means of transport has been inspected and approved under article 18(1).

### Slaughter legislation

#### 18 | Where would one find the regulations related to livestock slaughtering?

Council Regulation (EC) No. 1099/2009 on the protection of animals at the time of killing prescribes the framework for the killing of animals bred or kept for the production of food. It also includes operational requirements and requirements for the construction, layout and equipment of slaughterhouses.

Domestic legislation on livestock slaughtering is included in the Animals Act and several detailed regulations and guidelines, which stipulate how animals are to be unloaded and offloaded, how they should be handled at the slaughterhouse, and how sedation and slaughtering is to take place.

The NVWA is in charge of enforcement of these rules.

### Pest control requirements

#### 19 | Outline the regulatory regime for pesticides in your jurisdiction.

Only pesticides that have been approved by the Board for the Authorisation of Plant Protection Products and Biocides for the Netherlands market may be used. Regulation (EC) No. 1107/2009 concerning the placing of plant protection products on the market and the Crop Protection Products and Biocides Act provide for the legal framework for market approval of pesticides and crop protection products. The use of pesticides is only permitted if they do not cause harmful effects to humans, animals and the environment.

Regulation (EU) No. 528/2012 concerning the making available on the market and use of biocidal products and its supporting legislation, such as the Biocides Review Regulation (Commission Delegated Regulation (EU) No 1062/2014), prescribe that only biocides and biocidal products that are allowed in the European market may be used.

## BUSINESS ORGANISATION

### Typical organisation

#### 20 | How are agricultural operations typically organised in your jurisdiction?

Most farms are family owned or partnerships. About 50 per cent are sole proprietorships, and about 40 per cent are partnerships, often within families.

The Dutch agricultural sector has a relatively high percentage of cooperatives. Many farms are members of one or more cooperatives. While the number of farmers has gradually declined over the past 50 years, agricultural production has remained stable. In 2015, there were only 55,680 farmers, compared with 97,390 in 2000, while the total added value generated by agriculture, food processing and distribution continues to be €50 billion. Cooperatives are responsible for a major share of this added value.

In the past few decades, there has been strong consolidation between cooperatives, leading to only a few or even a single cooperative per sector. Several agricultural cooperatives operate internationally, or are multinational, and belong to the world's largest cooperatives.

A cooperative is a legal entity that is able to enter into agreements and own assets. Cooperatives have members rather than shareholders. The profits of the joint enterprise can be distributed to the members. A cooperative can be organised to limit or exclude the liability of the members for losses remaining after its dissolution.

Dutch cooperative law is flexible concerning internal governance and attracting equity from members or third parties. It has led to a large number of structures in the by-laws of cooperatives to suit their strategic needs. This often includes a legal separation between the cooperative association and the cooperative firm. As the cooperative does not have a capital divided into shares, it cannot be acquired as such. However, its assets and its individual member firms are open to investment and can be acquired.

### Foreign ownership

#### 21 | Outline any restrictions on foreign ownership of agricultural operations or businesses other than farming operations.

There are no restrictions.

## AGRICULTURAL WORKERS, IMMIGRATION, AND HEALTH AND SAFETY

### Worker rights

22 | Describe any specific rules or laws governing the rights of workers or employees for agricultural operations.

There are no specific rules or laws governing the rights of workers or employees for agricultural operations.

### Immigration regulation

23 | How is farmworker immigration regulated in your jurisdiction?

There are no specific regulations for immigration of farmworkers. Within the European Union, there is a policy of freedom of movement for workers. Therefore, no immigration procedures apply to workers from EU member states.

### Work health and safety regulation

24 | Outline the health and safety regulations relating to farmworkers in your jurisdiction.

There are no specific regulations related to farmworkers. The primary responsibility for a health and safety policy within a company lies with the employer and the employees. Trade unions and branch organisations can also put forward adequate health and safety measures.

The Dutch government is actively involved in the execution of health and safety policies. The Working Conditions Act a basis for a sound health and safety policy. It applies to all employers and employees in the Netherlands.

## INTERNATIONAL TRADE

### Import regulation

25 | Describe the regulatory environment for animal product imports.

Import control measures for animals and products of animal origin from outside the European Union require the following:

- for all animal imports, a health certificate from the country of origin by the competent authority is required, specifying that the animals fulfil the basic animal health requirements as set out in the relevant EU Directives;
- on arrival in the European Union, the animals and the accompanying certificates must be verified and checked by EU official veterinarians at a designated border control post (BCP); and
- random checks on the animals may be carried out at the final destination.

Regulation (EU) No. 2016/1012 on zootechnical and genealogical conditions for the breeding, trade in and entry into the Union of purebred breeding animals, hybrid breeding pigs and the germinal products thereof (the Animal Breeding Regulation) of 8 June 2016 became applicable as of 1 November 2018.

The Regulation provides a single legal framework for the rules applicable to the breeding, trade and entry into the European Union of breeding cattle, pigs, sheep, goats and horses as well as their germinal products.

