REPORT FROM THE COMMISSION TO THE COUNCIL

on the results of the application of Article 13(9) and Articles 22, 23 and 24 of Council Directive 2000/29/EC of 8 May 2000 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community
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Article 26 of Council Directive 2000/29/EC of 8 May 2000 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community stipulates that "by 20 January 2002 at the latest, the Commission shall examine the results of the application of Article 13(9) and Articles 22, 23 and 24 and submit to the Council a report, accompanied by any necessary proposals for amendments."

Accordingly, this report assesses the results of the application of Article 13(9) (inspection infrastructures) and Articles 22, 23 and 24 (solidarity and liability) of the Directive. In accordance with Article 26 of the Directive, the report will also propose amendments to the legislation in force.

1. INTRODUCTION

The concepts of solidarity and liability stem from the proposals put forward in the document "Completing the internal market: White Paper from the Commission to the European Council", presented on 14 June 1985 (COM(85) 310 final). Paragraphs 39 to 43 of the White Paper present a number of specific actions in the field of plant health protection. Paragraph 41 stipulates "Furthermore, Member States should cooperate in fighting fraudulent practices in the Community framework, and rules of liability in cases of damage resulting from fraudulent or negligent practices would need to be established." The idea is taken up in Section 5.1.6 of the Commission Communication "A new strategy in the field of plant health (harmful organisms)" of 10 March 1987 (COM(87) 97 final): "uniform liability and financing rules would be useful. Effect: Increase of confidence in respect of plant health activities; more appropriate distribution of financial burdens, in the case of spreading harmful organisms through infected material."

For this purpose:

- "solidarity" means that a Member State which is the "victim" of an emergence of organisms harmful to plants previously unknown on its territory may benefit from a financial contribution from the Community to support the organism eradication and control measures it has set in place,

and

"liability" means that, where it is established that the emergence of the harmful organism was caused by a Member State's failure to comply with the Community plant-health regulations or standards in force, the Member State shall reimburse the Community the costs of the plant health actions paid out under the solidarity scheme.

Making the Member States financially liable for inadequate monitoring, inspection and checking was a measure thought likely to improve compliance with Community plant-health regulations.


The provisions of Directive 97/3/EC were further specified by Commission Regulation (EC) No 2051/97 of 20 October 1997 establishing detailed rules for the implementation of the provisions relating to the allocation of a 'plant-health control' financial contribution from the Community,\(^6\) which set the deadlines for the submission of a solidarity dossier in a given year in order to be taken into account for the relevant appropriations in the general budget for that year.

Directive 97/3/EC also provided for infrastructure measures and stipulated that the details of the implementation of the solidarity provisions would be further specified in two implementing Regulations, one on the system in general and another (optional) specifically on "loss of earnings". All the provisions of Directive 97/3/EC were subsequently incorporated into Council Directive 2002/29/EC, which is a consolidated version of Directive 77/93/EEC.

2. **ASSESSMENT OF THE IMPLEMENTATION OF THE ARTICLES**

2.1. **Article 13(9) "Inspection infrastructures"

2.1.1. Description of the Article

Article 13(9) lays down general rules for the Community to award a financial contribution to Member States in order to strengthen inspection infrastructures insofar as they relate to plant-health checks carried out in accordance with Directive 2000/29/EC.

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\(^3\) OJ C 205, 6.8.1991, p. 16.
"The purpose of this contribution shall be to improve the provision, at inspection posts other than those at the place of destination, of the equipment and facilities required to carry out inspection and examination and, where necessary, to carry out the measures provided for in paragraph 11, beyond the level already achieved by complying with the minimum conditions stipulated in the implementing provisions pursuant to paragraph 8, fourth subparagraph," of Article 13 of Directive 2000/29/EC.

"The Commission shall propose the entry of suitable appropriations for that purpose in the general budget of the European Union." 

"Within the limits set by the appropriations available for these purposes, the Community contribution shall cover up to 50% of expenditure relating directly to improving equipment and facilities" (up to 70% in exceptional cases following a decision by the Council, Article 25 of Directive 2000/29/EC).

To that end, the minimum conditions for carrying out plant health checks in the Community, at inspection posts other than those at the place of destination, of plants, plant products or other objects coming from third countries were set out in Commission Directive 98/22/EC of 15 April 1998.7

The arrangements for this operation as defined in an implementing regulation and the award of the financial contribution as well as the amount thereof are adopted by Commission decision. The Member State concerned provides the information and documents necessary in order to award the financial contribution. If necessary, investigations may be carried out on the Commission's authority by the experts referred to in Article 21 of Directive 2000/29/EC.

