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DG Environment
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B-1049 Brussels

List of invasive alien species of Union concern

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Dear mr Vella,

On behalf of undersigned organizations, I herewith would like to ask for your attention on the Unionlist of invasive alien species of Union concern.

In most Member-States stakeholders are still completely unaware of the Unionlist and the restrictions of the regulation. The EC has stated stakeholders were fully informed on forehand as the workshop documents with the initial risk-assessments have been published on the IAS-team website. However, it is clearly stated the results presented in its report cannot be in any way regarded as the list that the Commission will be proposing, nor to represent the opinion of the Commission.

Stakeholders that are being informed are very reluctant to accept the Unionlist and often even find it hard to believe it's real. This was already clear in the first facebookaction. Nevertheless, there's no serious respons from the European Commission to the national authorities to enhance communication with stakeholders.

The impact of the list and the restrictions is devastating for many branches both in horticulture as in animal keeping. The European Commission should be very well aware of this lack of awareness and reluctance as it will strongly influence the level of compliance that can be achieved.

Even though Member States are obligated to enforce the provisions of the regulation, the reluctance of the stakeholders combined with the economic and social impact of the provisions and the inaccuracies in the method applied in the risk-assessments and the misjudgements, exaggerations and mistakes in the list itself will only result in a lot of resistance ending up in a serious amount of legal procedures which in many instances will lead to preliminary procedures at the Court of Justice. This can all be avoided by reconsidering the list, improving the method applied for the risk-assessments as well as the transparency in this process.

For many species, especially plants, it's most unlikely, enforcement is realistic. In the environment, it's in most cases for species already present far too expensive and most keepers of plant species, like trees, will never agree on eradicating them.

All stakeholders should be involved and attention must be given to awareness building of all stakeholders, especially those for whom the Unionlist has serious implications. Before the first Unionlist enters into force, stakeholders should be heard, both by the national authorities as by the European Commission and the IAS-team. Until recently, only the supporters of the Unionlist have been involved in the process and listing of species.

Realistic and reasonable provisions to prevent disproportional consequences for the branches involved should be provided for. It's completely impossible to adapt business processes within the 20 days between the publication of the Unionlist and its entering into force.

Lack of detailed description method of risk-assessment

Risk-assessments of the species listed on the Unionlist of invasive alien species are incomplete and haven't been based on a delegated acts which further specify the type of evidence acceptable for the purposes of point (b) of Article 4(3) and provide a detailed description of the application of points (a) to (h) of paragraph 1 of this Article. This has caused severe problems.

Species that have been present for decades and on which scientific research has been or could have been carried out meeting the criteria of objectivity, transparency and excellence are now listed based on the precautionary principle which is not to be applied in circumstances in which the result of a situations is already completely clear and on which there's no scientific uncertainty. For all species present in the EU, which have formed viable population and have spread in the environment, research it is clear whether or not these species have a significant adverse impact on biodiversity or the related ecosystem services. In these cases the application of the precautionary principle exceeds the criteria determined by the Court of Justice. So, species present in the EU in viable population can only be listed if a significant adverse impact on the biodiversity or the related ecosystem services has been clearly proven.

Only very few species fulfill the criteria they are of Union concern, meaning they have a severe adverse impacts on native species and the structure and functioning of ecosystems through the alteration of habitats, predation, competition, the transmission of diseases, the replacement of native species throughout a significant proportion of range and through genetic effects by hybridization. For several of the listed species, this is only assumed. Scientific evidence is for example nowhere to be found for the *Nasua nasua* and the *callosciurus niger*.

Social and economic benefits have not been assessed properly

One of the main problems is that article 5 (1) point h (a description of the known uses for the species and social and economic benefits deriving from those uses) hasn't been assessed properly. Therefore there was no clear indication of the impact of the restrictions on the branches for which the restrictions are applicable. Also, there's no knowledge whatsoever on the business models and characteristics which has resulted in transitional provisions that cannot be applied in any way by the businesses for which restrictions are applicable. An appropriate risk-assessment should clearly indicate how many businesses are involved in the artificial propagation, import or export and trade of species listed, what their revenue is and how much they contribute to employment. Furthermore it should be known what the data are for suppliers and other related businesses. Business models should be well known and understood in order to ascertain transitional provisions to serve their purposes, which is hardly the case for species listed in the first Unionlist or any subsequent lists.

Assessments conducted in an isolated model in which ecological benefits have not been assessed

Furthermore, as the assessments were conducted in a completely isolated model, the ecological function of species has not been assessed, even though some species fulfil an essential role in the ecosystems they have become part of. It has not been taken into account many plant- and tree species function as nesting place for birds or are an important part of the habitat of other species like insects, essential for entire eco-systems.

The risk-assessments were conducted from the perspective alien species per se are detrimental to indigenous ecosystems which has led to listing of species that have no or only a minimal negative impact on the environment. All risk-assessments should analyse the ecological function of species. For example, the *Acer negundo* is one of the most effective tree species to counteract air pollution and *Solidago graminifolia* is essential to conserve bee populations.

Ecosystems cannot be restored in their original form as key factors have altered

The theoretical opinion ecosystems should and can be restored in their original state doesn't take into account key factors such as the flow regimes of rivers have been so fundamentally changed that the plant communities that existed in these systems prior to human-mediated degradation (assuming we knew what they were; in many cases we don't) could not survive in the current ecosystems¹..

Experience has shown that even hugely expensive science-informed efforts to control invasive species have not succeeded in changing the trajectory of degradation and in many cases have made the problem much worse (e.g., by introducing and facilitating the proliferation of new invasive species and by destabilizing riverbanks, leading to massive erosion and damage to infrastructure)².

