

Council Directive 2002/53/EC of 13 June 2002 on the  
common catalogue of varieties of agricultural plant species

*Article 1*

1 This Directive concerns the acceptance for inclusion in a common catalogue of varieties of agricultural plant species of those varieties of beet, fodder plant, cereal, potato and oil and fibre plant the seed of which may be marketed under provisions of the Directives concerning respectively the marketing of beet seed (2002/54/EC), fodder plant seed (66/401/EEC), cereal seed (66/402/EEC), seed potatoes (2002/56/EC) and seed of oil and fibre plants (2002/57/EC).

2 The common catalogue of varieties shall be compiled on the basis of the national catalogues of the Member States.

3 This Directive shall not apply to varieties, the seed or propagating material of which are shown to be, intended for export to third countries.

*Article 2*

For the purposes of this Directive ‘official measures’ means measures taken:

- (a) by State authorities; or
- (b) by any legal person whether governed by public or by private law, acting under the responsibility of the State; or
- (c) in the case of ancillary activities which are also under State control, by any natural person duly sworn for that purpose;

provided that the persons mentioned under (b) and (c) derive no private gain from such measures.

*Article 3*

1 Each Member States shall establish one or more catalogues of the varieties officially accepted for certification and marketing in its territory. Any person may consult the catalogues.

2 In the case of varieties (inbred lines, hybrids) which are intended solely as components for final varieties, the provisions of paragraph 1 apply only to the extent that the seeds which belong to them are to be marketed under their names.

The conditions under which the provisions of paragraph 1 shall also apply to other component varieties may be determined in accordance with the procedure referred to in Article 23(2). In the meantime, in the case of cereals other than maize, Member States may themselves apply those provisions to other component varieties in respect of seed intended for certification in their territories.

Component varieties shall be indicated as such.

3 Member States may provide that the acceptance of a variety for inclusion in the common catalogue or in the catalogue of another Member State is equivalent to acceptance for inclusion in their own catalogues. If such provision is made, the Member State shall be released from the obligations provided in Article 7, Article 9(4) and Article 10(2) to (5).

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#### Article 4

1 Member States shall ensure that a variety is accepted only if it is distinct, stable and sufficiently uniform. The variety must be of satisfactory value for cultivation and use.

2 Examination of the value for cultivation and use shall not be required:

- a for the acceptance of varieties of grasses if the breeder declares that the seed of his variety is not intended for the production of fodder plants;
- b for the acceptance of varieties whose seed is to be marketed in another Member State which has already accepted the varieties, having regard to their value for cultivation and use;
- c for the acceptance of varieties (inbred lines, hybrids) which are intended solely as components for hybrid varieties satisfying the requirements of paragraph 1.

3 In the case of varieties to which point (a) of paragraph 2 applies, it may be decided, in accordance with the procedure referred to in Article 23(2), and to the extent that this is justified in the interest of free circulation of seed within the Community, that the varieties have to be shown by appropriate examination to be suitable for the purpose for which they are declared to be intended. In such cases, the conditions for the examination shall be determined.

[<sup>X14</sup> In the case of a genetically modified variety within the meaning of Article 2(1) and (2) of Directive 90/220/EEC, the variety shall be accepted only if all appropriate measures have been taken to avoid adverse effects on human health and the environment.]

[<sup>F15</sup> Further, when material derived from a plant variety is intended to be used in food falling within the scope of Article 3, or in feed falling within the scope of Article 15 of Regulation (EC) No 1829/2003 of the European Parliament and of the Council of 22 September 2003 on genetically modified food and feed<sup>(1)</sup>, the variety shall be accepted only if it has been approved in accordance with that Regulation.]

6 In the interest of conserving plant genetic resources as specified in Article 20(2), the Member States may depart from the acceptance criteria set out in the first sentence of paragraph 1 in so far as specific conditions are established in accordance with the procedure referred to in Article 23(2) considering the requirements of Article 20(3)(a) and (b).

#### Editorial Information

- X1** Substituted by [Corrigendum to Council Directive 2002/53/EC of 13 June 2002 on the common catalogue of varieties of agricultural plant species \(Official Journal of the European Union L 193 of 20 July 2002\)](#).

#### Textual Amendments

- F1** Substituted by [Regulation \(EC\) No 1829/2003 of the European Parliament and of the Council of 22 September 2003 on genetically modified food and feed \(Text with EEA relevance\)](#).