2.1.2. Progress with regard to the implementation of the Article

After Directive 97/3/EC entered into force, a series of draft Commission Regulations establishing detailed rules for the implementation of the provisions described in Article 13(9) resulted in the adoption of Commission Regulation (EC) No 998/2002 of 11 June 2002 establishing detailed rules for the implementation of the provisions relating to the allocation of a Community financial contribution for Member States in order to strengthen inspection infrastructures for plant-health checks on plants and plant products coming from third countries.8

In particular, the Regulation gives details of the administrative rules for the presentation of applications, the information to be provided regarding the inspection post to be equipped, the justification and the description of the equipment/facilities to be acquired as well as a detailed financial estimate for their procurement.

Member States must present applications for such expenditure in advance. The Commission then examines the applications and prepares a list of applications satisfying the criteria of the Regulation. The list of equipment/facilities eligible for subsidy is limited to those directly required for inspection activities.

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The spending programmes found eligible are then ranked according to their added value, prioritising inspection posts which need to be significantly restructured and those recommended for improvement following an inspection visit by the Food and Veterinary Office (FVO). The final list of programmes eligible for subsidy is presented to and discussed within the Standing Committee on Plant Health (SCPH).

It should be noted that the Council has not as yet defined the cases for which the financial contribution referred to in Article 13(9) may be as much as 70% of the eligible expenditure (Article 25 of Directive 2000/29/EC).

€100 000-200 000 per annum are allocated to this action at present. The enlargement of the European Union is expected to add to the need for resources in this area.

Exceptionally for 2002, the Regulation stipulated that Member State applications must be submitted by 15 July at the latest. The Commission has received four applications, which are currently being examined.

2.2. Articles 22 and 23 ("Solidarity")

2.2.1. Description of the Articles

2.2.1.1. Principle

Article 22 stipulates that "in the event of the actual or suspected appearance of a harmful organism as a result of its introduction or spread within the Community, Member States may receive a "plant-health control" financial contribution from the Community pursuant to Articles 23 and 24 to cover expenditure relating directly to the necessary measures which have been taken or are planned for the purpose of combating that harmful organism in order to eradicate or, if that is not possible, contain it. The Commission shall propose the entry of suitable appropriations for that purpose in the general budget of the European Union."

In order to receive the Community financial contribution, the Member State must have notified the appearance of the harmful organism in question, whether or not listed in Annexes I and II of Directive 2000/29/EC.

A further condition is that the organism "constitutes an imminent danger for all or part of the Community due to its appearance in an area where the organism had either not been known to occur previously or had been or was being eradicated, and was introduced into that area through consignments of plants, plant products or other objects from a third country or another area of the Community."

2.2.1.2. The "necessary measures" referred to in Article 22

The necessary measures (see Article 23(2) of Directive 2000/29/EC for further details) may, for example, consist of:

(a) destruction or disinfection,
(b) inspections or testing,
(c) prohibitions or restrictions in respect of use.
For the measures covered by indents (a) and (b) of the Article referred to in paragraph 2.2.1.2, the financial contribution covers the expenditure paid from public funds and compensation for financial losses other than loss of earnings. Financial losses may include the depreciation and maintenance for machinery and premises, farm rents, taxes, penalties for breach of contract, etc., provided that such losses are not covered by income from an alternative crop. They may be actual or estimated costs. If estimated, a detailed calculation method must be provided.

For the measures covered by indent (c) of the Article an implementing Regulation may, by way of derogation, specify cases in which compensation for loss of earnings (arising due to prohibitions or restrictions and directly related to the sale of products and net farm income) shall be considered to be expenditure directly relating to necessary measures subject to the time limits applicable to those cases, up to a maximum of three years. The cases where derogations may apply have not yet been defined.

The interpretation of the concept of public funds has been much debated. Public funds, for the purposes of the solidarity legislation, can be considered State resources that do not necessarily have to come direct from the national budget, but may come via an intermediary, which could be a producers' association, under certain conditions. Expenditures made by producer associations may be considered as being from public funds, if the said associations have undertaken eradication measures according to the instructions of the plant health authorities, and are funded from the State budget, a parafiscal levy or a compulsory contribution from all producers in a specific sector or zone. Where, on the other hand, an association is funded from the resources of its members and membership is not compulsory, public funds are not involved.

