



Food and Agriculture
Organization of the
United Nations



International
Plant Protection
Convention



Introducing ePhyto in National Legislation

Study of Legislative Frameworks of Five Pilot COMESA Countries



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OVERVIEW

- Purpose and scope of the pilot project;
- Essential learnings and outcomes;
- Presentation of Guidelines for the Drafting of National Regulation on ePhyto;
- Presentation of Model Regulation on Electronic Phytosanitary Certification;
- Question Period



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PURPOSE AND SCOPE OF STUDY

- Legal aspects of implementation of ePhyto in countries involved in the ePhyto Solution;
- Participating countries: Kenya, Malawi, Uganda, Zambia and Zimbabwe;
- Review of national legislative frameworks dealing with phytosanitary certification in each participating country;
- Identification of areas where modernization is needed to support ePhyto;
- Development of tools to assist participating countries.



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ESSENTIAL LEARNINGS AND OUTCOMES

- Legal basis for phytosanitary certification activities is usually fragmented, with some elements in the Act and others in Regulations/Rules (general, import, export)
- Most statutes and regulations currently in force were enacted at a time when phytosanitary certificates were entirely paper-based;
- Some countries already started to develop regulation to introduce ePhyto;
- Need to retain hybrid system, i.e. paper and electronic;
- Outcomes: Guidelines and Model Regulations on ePhyto.



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GUIDELINES FOR THE DRAFTING OF REGULATIONS ON EPHYTO

STEP 1: ENSURING LEGAL AUTHORITY

- Regulations are subordinate to their parent statute;
- Confirm that ePhyto regulations would be legally authorized; see regulation-making provision in the PPA;
- Confirm that the PPA contains no language that is inconsistent with ePhyto, which could be an indication that Parliament did not envisage electronic certification and that an amendment to the Act should be sought before going forward with ePhyto regulations;
- Consult with legal counsel.



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GUIDELINES FOR THE DRAFTING OF REGULATIONS ON EPHYTO

STEP 2: ASSESSING EXISTING REGULATIONS

- Review the entire regulation to identify provisions dealing with phytosanitary certification;
- Determined whether the language used in these provisions can accommodate ePhyto;
- All relevant regulations must be reviewed (import, export, user fees);
- No legal need to amend a regulatory provision if it clearly captures ePhyto;
- If a regulatory provision is worded in a way that clearly cannot capture ePhyto, it should be amended;
- If a regulatory provision is worded in a way that suggests a paper bias, consider amending it in a way that will remove uncertainty;
- Consult with legal counsel.



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TERMINOLOGY CONSISTENT WITH EPHYTO — EXAMPLES

"Phytosanitary Certificate" means a certificate **issued** by a plant protection officer certifying that he has examined the plants, parts of plants, plant products, to which the statement relates, and found them substantially free from pests and diseases.

x. No plant or plant products may be imported in [name of country] except with a **phytosanitary certificate**.



TERMINOLOGY INCONSISTENT WITH EPHYTO— EXAMPLES

- x. A person shall not import a plant, plant product or regulated article unless that person has the **original** phytosanitary certificate issued by the relevant authority of the exporting country.

- x. An inspector shall not allow the entry of any plant, plant product or regulated article into [name of country] unless **an importer has submitted** to the inspector the relevant permit, certificate and any other document.

- x. A re-export consignment shall be **accompanied by its original phytosanitary certificate or a certified copy** in addition to the re-export phytosanitary certificate.



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UNCERTAIN TERMINOLOGY — EXAMPLES

"Phytosanitary Certificate" means an official **document** related to the phytosanitary state of plants or plant products issued by a plant protection officer or a NPPO of another country.

x. A plant, plant material or other regulated article shall not be imported in [name of country] unless a phytosanitary certificate has been issued and **signed** by the responsible person or authority in the country of origin.



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MODEL REGULATION ON EPHYTO – PRELIMINARY REMARKS

- Need to retain paper certificates until full implementation of ePhyto system;
- Model Regulation follows a prescriptive approach, but other approaches may be acceptable;
- Need to adapt to national needs, specificities and processes;
- Need to align language on terminology, legislative style and drafting conventions used in the country.



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MODEL REGULATION ON EPHYTO – CONTENTS

- Definition “phytosanitary certificate”
- Conditions for the recognition of ePhytos
- Import requirements
- Export requirements
- Re-export requirements



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ARTICLE 1: DEFINITION "PHYTOSANITARY CERTIFICATE"

"Phytosanitary Certificate" means a certificate, **in paper or electronic format**, consistent with the model certificates of the IPPC, that is issued in relation to a consignment of plants, plant products or regulated articles by [name of NPPO of the country] or by the NPPO of an exporting country to certify that the consignment meets the phytosanitary import requirements.