#### Article 5

1 A variety shall be regarded as distinct if, whatever the origin, artificial or natural, of the initial variation from which it has resulted, it is clearly distinguishable on one or more important characteristics from any other variety known in the Community.

The characteristics of a variety must be capable of precise recognition and precise definition.

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A variety known in the Community shall be any variety which, at the time when the application for the acceptance of the variety to be assessed is duly made, is:

- either listed in the common catalogue of varieties of agricultural plant species or the catalogue of varieties of vegetable species; or
- without being listed in one of those catalogues, has been accepted or submitted for acceptance in the Member State in question or in another Member State, either for certification and marketing, or for certification for other countries,

unless the conditions are no longer fulfilled in all the Member States concerned before the decision on the application for acceptance of the variety to be assessed is taken.

2 A variety shall be regarded as stable if, after successive propagation or multiplications or at the end of each cycle (where the breeder has defined a particular cycle of propagation or multiplications) it remains true to the description of its essential characteristics.

3 A variety shall be regarded as sufficiently uniform if, apart from a very few aberrations, the plants of which it is composed are, account being taken of the distinctive features of the reproductive systems of the plants, similar or genetically identical as regards the characteristics, taken as a whole, which are considered for this purpose.

4 The value of a variety for cultivation or use shall be regarded as satisfactory if, compared to other varieties accepted in the catalogue of the Member State in question, its qualities, taken as a whole, offer, at least as far as production in any given region is concerned, a clear improvement either for cultivation or as regards the uses which can be made of the crops or the products derived therefrom. Where other, superior characteristics are present, individual inferior characteristics may be disregarded.

#### *Article 6*

Member States shall ensure that varieties coming from other Member States are subject to the same requirements, in particular as regards the acceptance procedure, as those which apply to domestic varieties.

#### *Article 7*

1 Member States shall provide that the acceptance of varieties be based on the results of official examinations, particularly growing trials, covering a sufficient number of characteristics for the variety to be described. The methods used for determining characteristics must be exact and reliable. In order to establish distinctness, the growing trials shall include at least the available comparable varieties which are varieties known in the Community within the meaning of Article 5(1). For the purpose of applying Article 9, other available comparable varieties shall be included.

2 The following shall be fixed in accordance with the procedure referred to in Article 23(2), account being taken of current scientific and technical knowledge:

- a the characteristics to be covered as a minimum by the examinations of the various species;
- b the minimum requirements for carrying out the examination;
- c the necessary arrangements for the growing trials to be carried out with a view to assessing the value for cultivation or use; these arrangements may determine:
  - the procedures and conditions under which all or several Member States may agree to include in the growing trials, by way of administrative assistance, varieties for which a request for acceptance has been introduced in another Member State,

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- the terms of cooperation between the authorities of the participating Member States,
- the impact of the results of the growing trials,
- the standards relating to information on growing trials for assessment of the value for cultivation or use.

3 Where examination of the genealogical components is necessary in order to study hybrids and synthetic varieties, Member States shall ensure that the results of the examination and the description of the genealogical components are, if the breeder so requests, treated as confidential.

4

- a In the case of a genetically modified variety referred to in Article 4(4), an environmental risk assessment equivalent to that laid down in Directive 90/220/EEC shall be carried out.
- b The procedures ensuring that the environmental risk assessment and other relevant elements shall be equivalent to those laid down in Directive 90/220/EEC shall be introduced on a proposal from the Commission, in a Council Regulation based on the appropriate legal basis in the Treaty. Until this Regulation enters into force genetically modified varieties shall only be accepted for inclusion in a national catalogue after having been accepted for marketing in accordance with Directive 90/220/EEC.
- c Articles 11 to 18 of Directive 90/220/EEC shall no longer apply to genetically modified varieties once the Regulation referred to in point (b) above has entered into force.
- d The technical and scientific details of the implementation of the environmental risk assessment shall be adopted in accordance with the procedure referred to in Article 23(2).

[<sup>F15</sup> Member States shall ensure that a variety intended to be used in food or feed as defined in Articles 2 and 3 of Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority, and laying down procedures in matters of food safety<sup>(2)</sup> is accepted only if it has been authorised under the relevant legislation.]

#### Textual Amendments

- F1** Substituted by [Regulation \(EC\) No 1829/2003 of the European Parliament and of the Council of 22 September 2003 on genetically modified food and feed \(Text with EEA relevance\)](#).

#### Article 8

Member States shall require that when lodging an application for the acceptance of a variety, the applicant indicate whether acceptance has already been applied for in another Member State, which Member State was concerned and whether the application was granted.