The Animal Breeding Regulation requirements include:

- controls on activities of recognised breed societies, including periodic inspections by the Animal and Plant Health Agency;
- a new zootechnical certificate for cattle, pigs, sheep and goats and a new horse certificate; and

- the need for all breeding organisations to create and publish a breeding programme for each breed they support.

Breed societies and stud books that are officially recognised by the Netherlands Enterprise Agency must meet zootechnical rules and standards to trade pure-bred breeding animals and germinal products on preferable terms. This means that animals and germinal products from recognised breed societies in one EU member state are treated the same in other EU member states and some non-EU countries, such as the United States and Australia.

26 | Describe the regulatory environment for all other food imports.

The Official Controls Regulation (Regulation (EU) No. 2017/625) addresses official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products.

The scope of the Regulation has been extended to cover official controls to verify compliance with food and feed law, animal health and welfare, plant health and animal by-products rules.

### Tariffs and quotas

27 | May tariffs, quotas or similar measures be put in place?

The European Union is competent to negotiate or establish tariffs, quotas or similar measures that will then have direct effect in the Netherlands (and all other member states).

### Import and export treaties

28 | What treaties apply to the import and export of agricultural products in your jurisdiction?

In addition to EU legislation, the Netherlands is bound to free trade agreements that are agreed between the European Union and several third countries, which may, for instance, reduce tariffs on agricultural products and will directly affect the import and export of agricultural products from and to member states.

## INTELLECTUAL PROPERTY

### Plant breeder rights

29 | How are plant breeders' property rights protected in your jurisdiction?

The Netherlands is a member of the International Union for the Protection of New Varieties of Plants Convention since 1968 and is party to the latest Act of 1991. The UPOV 1991 Act has been implemented in national law through the Seeds and Planting Materials Act 2005 and further implementing decrees.

Regulation (EC) No. 2100/94 on Community plant variety rights establishes a system of EU plant variety rights (PVR) for its member states. A clear distinction is made between granting a PVR and the right to place propagation material on the market (trading).

The Community PVR system exists in parallel with national systems. If a national (Dutch) PVR is granted for a new variety, it is added to the Netherlands Register of Varieties. Once the national right has been obtained, the applicant can apply for a Community PVR with the Community Plant Variety Office in Angers, France. If a Community PVR is granted and registered in the EU Common Catalogue, the national PVR will become 'dormant' for the period the Community PVR is in force.

Trading of new plant varieties (agricultural crops, forestry, fruits and vegetables) may require prior admission to the National Plant



Variety Register. Registration on this list may be subject to a value for culture and use test. This test is required for most agricultural crops but not for fruits and vegetables. Once a variety has been admitted to the National Plant Variety Register, the Dutch Plant Varieties Board will notify the EU and other member states, and the propagation material can be freely traded in the European Union. Horticultural plant varieties can be traded without registration in the National Plant Variety Register.

Granting of plant breeders' rights is dependent upon whether the variety complies with novel, distinct, uniform and stable (DUS) criteria and has a suitable name. Conformity with DUS criteria is verified by the Netherlands Inspection Service for Horticulture.

### Access to plant varieties and technologies

#### 30 | How is farmers' access to crop varieties and plant technologies addressed in your jurisdiction?

A farmer's privilege is the right of a grower to use harvested materials within the premises of their company for propagation purposes. This privilege only applies to crops in sectors in which the use of an individual's own seeds and seed materials is customary (eg, grain and potato crops).

In this respect, the grower must:

- inform the PVR holder of the details of his or her company and the use of the seeds and seed materials; and
- pay a reasonable licence fee for the use of the harvested materials.

In general, 60 per cent of the licence fee that is due in trade for use of that variety is considered reasonable.

A breeder's exemption allows a third party to use the protected variety to breed a new variety without paying a royalty fee. This breeder's exemption is not an infringement of the rights of the PVR holder.

### Other intellectual property

#### 31 | What other intellectual property considerations apply to agribusiness in your jurisdiction?

ILP Vegetable, the international licensing platform for vegetable plant breeding, was set up in the Netherlands with the objective of guaranteeing worldwide access to patents that cover crucial vegetable plant traits currently covered by patent claims from ILP Vegetable member companies, which currently represent more than 50 per cent of the global seed market. Under the terms and conditions of this platform, the members of ILP Vegetable will make all their patents accessible to their fellow members, who can obtain a licence for breeding and commercialisation of new varieties. The licensee must pay royalties for the commercialisation of the new variety, if still covered by the patent, in countries where a patent right exists.

## ENVIRONMENTAL ISSUES

### Regulatory agencies

#### 32 | Describe the regulatory agencies that have a role in managing the environmental impact of agricultural production in your jurisdiction.

The primary regulatory agency is the Human Environment and Transport Inspectorate of the Ministry of Infrastructure and the Environment, which enforces regulations relating to sustainability and safety, the processing of (waste) materials and products, the quality of the water and soil, and spatial planning.