Under no circumstances are the regular running costs of the official body concerned (the plant protection service) covered.

The commercial value of the destroyed material (i.e. material infected or suspected to be infected) originating from the consignment and the reduced income resulting from its disposal or processing are not eligible for reimbursement.

2.2.1.3. Submission of a dossier

In order to qualify for the financial contribution from the Community, the Member State concerned must apply to the Commission within a specified time limit ("at the latest before the end of the calendar year following that in which the appearance of the harmful organism was detected"). The Commission and the other Member States receive all the necessary information (Article 23(4)) regarding the dossier. The Member State presenting an application also specifies the necessary measures, the timetable for them, the results obtained and the actual or estimated cost of the expenditure incurred or to be incurred, and the proportion of such expenditure covered from public funds.

The Community financial contribution is awarded in the same way as the infrastructure expenses by one or more Commission Decisions, taking account of the danger represented by the harmful organism concerned. It covers up to 50%, and in the case of compensation for loss of earnings up to 25%, of the expenditure directly associated with the necessary measures.
2.2.1.4. Allocation of funds

The necessary measures should be taken, or planned to be taken, within a period not more than two years after the date when the appearance of the harmful organism is detected. The period may be extended if examination of the situation concerned leads to the conclusion that the objective of the measures will be achieved within a reasonable additional period. In that case, the financial contribution from the Community will be degressive over the years concerned. Special arrangements have been laid down in respect of measures to protect Community territory other than that of the Member State concerned.

The Member State concerned will reimburse the Community for all or part of the amounts paid to it if, for example, the necessary measures were not implemented or were not compliant. Similarly, the contribution will cease to be paid if the measures are deemed no longer necessary.

2.2.2. Progress with regard to the implementation of the Articles

2.2.2.1. Developments in the available budget 1997-2002

The Commission started receiving the first applications for budget allocations to fund solidarity measures in 1997. Examination of the first solidarity dossiers began in February 1999. It was not therefore possible to use the budget sums available for 1997 and 1998 (€400 000 per year).

From 1999 to 2001, 57 dossiers were submitted and examined. A series of Commission Decisions have been adopted awarding the Community financial contribution in the case of eligible dossiers, the latest being Commission Decision 2001/811/EC of 21 November 2001. A total of €1 654 513 has been paid out. The budget allocated has increased gradually over the years, as is shown in Table 1.

Table 1: Growth of the available budget (currently budget line B1-333)

<table>
<thead>
<tr>
<th>Year</th>
<th>Budget available (€)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1997</td>
<td>400 000</td>
</tr>
<tr>
<td>1998</td>
<td>400 000</td>
</tr>
<tr>
<td>1999</td>
<td>300 000</td>
</tr>
<tr>
<td>2000</td>
<td>500 000</td>
</tr>
<tr>
<td>2001</td>
<td>900 000</td>
</tr>
<tr>
<td>2002</td>
<td>1 300 000</td>
</tr>
<tr>
<td>Total</td>
<td>3 800 000</td>
</tr>
</tbody>
</table>

2.2.2.2. Procedure for the award of the financial contribution

It is extremely important that dossiers are compiled properly. To facilitate that task, a great deal of work has been put into drawing up guidelines (several updated versions have been published). The guidelines comprise a number of sections. First, the general eligibility criteria for a dossier are explained and clarified. Particular emphasis is placed on the existence of a trade pathway behind the appearance of the harmful organism. The admissible duration of the measures is also mentioned. Details of how to compile the dossier are given, and the technical annexes to be attached are specified. Examples of background information that may help the assessment of the dossier are given. A summary of the eligible "necessary measures" is then given. The concept of "public funds" is explained. One section is also devoted to clarifying the concept of "payments" under the various types of measure concerned (destruction and disinfection, inspection and testing, compensation for financial losses other than loss of earnings). Detailed instructions are given for the presentation of the financial annexes of the dossier, which are a key element in determining any appropriate Community financial contribution. Finally, the guidelines include model documents for the presentation of the dossier such as the application form, financial table and other useful information such as glossaries of technical terms and the NUTS categories (Nomenclature of Territorial Statistical Units, to help map the area where the outbreak occurred).

