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COMMISSION DECISION

of 21 January 2005

authorising Member States temporarily to provide for derogations from certain provisions of Council Directive 2000/29/EC in respect of the importation of soil contaminated by pesticides or persistent organic pollutants for decontamination purposes

(notified under document number C(2005) 92)

(2005/51/EC)

(OJ L 21, 25.1.2005, p. 21)

Amended by:

		Official Journal		
		No	page	date
► <u>M1</u>	Commission Decision 2007/156/EC of 7 March 2007	L 68	7	8.3.2007



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(2005/51/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to 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 ⁽¹⁾, and in particular Article 15(1) thereof,

Whereas:

- (1) Under Directive 2000/29/EC, soil originating in certain third countries may not, in principle, be introduced into the Community.
- (2) The United Nations Food and Agriculture Organisation (FAO) manages a programme on prevention and disposal of obsolete and unwanted pesticides to assist developing countries in identifying and eliminating obsolete pesticide stockpiles and soil contaminated by these products due to leakage. Moreover, two international legally binding instruments address the production, use and releases of persistent organic pollutants and the safe management of waste containing these substances, with the aim of protecting human health and the environment from these substances. Because developing countries and countries with economies in transition do not always have adequate facilities for the safe destruction or reprocessing of these stockpiles and contaminated soil, international agreements and programmes foresee shipment of such soil to a treatment facility for processing or destruction.
- (3) Under the aforementioned programme, soil should be packaged and labelled in compliance with the International Maritime Dangerous Goods Code (IMDG Code), using only United Nations approved containers. Shipment should comply with the IMDG Code and Council Regulation (EEC) No 259/93 ⁽²⁾ on the supervision and control of shipments of waste within, into and out of the European Community.
- (4) The Commission considers that there is no risk of spreading organisms harmful to plants or plant products when the soil is treated in dedicated hazardous waste incinerators, which comply with Directive 2000/76/EC of the European Parliament and of the Council ⁽³⁾ on the incineration of waste, in such a way as to ensure that the pesticide or persistent organic pollutant content is destroyed or irreversibly transformed.
- (5) Member States should therefore be authorised to provide for derogations, for a limited period and subject to specific conditions, to allow the import of such contaminated soil.
- (6) The authorisation to provide for derogations should be terminated if it is established that the specific conditions laid down in this

⁽¹⁾ OJ L 169, 10.7.2000, p. 1. Directive as last amended by Commission Directive 2004/102/EC (OJ L 309, 6.10.2004, p. 9).

⁽²⁾ OJ L 30, 6.2.1993, p. 1. Regulation as last amended by Commission Regulation (EC) No 2557/2001 (OJ L 349, 31.12.2001, p. 1).

⁽³⁾ OJ L 332, 28.12.2000, p. 91.

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Decision are not sufficient to prevent the introduction of harmful organisms into the Community or have not been complied with.

- (7) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Plant Health,

HAS ADOPTED THIS DECISION:

Article 1

Member States are hereby authorised to provide for derogations from Article 4(1) of Directive 2000/29/EC, with regard to the prohibitions referred to in point 14 of Annex III(A) to that Directive, and from Article 5(1) of Directive 2000/29/EC with regard to the special requirements referred to in point 34 of Annex IV(A)(I) to that Directive for soil originating in certain third countries.

The authorisation to provide for derogations, as mentioned in paragraph 1 shall be subject to the specific conditions provided for in the Annex, and shall only apply to soil that is introduced into the Community between 1 March 2005 and ►**M1** 28 February 2009 ◀ and destined for treatment in dedicated hazardous waste incinerators.

The authorisation is without prejudice to any further authorisation or procedures which may be required under other legislation.

Article 2

Member States shall provide the Commission and the other Member States, before 31 December of each year of importation, with the information as required in point 7 of the Annex for each consignment of soil imported prior to that date pursuant to this Decision.

Article 3

Member States shall immediately notify the Commission and the other Member States of all consignments introduced into their territory pursuant to this Decision which were subsequently found not to comply with this Decision.

Article 4

This Decision may be revoked if the conditions set out in the Annex are shown to be insufficient to prevent the introduction into the Community of organisms harmful to plants or plant products.

Article 5

This Decision is addressed to the Member States.



ANNEX

Specific conditions applying to soil originating in third countries benefiting from the derogation provided for in Article 1 of this Decision

1. The soil shall be:
 - (a) soil contaminated by pesticides covered by the FAO programme on prevention and disposal of obsolete and unwanted pesticides or similar multilateral programmes, or soil contaminated with persistent organic pollutants listed in the Stockholm Convention on persistent organic pollutants or in the Protocol to the 1979 Convention on long-range trans-boundary air pollution on persistent organic pollutants;
 - (b) packaged in sealed drums or bags in compliance with the IMDG Code, transported in sealed shipping containers from the packaging site in the country of origin to the treatment facility located in the Community in compliance with Regulation (EEC) No 259/93;
 - (c) intended to be treated in the Community in dedicated hazardous waste incinerators, which comply with Directive 2000/76/EC.
2. The soil shall be accompanied by a phytosanitary certificate issued in the country of origin in accordance with Article 13(1)(ii) of Directive 2000/29/EC. The certificate shall state under 'Additional declaration', the indication 'This consignment meets the conditions laid down in Decision 2005/51/EC'.
3. Prior to introduction into the Community, the importer shall be officially informed of the conditions laid down in points 1 to 7 of this Annex. The said importer shall notify details of each introduction sufficiently in advance to the responsible official bodies in the Member State of introduction, indicating:
 - (a) the quantity and the origin of the soil;
 - (b) the declared date of introduction and the confirmation of the point of entry in the Community;
 - (c) the names, addresses and the locations of the premises referred to in point 5 where the soil will be treated.

The importer shall inform the official bodies concerned of any changes to the above details as soon as they are known.

4. The soil shall be introduced through points of entry situated within the territory of a Member State and designated for the purpose of this derogation by that Member State; these points of entry and the name and address of the responsible official body referred to in Directive 2000/29/EC in charge of each point shall be notified sufficiently in advance by the Member States to the Commission and shall be held available on request to other Member States. Direct transport between the point of entry and the place of treatment must be assured. In those cases where the introduction into the Community takes place in a Member State other than the Member State making use of this derogation, the said responsible official bodies of the Member State of introduction shall inform and cooperate with the said responsible official bodies of the Member States making use of this derogation to ensure that the provisions of this Decision are complied with.
5. The soil shall be treated only at premises:
 - (a) for which the names, addresses and the locations have been notified in accordance with point 3 to the relevant responsible official bodies; and
 - (b) officially registered and approved for the purposes of this derogation by the relevant responsible official bodies.

In those cases where the premises are situated in a Member State other than the Member State making use of this derogation, the said responsible official bodies of the Member State making use of this derogation, at the moment of receipt of the aforementioned advance notification from the importer, shall inform the said responsible official bodies of the Member State in which the soil will be treated giving the names, addresses and the locations of the premises where the soil will be treated.

6. At the premises referred to in point 5:

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- (a) the soil shall be handled as hazardous waste with all the appropriate safeguards applied; and
 - (b) the soil shall be treated in dedicated hazardous waste incinerators, which comply with Directive 2000/76/EC.
7. The Member State making use of this derogation shall convey the details referred to in point (3) for each introduction on a yearly basis to the Commission and the other Member States.