NOTE: Another approach would be to have two distinct definitions: "phytosanitary certificate" for paper certificates and "ePhyto" for electronic phytosanitary certificates, and to use these definitions alternatively throughout the regulations, depending on the context.



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ARTICLE 2: RECOGNITION OF ELECTRONIC PHYTOSANITARY CERTIFICATES

For the purposes of these Regulations, a requirement for phytosanitary certification is satisfied by an electronic phytosanitary certificate if the following conditions are met:

- a) it is received by [name of NPPO of the country] from, or sent by [name of NPPO of the country] to, a country using the Generic ePhyto National System or a certification system that is capable of sharing phytosanitary data with the Generic ePhyto National System and that ensures that the phytosanitary data is secure and authenticated;
- b) it contains the information specified in the Model Phytosanitary Certificate annexed to the International Plant Protection Convention;
- c) the identity of the issuing NPPO is adequately established; and
- d) the certification data is authenticated by the issuing NPPO.



ARTICLE 3: IMPORT REQUIREMENTS

- (1) No person shall import a plant, plant product or regulated article, unless a **phytosanitary certificate is issued by the NPPO of the country of exportation** in relation to the plant, plant product or regulated article.
- (2) Upon arrival of the plants, plant products or regulated articles at the point of entry, **the importer shall present** to an inspector the plants, plant products or regulated articles for phytosanitary inspection, as well as the import permit, **the original paper phytosanitary certificate** and any other document relevant to the plants, plant products or regulated articles.
- (3) The inspector shall conduct an inspection by examining the plants, plant products or regulated articles and by reviewing the permit, certificate and other document presented by the importer, **as well as any electronic phytosanitary certificate issued by the NPPO of the country of exportation, if applicable.**



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ARTICLE 4: EXPORT REQUIREMENTS

- (1) No person shall export a plant, plant product or a regulated article for which a phytosanitary certificate is required by the country of importation, **unless a phytosanitary certificate for export is issued by [name of NPPO]**, or an inspector acting on its behalf, in respect of the plant, plant product or regulated article.
- (2) If the inspector is satisfied that the phytosanitary requirements of the country of importation are met, the inspector shall issue a paper phytosanitary certificate for export to the applicant **and, if the country of importation accepts electronic phytosanitary certificates, the inspector shall issue an electronic phytosanitary certificate to the NPPO of the country of importation.**
- (3) **If a phytosanitary certificate for export is issued by electronic means, the inspector shall make available to the exporter the actual electronic phytosanitary certificate number for the consignment.**



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ARTICLE 5: RE-EXPORT REQUIREMENTS

- (1) Where a consignment of plants, plant products or regulated articles are imported in [name of country] for re-export to a country that requires a phytosanitary certificate for the consignment, no person shall re-export the plants, plant products or regulated articles **unless a phytosanitary certificate for re-export is issued by [name of NPPO]**, or an inspector acting on its behalf, in respect of the plants, plant products or regulated articles.
- (2) If the inspector is satisfied that the identity and integrity of the plants, plant products or regulated products have been maintained while in [name of country] and that they have not been subject to a risk of infestation, the inspector shall issue a phytosanitary certificate for re-export to the applicant **and, if the country of importation accepts electronic phytosanitary certificates, they shall issue an electronic phytosanitary certificate to the NPPO of the country of importation.**



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ARTICLE 5: RE-EXPORT REQUIREMENTS

(3) No person shall re-export plants, plant products or regulated articles in respect of which a phytosanitary certificate for re-export has been issued, **unless the original phytosanitary certificate for export is attached to the phytosanitary certificate for re-export, either physically or electronically, as the case may be.**

(4) If the original phytosanitary certificate for export is in paper form and the phytosanitary certificate for re-export is issued by electronic means, the former shall be scanned by [name of NPPO] in a non-editable format and attached electronically to the latter.

(5) If the original phytosanitary certificate for export is in electronic form and the phytosanitary certificate for re-export is issued on paper, the former shall be printed and validated by [name of NPPO] and physically attached to the latter.



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CONCLUSION

- Need to review existing all texts that form part of the plant protection framework;
- Provide clear basis for ePhyto;
- Eliminate uncertainty;
- Low complexity;
- Legislative review could be an opportunity to address gaps or deficiencies, where necessary;
- Seek assistance of legal counsel.



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Thank you

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