Dossiers found to be complete are then examined in specific working groups within the Standing Committee on Plant Health (SCPH). During the first half of the calendar year, the working group determines which dossiers are eligible to receive a financial contribution. The financial contributions for the various dossiers are then calculated according to the available budget, taking any applicable degressive principles into account (at present, the degressive rules are not established by legislative act). All these elements are incorporated in a draft Commission decision which is submitted Standing Committee on Plant Health for its opinion. After the draft has obtained a favourable opinion and the Decision has been adopted by the Commission, the financial contributions are paid to the Member States forthwith.

Commission Regulation (EC) No 2051/97 of 20 October 1997 establishing detailed rules for the implementation of the provisions relating to the allocation of a 'plant-health control' financial contribution from the Community gave only a few details in respect of the submission of dossiers, particularly in terms of form and deadlines. Experience of examining the dossiers showed that the provisions of the Regulation required further clarification. Consequently, in accordance with the fifth indent of Article 23(5) of Directive 2000/29/EC, an implementing Regulation, Commission Regulation (EC) No 1040/2002 of 14 June 2002\(^\text{10}\) establishing detailed rules for the implementation of the provisions relating to the allocation of a financial contribution from the Community for plant-health control and repealing Regulation (EC) No 2051/97, was adopted. It will be applicable to dossiers submitted as of 2003.

The Regulation gives details of the information to be included in the dossier: general information on the appearance of the relevant harmful organism, notification in accordance with Directive 2000/29/EC, the measures which have been taken or are planned, including the statutory notice of same by Member State agencies and the identification of the consignment which gave rise to the contamination. Details of the amounts paid or to be paid are also required, indicating the proportion contributed from public funds. After examining the dossiers, the Commission services draw up a list ranking the dossiers according to specific priorities: protecting the interests of the whole Community, the higher probability of efficacy and information regarding the identity of the consignment. Only dossiers for eligible expenditure of at least €50,000 will be considered. As in the case of the Regulation on inspection infrastructures, the list of the dossiers selected is approved by decision of the Commission.

Moreover, there is as yet no legal framework for the "loss of earnings" (the last indent of Article 23(3) of Directive 2000/29/EC) as the relevant "cases" have not yet been defined.

2.2.2.3. On-the-spot checks

An inspection visit was carried out in Portugal by the department responsible for examining the dossiers (DG SANCO E.1) in order to assess the solidarity dossier on brown rot in various Solanaceae in that country. There may be a need for this type of inspection visit to be carried out more frequently in future. (They are not the same as the Food and Veterinary Office inspections under Article 16(3) of Directive 2000/29/EC.) The inspectors check documents and verify the conformity and eligibility of the expenditure. In future, the evaluation teams will be made up of representatives of SANCO E.1 and of the unit in charge of budget management (DG SANCO A.3).

2.2.3. Statistical data on solidarity dossiers

The following tables give a more detailed picture of the solidarity dossiers processed since 1999. Table 2 shows the Decisions published since 1999 awarding financial contributions. Since 2000, the various financial contributions relating to solidarity have been encapsulated in a single annual Commission Decision.

Table 2: List of Decisions published since 1999

<table>
<thead>
<tr>
<th>Budget for the year</th>
<th>Decisions</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000</td>
<td>1 (2001/14/EC)</td>
</tr>
<tr>
<td>2001</td>
<td>1 (2001/811/EC)</td>
</tr>
</tbody>
</table>

Table 3 shows the statistics for dossiers presented during the period in consideration.

**Table 3: Number of dossiers presented / approved**

<table>
<thead>
<tr>
<th>Year</th>
<th>Dossiers presented</th>
<th>Dossiers approved</th>
<th>Budget available</th>
<th>Budget used</th>
<th>Percentage of budget used</th>
<th>Percentage of the financial contribution (*) (**)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999</td>
<td>24</td>
<td>17</td>
<td>300 000</td>
<td>296 610</td>
<td>98.9</td>
<td>40</td>
</tr>
<tr>
<td>2000</td>
<td>21</td>
<td>18</td>
<td>500 000</td>
<td>497 481</td>
<td>99.5</td>
<td>19</td>
</tr>
<tr>
<td>2001</td>
<td>12</td>
<td>10</td>
<td>900 000</td>
<td>860 422</td>
<td>95.6</td>
<td>50</td>
</tr>
<tr>
<td>Total</td>
<td>57</td>
<td>45</td>
<td>1 700 000</td>
<td>1 654 513</td>
<td>97.3</td>
<td>--</td>
</tr>
</tbody>
</table>

(*) Financial contribution divided by the total eligible expenditure. There is normally one dossier for each year of an eradication programme.