#### Article 9

1 Each Member State shall arrange for official publication of the catalogue of varieties accepted in its territory and of the name of the person or persons responsible for maintenance of the variety in its country. When several persons are responsible for the maintenance of a variety, the names need not be published. If the names are not published, the catalogue shall indicate the authority holding the list of names of persons responsible for maintenance of the variety.

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2 Member States shall, as far as possible, ensure at the time of acceptance that the variety is known by the same name in all Member States.

If it is known that seed or propagating material of a given variety are marketed in another country under a different name, that name shall also be indicated in the catalogue.

3 In taking into account the information available, Member States shall also ensure that a variety which is not clearly distinguishable:

- from a variety previously accepted in the Member State in question or in another Member State, or
- from another variety which has been assessed with regard to distinctness, stability and uniformity in accordance with rules corresponding to those of this Directive, without, however, being a variety known in the Community within the meaning of Article 5(1),

bears the name of that variety. This provision shall not apply if this name is likely to mislead or cause confusion concerning the variety in question, or if, pursuant to all the provisions of the Member State concerned governing the names of varieties, other facts prevent its utilisation, or if the rights of third parties impede the free use of that name in connection with the variety in question.

4 Member States shall compile a file on each variety accepted, containing a description of the variety and a clear summary of all the facts on which the acceptance was based. The description of the varieties shall relate to plants produced directly from seed and young plants of the category ‘certified seed and propagating material’.

5 Member States shall ensure that genetically modified varieties which have been accepted are clearly indicated as such in the catalogue of varieties. They shall further ensure that any person marketing such a variety clearly indicates in his sales catalogue that the variety is genetically modified.

6 So far as the suitability of the denomination of a variety is concerned, Article 63 of Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights<sup>(3)</sup> shall apply.

Detailed implementing rules as to the suitability of denominations of varieties may be adopted in accordance with the procedure referred to in Article 23(2).

#### *Article 10*

1 Any application or withdrawal of an application for acceptance of a variety, any entry in a catalogue of varieties as well as any amendment thereto shall be notified forthwith to the other Member States and the Commission.

2 Member States shall, for each new variety accepted, send the other Member States and the Commission a brief description of its most important characteristics for use. This provision shall not apply in the case of varieties (inbred lines, hybrids) which are intended solely as components for final varieties. They shall, on request, also communicate the special qualities which enable the variety to be distinguished from other similar varieties.

3 Each Member State shall make available to the other Member States and the Commission the files referred to in Article 9(4) on the varieties which are accepted or which have ceased to be accepted. Information exchanged concerning these files shall be treated as confidential.

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4 Member States shall ensure that the acceptance files are made available for the personal and exclusive use of any person able to show a legitimate interest. These provisions shall not apply where the information must, under Article 7(3), be treated as confidential.

5 Where acceptance of a variety is refused or revoked, the results of the examinations shall be made available to persons affected by such decision.

#### *Article 11*

1 Member States shall provide that the varieties accepted must be maintained according to accepted practices for the maintenance of the variety.

2 It must at all times be possible to check maintenance from the records kept by the person or persons responsible for the variety. These records shall also cover the production of all generations prior to basic seed or propagating material.

3 Samples may be requested from the person responsible for the variety. Such samples may if necessary be taken officially.

4 Where maintenance takes place in a Member State other than the one in which the variety was accepted, the Member States concerned shall assist each other administratively as regards verification.

#### *Article 12*

1 Acceptance shall be valid until the end of the tenth calendar year following acceptance.

Acceptance of the varieties by the authorities of the former German Democratic Republic prior to German unification shall be valid until the end of the tenth calendar year at the latest following their entry in the catalogue of varieties drawn up by the Federal Republic of Germany in accordance with Article 3(1).

2 Acceptance of a variety may be renewed at given intervals if it is still cultivated on such a scale as to justify this, or should be retained in the interest of conserving plant genetic resources, and providing that the requirements as to distinctness, uniformity and stability, or the criteria determined under Article 20(2) and (3), are still satisfied. Except in the case of plant genetic resources within the meaning of Article 20 applications for renewal shall be submitted not later than two years before expiry of acceptance.

3 The period of validity of acceptance shall be extended provisionally until a decision is taken on the application for renewal.

#### *Article 13*

1 Member States shall ensure that any doubts which arise after the acceptance of a variety concerning the appraisal of its distinctness or of its name at the time of acceptance are clarified.