The Netherlands Food and Consumer Product Safety Authority is in charge of enforcing animal manure legislation and carries out inspections on animal farms and manure transportation and processing companies.

### Water and air pollution regulation

#### 33 | Describe how water and air pollution is regulated in relation to primary agriculture in your jurisdiction.

The regulatory framework on water and air pollution stems from EU directives that are transposed into national law, including the Water Act. Based on this legislation, it is prohibited to dispose of waste, residue or other materials into the water system unless a 'water permit' has been obtained that authorises a specific disposal. A water permit can be obtained from the local council where the proposed activities are to take place.

The regulatory environment relating to air quality is designed to implement and meet the objectives primarily established through the EU regulatory framework. With regard to air quality, the Ministry of Infrastructure is taking measures against particulates pollution caused by livestock farming in the Netherlands.

### Waste regulation

#### 34 | Describe how liquid and other waste is regulated in relation to primary agriculture in your jurisdiction.

Under Chapter 10 of the Environmental Management Act, the general principle is established that all operators dealing with waste are obliged to take all precautionary measures reasonably possible to reduce negative impacts for the environment to the extent possible.

The Fertilisers Act provides the regulatory framework for all types of fertiliser (including vegetable and animal waste) and provides strict rules on the transport, use and trade of fertiliser.

## UPDATE AND TRENDS

### Key developments of the past year

#### 35 | What are the most noteworthy current trends or primary legal issues of concern in relation to agriculture and agribusiness in your jurisdiction? What future trends in relation to agriculture and agribusiness do you foresee in your jurisdiction?

On 1 June 2018, the European Commission presented legislative proposals on the Common Agricultural Policy (CAP) beyond 2020. These proposals aim to make the CAP more responsive to current and future challenges, such as climate change and generational renewal, while continuing to support European farmers for a sustainable and competitive agricultural sector.

Based on nine objectives, the future CAP will continue to ensure access to high-quality food and strong support for the unique European farming model. The nine objectives of the future CAP are:

- ensuring fair income to farmers;
- increasing competitiveness;
- rebalancing the power in the food chain;
- climate change action;
- environmental care;
- preserving landscapes and biodiversity;
- supporting generational renewal;
- vibrant rural areas; and
- protecting food and health quality.

The European Commission proposes a more flexible system, simplifying and modernising the way the CAP works. The policy will shift the emphasis from compliance and rules towards results and performance.

The Dutch government wishes to reform the CAP after 2020 to focus less on income support for farmers and more on stimuli for innovation, sustainability, food security and food safety. From 2020, new greenhouses must be climate neutral and economically viable. Maximum levels of

carbon dioxide emissions have been agreed by the government and the horticultural sector. The government also aims to reduce greenhouse gas emissions resulting from agriculture by 3.5 tons and is discussing the measures required to achieve this with the agricultural sector.

On 20 December 2019, the Supreme Court issued its landmark decision in *State of the Netherlands v Urgenda* (the *Urgenda* decision), confirming the government had acted unlawfully in taking insufficient action to prevent dangerous climate change. The state was ordered to reduce its greenhouse gas emissions to 25 per cent by 2020 in accordance with its human rights obligations.

The government is taking on a number of recommendations made by *Urgenda*, including a subsidy scheme for LED lighting and energy efficiency in greenhouse horticulture.

To reduce the impact of nitrogen, for the next 10 years, the government will annually commit €300 million to restoring and strengthening nature sites. In addition, €200 million euros will be spent each year for the next 10 years to invest in other measures to help businesses reduce the amount of nitrogen that is dumped into more sensitive nature areas. This includes, for example, cleaner technologies, different animal feed and financial arrangements for farmers who want to stop.

### Coronavirus

**36 | What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?**

From 1 October 2020, a third set of economic support measures for businesses affected by the covid-19 crisis has come into effect. Several existing measures, such as the Temporary Emergency Bridging Measure for Sustained Employment (NOW) and Tozo will be extended, with new conditions.

- NOW3: employers with a turnover loss of more than 20 per cent will be able to apply for the NOW to receive compensation of their employees' wages from October 2020 to July 2021.
- Tozo2: Self-employed professionals can apply for Tozo2, the temporary benefit to bridge the loss of income during the period from June to September in the municipality where they live.

Entrepreneurs in the horticultural sector, both the ornamental (floriculture) and vegetable horticulture subsectors, and growers of potatoes for processing that have suffered turnover losses owing to the pandemic (eg, because they can no longer export their produce) can apply for compensation.

Entrepreneurs in the horticulture and floriculture sectors will pay 30 per cent of these damages themselves (entrepreneurial risk). The government will compensate part of the remaining loss. An amount of €600 million is available for this compensation.

Growers of potatoes for processing can apply for compensation (purchase scheme) for the potatoes they have in stock that can no longer be processed into fries. The compensation amounts to 40 per cent of the average market value during the period from September 2019 to February 2020. An amount of €50 million is available for this measure.

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