(**) The percentages given in the Table refer to dossiers covering at most two years. Applying the degressive principle, as of the third year programmes receive a 50% less contribution

**Trends in 2002**

The Member States have submitted seven dossiers for the year 2002, with a total expenditure of approximately €3 100 000.

Table 4 shows the details of dossiers per Member State. Of the seven Member States which have already submitted dossiers, Portugal, Spain and France are the countries receiving the greatest financial contribution. This observation must be weighed against the number of dossiers submitted in a given year, their financial value and the budget available annually.
Table 4: Breakdown of solidarity payments according to Member State, and total annual contributions

<table>
<thead>
<tr>
<th>Member State</th>
<th>1999</th>
<th>2000</th>
<th>2001</th>
</tr>
</thead>
<tbody>
<tr>
<td>B</td>
<td>6</td>
<td>3</td>
<td>17 892</td>
</tr>
<tr>
<td>L</td>
<td>9</td>
<td>9</td>
<td>89 972</td>
</tr>
<tr>
<td>D</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>E</td>
<td>7</td>
<td>5</td>
<td>32352</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>25</td>
<td>17</td>
<td>296 610</td>
</tr>
</tbody>
</table>

(*) Dos. Pr. = dossiers presented, Dos. Acc. = dossiers accepted.
Graph 1 and Table 5 give further information per Member State regarding the contributions paid since 1999. Graph 1 illustrates the amounts shown in Table 4 in another form, while Table 5 shows the amounts per Member State and per disease.

Graph 1: Total contribution per Member State (€)
### Table 5: Breakdown of contributions per Member State and per harmful organism

<table>
<thead>
<tr>
<th>Member State</th>
<th><strong>Harmful organisms inspected</strong></th>
<th>Plants affected</th>
<th>Year</th>
<th><strong>Maximum Community contribution (€)</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td><em>Erwinia amylovora</em></td>
<td>Apple trees, pear trees, other Rosaceae</td>
<td>1998-1999</td>
<td>88 478</td>
</tr>
<tr>
<td>Spain</td>
<td><em>Erwinia amylovora</em></td>
<td>Apple trees, pear trees, other Rosaceae</td>
<td>1996-2000</td>
<td>78 407</td>
</tr>
<tr>
<td>Spain</td>
<td><em>Rhynchophorus ferrugineus</em></td>
<td>Palm trees</td>
<td>1996-2000</td>
<td>86 338</td>
</tr>
<tr>
<td>Spain</td>
<td><em>Ralstonia solanacearum</em></td>
<td>Potatoes</td>
<td>1996-1997</td>
<td>5 644</td>
</tr>
<tr>
<td>Spain</td>
<td><em>Clavibacter michiganensis sepedonicus</em></td>
<td>Potatoes</td>
<td>1996-1997</td>
<td>8 806</td>
</tr>
<tr>
<td>Finland</td>
<td><em>Liriomyza trifolii</em></td>
<td><em>Gerbera</em></td>
<td>1999</td>
<td>16 606</td>
</tr>
<tr>
<td>Finland</td>
<td>Tomato Spotted Wilt Virus</td>
<td><em>Gerbera, Amaryllis, Chrysanthemum</em></td>
<td>1999</td>
<td>39 817</td>
</tr>
<tr>
<td>France</td>
<td><em>Clavibacter michiganensis sepedonicus</em></td>
<td>Potatoes</td>
<td>1997-1999</td>
<td>5 437</td>
</tr>
<tr>
<td>France</td>
<td><em>Globodera pallida, G.rostochiensis</em></td>
<td>Potatoes</td>
<td>1997-1999</td>
<td>3 821</td>
</tr>
<tr>
<td>France</td>
<td><em>Xanthomonas axonopodis</em></td>
<td><em>Anthurium</em></td>
<td>1997-1999</td>
<td>80 714</td>
</tr>
<tr>
<td>France</td>
<td><em>Clavibacter michiganensis sepedonicus</em> and <em>Globodera spp.</em></td>
<td>Potatoes</td>
<td>1997</td>
<td>26 899</td>
</tr>
<tr>
<td>Greece</td>
<td><em>Ralstonia solanacearum</em></td>
<td>Potatoes</td>
<td>1997-1998</td>
<td>1 467</td>
</tr>
<tr>
<td>Greece</td>
<td><em>Clavibacter michiganensis sepedonicus</em></td>
<td>Potatoes</td>
<td>1997-1998</td>
<td>30 885</td>
</tr>
<tr>
<td>Portugal</td>
<td><em>Bursaphelenchus xylophilus</em></td>
<td><em>Pinus</em></td>
<td>1999-2000</td>
<td>425 124</td>
</tr>
<tr>
<td>Portugal</td>
<td><em>Ralstonia solanacearum</em></td>
<td>Potatoes, tomatoes and peppers</td>
<td>1996-2000</td>
<td>271 319</td>
</tr>
<tr>
<td>Portugal</td>
<td>Tomato Spotted Wilt Virus</td>
<td>Tomatoes</td>
<td>1996-2000</td>
<td>461 038</td>
</tr>
<tr>
<td></td>
<td>Tomato Yellow Leaf Curl Virus</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Total financial participation**: € 1 654 513
Table 6 gives an overview of the solidarity contributions according to the crops affected. Solanaceae (potatoes, tomatoes, peppers) account for 50.7% of all solidarity contributions. Another significant item is the outbreak of pine wood nematode in Portugal.