2 Where, after acceptance of a variety, it is established that the condition concerning distinctness within the meaning of Article 5 was not fulfilled at the time of acceptance, acceptance shall be replaced by another decision or, where appropriate, a revocation, which conforms with this Directive.

By this other decision, the variety shall, with effect from the date of its initial acceptance, no longer be regarded as a variety known in the Community within the meaning of Article 5(1).

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3 Where, after acceptance of a variety, it is established that its name within the meaning of Article 9 was not acceptable when the variety was accepted, the name shall be adapted in such a way that it conforms with this Directive. Member States may permit the previous name to be used temporarily as an additional name. The detailed arrangements in accordance with which the previous name may be used as an additional name may be laid down in accordance with the procedure referred to in Article 23(2).

4 In accordance with the procedure referred to in Article 23(2) rules may be established for the application of paragraphs 1 and 2.

#### *Article 14*

- 1 Member States shall ensure that acceptance of a variety is revoked:
  - a if it is proved, on examination, that the variety is no longer distinct, stable or sufficiently uniform;
  - b if the person or persons responsible for the variety so request, unless there is maintenance of the variety.
- 2 Member States may revoke the acceptance of a variety:
  - a if the laws, regulations and administrative provisions adopted in pursuance of this Directive are not complied with;
  - b if, at the time of the application for acceptance or during examination, false or fraudulent particulars were supplied concerning the factors on the basis of which acceptance was granted.

#### *Article 15*

1 Member States shall ensure that a variety is deleted from their catalogues if acceptance of the variety has been revoked or if the period of validity of the acceptance has expired.

2 Member States may, in respect of their own territory, allow a period for the certification and marketing of seed or propagating material up to 30 June of the third year at the most after expiry of the acceptance.

In the case of varieties that were listed pursuant to Article 16(1) in the common catalogue of varieties referred to in Article 17, the period which expires last among those granted by the various Member States of acceptance under the first subparagraph shall apply to marketing in all the Member States, provided that the seed or propagating material of the variety concerned has not been subject to any marketing restriction as regards the variety.

#### *Article 16*

1 Member States shall ensure that, with effect from the publication referred to in Article 17, seed of varieties accepted in accordance with this Directive or in accordance with principles corresponding to those of this Directive is not subject to any marketing restrictions relating to variety.

2 A Member State may, upon application which shall be dealt with under the procedure referred to in Article 23(2) or in Article 23(3) in the case of genetically modified varieties, be authorised to prohibit the use of the variety in all or in part of its territory or to lay down appropriate conditions for cultivating the variety in accordance, in cases provided for in subparagraph (c), with the conditions for using the products resulting from such cultivation:

- a where it is established that the cultivation of the variety could be harmful from the point of view of plant health to the cultivation of other varieties or species; or

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- b where official growing trials carried out in the applicant Member States, Article 5(4) being applied correspondingly, show that the variety does not, in any part of its territory, produce results corresponding to those obtained from a comparable variety accepted in the territory of that Member State or, where it is well known that the variety is not suitable for cultivation in any part of its territory because of its type of maturity class. The application shall be lodged before the end of the third calendar year following that of acceptance;
- c where it has valid reasons other than those already mentioned or which may have been mentioned during the procedure referred to in Article 10(2) for considering that the variety presents a risk for human health or the environment.

#### *Article 17*

The Commission shall, on the basis of the information supplied by the Member States and as this is received, publish in the C series of the *Official Journal of the European Communities* under the title ‘Common Catalogue of Varieties of Agricultural Plant Species’ a list of all varieties of which the seed and propagating material, under Article 16, are not subject to any marketing restrictions as regards variety, and also the information required under Article 9(1) concerning the person or persons responsible for maintenance of the variety. The published notice shall indicate the Member States which have received an authorisation under Article 16(2) or Article 18.

The published notice shall list those varieties for which a period has been applied in accordance with the second subparagraph of Article 15(2). This shall indicate the length of the period and, where appropriate, the Member States to which the period does not apply.

The published notice shall clearly indicate those varieties which have been genetically modified.

#### *Article 18*

If it is established that the cultivation of a variety included in the common catalogue of varieties could in any Member State be harmful from the point of view of plant health to the cultivation of other varieties or species, or present a risk for the environment or for human health, that Member State may upon application, be authorised in accordance with the procedure referred to in Article 23(2) or in Article 23(3) in the case of a genetically modified variety to prohibit the marketing of the seed or propagating material of that variety in all or part of its territory. Where there is imminent danger of the spread of harmful organisms or imminent danger for human health or for the environment, that prohibition may be imposed by the Member State concerned as soon as its application has been lodged until such time as a final decision has been taken. That decision shall be taken within a period of three months in accordance with the procedure laid down in Article 23(2) or in Article 23(3) in the case of a genetically modified variety.