Introduction pathways have not been assessed properly and lack scientific evidence

There's also a problem with the evaluation of the introduction pathways. These have not properly been assessed and pathways that have in the past contributed to the escapes and the establishment of populations and spread are often no longer available due to strict codes of conduct and EU-legislation. Only too often, without any research or proof, private owners are mentioned as introduction pathways. These are nothing more than populist assumptions as for most species it is very clear they have become invasive through very specific events in the late 19th and first half of the 20th century.

For species that have formed populations in the EU in the past but for which the introduction pathways are no longer available, the restrictions of article 7 should not be applicable as this forms an infringement of the principle of proportionality and the duty of diligence, which requires a direct link between the restriction and the situation that is to be prevented. The absence of introduction pathways can be substantiated by the presence of codes of conduct.

The precautionary principle is applied in contradiction with Court rulings

The precautionary principle can be applied for species that haven't been present in the EU yet, but only if, after research that fulfills all the requirements of the duty of diligence, the result is inconclusive but nevertheless there's a real risk of serious consequences for the objective. And even then the principle of proportionality should always be respected.

For each species that is listed based on the precautionary principle, the criteria of article 4, paragraph 3 must have been met. A species cannot be listed on the mere fact that it could be introduced and might be able to form a population and could be invasive. There should always be sufficient scientific evidence that there's a real risk the species is introduced into the environment and that it will have a very significant adverse impact which cannot be prevented by any other means than the application of all restrictions of article 7 of the Regulation.

If listing of a species is based on scientific evidence a species is invasive in another part of the world, it should for a proper application of the precautionary principle be proven all conditions that have enabled the introduction of the species in another region are also present in the EU in a biogeographical region shared by more than two Member States

¹ David M. Richardson Director, Conservation is complicated, and all approaches need to be on the table, Stellenbosch University, February 11, 2015

The Unionlist should only be changed with a realistic interval of 3 years, the period for entering into force should also be 3 years giving stakeholders a realistic period to adapt

As it is completely impossible for stakeholders to adapt to a list that changes every few months and enters into force within 20 days, there should be realistic intervals for changes and additions to the list. Review of the list should be limited to once every 3 years as, for good reasons, is also applicable for many other regulations and directives. Furthermore, a list should only enter into force after a decent period for business to adapt their business model. Taking into account all stakeholders are already bound by the codes of conduct under the Bern Convention, which has reduced the risk of new introductions to a minimum, this period should be at least 3 years.

Permits and authorization should be granted for all situations from which the chance of species to escape is minimal.

Furthermore the permits and authorizations of article 8 and 9 of the Regulation should be applied broadly as long as the risk of species escaping their enclosure is as small as realistically possible. A policy for permits and authorizations to be granted which is too strict forms an infringement of the principle of proportionality. This principle is clearly applied in the aforementioned Case T-333/10: 98 *The Court recalls that the principle of proportionality, which is among the general principles of EU law and is referred to in Article 5(4) TEU, requires that measures adopted by EU institutions do not exceed the limits of what is appropriate and necessary in order to attain the objectives legitimately pursued by the legislation in question. However, when there is a choice between several appropriate measures, recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued (see, to that effect, Case C-343/09 Afton Chemical [2010] ECR I-7027, paragraph 45 and the case-law cited).*

Restrictions limited to the biogeographical region in which a species can realistically establish a viable population and spread in the environment

As the principle of proportionality limits measures to what is appropriate and necessary in order to attain the objectives legitimately pursued by the legislation in question, it is not allowed to apply the restrictions of article 7 outside the biogeographical region in which a species can realistically establish a viable population and spread in the environment. The Unionlist should therefore, as far as article 7 is concerned, only apply to the relevant biogeographical region in which the criteria of article 4.3 are fulfilled. In all other cases the articles 11 and 12 should be applied and species should be placed on a national list which can be supported by the regional cooperation of article 11 of the Regulation.

Only in those cases where a very limited number of species illegally brought into the biogeographical region in which the species can become invasive can cause the emergence of a viable population, the restrictions of article 7 can be considered to be proportionate in the entire EU.

We strongly suggest the following adjustments for the Unionlist of invasive alien species:

1. Species are only listed with due restraint.
2. The first Unionlist will not be published before the delegated act has been adopted.
3. Species will only be listed after ensuring they have a significant adverse impact on biodiversity or the related ecosystem services. For species which already have formed viable populations in the EU this should be proven by diligent scientific research. Only for species that have not yet been introduced in the EU, the precautionary principle can be applied within the framework determined by the Court of Justice.
4. The risk analysis assess the invasiveness in the EU coherently and listing cannot be based on the risk-assessment of a single Member-States as this lacks the principle of objectivity;
5. The ecological function of species should be considered in the risk-assessment;
6. The prohibitions apply only in the relevant biogeographical region taking into account article 4.7 and article 11 and 12 of the Regulation;
7. The adaptation of the list is limited to once every six years;
8. A transitional period for new species is deemed to be three years to give stakeholders the opportunity to adapt;
9. The list is will be split between species subject to the prohibition of article 7 of the Regulation and species which are only managed in nature because introduction pathways caused by human action are no longer available. The presence of codes of conduct and voluntary agreements should play an important role;
10. Placing hybrids on the list will not be used as standard but as an exception. This is to avoid
11. unnecessary economic damage;
12. The exemptions are applied in a ample manner so that they are more practical applicable for all situations in which their's no risk for release or escape.

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