### Table 6: Breakdown of contributions paid according to plants affected

<table>
<thead>
<tr>
<th>Crop affected</th>
<th>Amount allocated</th>
<th>% of total 1999-2001 financial contribution</th>
</tr>
</thead>
<tbody>
<tr>
<td>Potatoes</td>
<td>106 492</td>
<td>6.4</td>
</tr>
<tr>
<td>Tomatoes</td>
<td>461 032</td>
<td>27.9</td>
</tr>
<tr>
<td>Potatoes, tomatoes and peppers</td>
<td>271 319</td>
<td>16.4</td>
</tr>
<tr>
<td>Conifers: <em>Pinus</em></td>
<td>425 124</td>
<td>25.7</td>
</tr>
<tr>
<td>Apple trees, pear trees, various Rosaceae</td>
<td>166 885</td>
<td>10.1</td>
</tr>
<tr>
<td>Ornamentals</td>
<td>137 137</td>
<td>8.3</td>
</tr>
<tr>
<td>Palm trees</td>
<td>86 338</td>
<td>5.2</td>
</tr>
</tbody>
</table>

#### 2.2.4. Observations

The solidarity system is a recent development. It is no easy matter to draw conclusions from just three to four years' statistics since the results for every additional year add yet another dimension. It is still too early to conclude, for example, that solidarity is of interest only to specific countries, especially as other Member States are now submitting dossiers.

It is essential that Member States prepare their dossiers correctly so that the Commission can optimise the time taken to assess them. This is even more important when it comes to evaluating the financial evidence produced in support of a dossier. The thorough examination of the dossier should be complemented by on-the-spot checking by the Commission services responsible for processing the dossiers and managing the budget (see section 2.2.2.3).

In order for a dossier to be accepted, the appearance of the harmful organism must first have been properly notified (Article 23(1) of Directive 2000/29/EC). To avoid disputes as to the form that this notification should take, it is worth clarifying that the notification referred to in paragraph 1 and the first indent of paragraph 2 of Article 16 of the Directive must be in writing, even though the use of the term "notification" and the context in which it is used support the strict legal interpretation.

It is further recommended that the evaluation of dossiers by working groups be carried out by independent experts, i.e. not members of the national plant protection services submitting the dossiers.

Although a number of the decisions already published take degressive principles into account, it is not always possible to implement such rules in a completely clear way. For example, even if a degressive percentage is applied between the payment for year 2 and that for year 3, the payment for year 3 is still likely to be more than for year 2 if year 3 expenditure is considerably greater than the year 2 amount.
Further examination of the practical application of the concepts of "loss of revenue" and "financial losses" is required. At present, few Member States have submitted dossiers with a "financial losses other than loss of earnings" or "loss of earnings" component.

2.3. Article 24 ("Liability")

2.3.1. Description of the Article

The Commission must investigate the background to the appearance of the harmful organism which has given rise to the granting of the financial contribution under the solidarity scheme. It must in particular consult various information sources (the Member State where the outbreak originated, Community inspections, etc.) to investigate why the non-compliance of the consignments (plants, plant products or other objects) with the terms of Directive 2000/29/EC was not detected by the Member State of origin. This will enable any shortcomings in the Community Plant Health Regime to be identified and rectified.