#### *Article 19*

Where a variety ceases to be accepted in the Member State which initially accepted it, one or more other Member States may continue to accept that variety provided that the requirements for acceptance continue to be met in their territory and that maintenance remains assured.



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### Article 20

1 Specific conditions may be established in accordance with the procedure referred to in Article 23(2) to take account of developments in relation to the conditions under which chemically treated seed may be marketed.

2 Without prejudice to Council Regulation (EC) No 1467/94 of 20 June 1994 on the conservation, characterisation, collection and utilisation of genetic resources in agriculture<sup>(4)</sup>, specific conditions shall be established in accordance with the procedure referred to in Article 23(2) to take account of developments in relation to the conservation *in situ* and the sustainable use of plant genetic resources through growing and marketing of seed of landraces and varieties which are naturally adapted to the local and regional conditions and threatened by genetic erosion.

3 The specific conditions referred to in paragraph 2 above shall include in particular the following points:

- a landraces and varieties shall be accepted in accordance with the provisions of this Directive. The procedure for official acceptance shall take into account specific quality characteristics and requirements. In particular the results of unofficial tests and knowledge gained from practical experience during cultivation, reproduction and use and the detailed descriptions of the varieties and their relevant denominations, as notified to the Member State concerned, shall be taken into account and, if sufficient, shall result in exemption from the requirement of official examination. Upon acceptance of such a landrace or variety, it shall be indicated as a ‘conservation variety’ in the common catalogue;
- b appropriate quantitative restrictions.

### Article 21

Specific conditions may be established in accordance with the procedure referred to in Article 23(2) to take account of developments in the area of the conservation of genetic resources.

### Article 22

1 The Council, acting by a qualified majority on a proposal from the Commission, shall determine whether:

- a the official examinations of varieties carried out in the third country afford the same assurances as those provided for in Article 7 and carried out in the Member States;
- b the checks on practices for the maintenance of varieties carried out in the third country afford the same assurances as those carried out by the Member States.

2 Paragraph 1 shall also apply in respect of any new Member State from the date of its accession to the date on which it is to bring into force the laws, regulations or administrative provisions necessary to comply with this Directive.

### Article 23

1 The Commission shall be assisted by the Standing Committee on Seeds and Propagating Material for Agriculture, Horticulture and Forestry set up by Article 1 of Council Decision 66/399/EEC<sup>(5)</sup>.

2 Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply.

The period laid down in Article 4(3) of Decision 199/468/EC shall be set at one month.

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3 Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply.

[<sup>X1</sup>The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.]

4 The Committee shall adopt its rules of procedure.

**Editorial Information**

X1 Substituted by [Corrigendum to Council Directive 2002/53/EC of 13 June 2002 on the common catalogue of varieties of agricultural plant species \(Official Journal of the European Union L 193 of 20 July 2002\)](#).

*Article 24*

Save as otherwise provided in Articles 16 and 18, this Directive shall be without prejudice to the provisions of national laws justified on grounds of the protection of health and life of humans, animals or plants or the protection of industrial or commercial property.

*Article 25*

The Member States shall communicate to the Commission the text of the main provisions of domestic law they adopt in the field covered by this Directive.

The Commission shall inform the other Member States thereof.

*Article 26*

1 Directive 70/457/EEC as amended by the Directives listed in Annex I part A, is hereby repealed without prejudice to the obligations of the Member States concerning the deadlines for transposition of the said Directives set out in Annex I part B.

2 References to the Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex II.

*Article 27*

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*.

*Article 28*

This Directive is addressed to the Member States.

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- (1) [<sup>F1</sup>OJ L 268, 18.10.2003, p. 1.]
- (2) [<sup>F1</sup>OJ L 31, 1.2.2002, p. 1.]
- (3) OJ L 227, 1.9.1994, p. 1. Regulation as amended by Regulation (EC) No 2506/95 (OJ L 258, 28.10.1995, p. 3).
- (4) OJ L 159, 28.6.1994, p. 1.
- (5) OJ 125, 11.7.1966, p. 2289/66.

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**Textual Amendments**

- F1** Substituted by Regulation (EC) No 1829/2003 of the European Parliament and of the Council of 22 September 2003 on genetically modified food and feed (Text with EEA relevance).