It will also make it possible to assess whether the "victim" Member State failed to fulfil any of its obligations under the Community Plant Health Regime. If this is the case, "the Community financial contribution shall not be allocated to that Member State or, if already allocated, shall not be paid or, if already paid, shall be refunded to the Community."

If the assessment shows that the appearance of the harmful organism was caused by a Member State's failure to comply with the Community plant-health regulations or standards in force, the Member State has to reimburse the Community the costs of the plant health actions paid out under the solidarity scheme.

The concept of liability has been introduced into the system as a sort of "financial constraint" to improve levels of compliance with Community legislation for the monitoring, inspection and checking measures set in place by Member States.

2.3.2. Progress with regard to the implementation of the Article

The Commission services started to assess liability at the beginning of 2000. There were various proposals as to how this task should be carried out. The planned stages were as follows:

Stage 1: The Commission examines each solidarity case. All available documents are examined: the initial dossier from the Member State and additional information, reports and memos from the national Plant Protection agencies, and the results of investigations in the "victim" Member State. This stage has been initiated for 16 dossiers, each of which resulted in a preliminary assessment of liability.

Stage 2: Following the preliminary assessment of liability, a letter is sent to the Member States which either received or were at the origin of the infected material. Eight such letters have been sent to Member States.

Stage 3: Answers from the Member States to the Commission. Answers have been received to each of the eight letters sent.
Stage 4: On-the-spot inspection visits by the Commission, if necessary, when the information received is deemed incomplete. The liability inspections, like the solidarity inspections, are distinct from Food and Veterinary Office inspections. The inspection teams will be made up of representatives of SANCO E.1 and of the unit in charge of budget management (DG SANCO A.3), assisted, if necessary, by representatives of the legal services.

Stage 5: The Commission and the Standing Committee on Plant Health (SCPH) examine the information received in the course of the four previous stages in order to identify any failings in the Community's plant-health regulations or their implementation and to remedy those failings (the first indent of Article 24(2) of Directive 2000/29/EC). At this stage, the Commission draws up a general report with a preliminary assessment of liability, for discussion in the SCPH.

Stage 6: On its own responsibility, the Commission determines, in the light of the information available, whether a Member State has failed to meet one of its obligations under the Treaty and under the provisions of Directive 2000/29/EC (second indent of Article 24(2) of Directive 2000/29/EC). At this stage, it must be considered whether this failure is accidental and whether the non-compliance has been made good or is still effective.

Stage 7: If necessary, the Commission services ask for the financial contributions under the solidarity scheme to be reimbursed by either the "victim" Member State or the Member State found liable. This procedure does not preclude the possibility of the Commission's instigating infringement proceedings, where necessary, pursuant to Article 226 of the Treaty.

The Commission has already completed Stages 1 to 3 in a number of cases. This action must be continued and extended. This will be one of the priority tasks for the second half of 2002.

The work carried out thus far shows that Member State liability is not easy to determine insofar as it is difficult, on occasion, to trace the origin of the appearance of a harmful organism. This is particularly true when the precise origin of the infected material is unknown or when the harmful organism makes its effects felt only years after being introduced.

3. SUMMARY, CONCLUSIONS AND SUGGESTIONS OF THE COMMISSION REGARDING THE APPLICATION OF ARTICLES 13(9) AND 22 TO 24 OF DIRECTIVE 2000/29/EC

3.1. Inspection infrastructures


No suggestions can be made as yet for amendments to the legislation in force, given our limited experience in this area. The Commission is committed to assessing results as soon as the measure is applied.
3.2. Solidarity

A Regulation has been adopted (Regulation (EC) No 2051/97). The practical experience gained from running the system for four years has led to the Regulation's being significantly amended by Regulation (EC) No 1040/2002, which further clarifies and facilitates the submission of dossiers by Member States and improves the procedures for their assessment.

Several updated versions of the guidelines to assist Member States in preparing dossiers have been published. The Commission will continue to improve them.

To avoid disputes as to the form that the notification referred to in Article 23(1) of Directive 2000/29/EC should take, it is worth clarifying that the notification referred to in paragraph 1 and the first indent of paragraph 2 of Article 16 of the Directive must be in writing.

Very few dossiers to date have been presented by the Member States for "loss of earnings". The Commission consequently has very little practical experience in this area.

On-the-spot inspection visits will be carried out to complete the examination of dossiers.

3.3. Liability

The work already under way on establishing liability will be continued. The Commission will draw conclusions based on the results obtained and will make the appropriate proposals.