

Council Directive 2004/117/EC of 22 December 2004 amending Directives 66/401/EEC, 66/402/EEC, 2002/54/EC, 2002/55/EC and 2002/57/EC as regards examinations carried out under official supervision and equivalence of seed produced in third countries

Article 1

Directive 66/401/EEC is hereby amended as follows:

1. Article 2(1) shall be amended as follows:
 - (a) in (B)(1), point (d) shall be replaced by the following:
 - (d) which has been found by official examination or, in the case of the conditions laid down in Annex II, either by official examination or by examination carried out under official supervision, to satisfy the conditions set out in (a), (b) and (c).;
 - (b) in (B)(2), point (d) shall be replaced by the following:
 - (d) which has been found by official examination or, in the case of the conditions laid down in Annex II, either by official examination or by examination carried out under official supervision, to satisfy the conditions set out in (a), (b) and (c).;
 - (c) in (C), point (d) shall be replaced by the following:
 - (d) which has been found by official examination or by examination carried out under official supervision to satisfy the conditions set out in (a), (b) and (c).;
 - (d) in (Ca), point (d) shall be replaced by the following:
 - (d) which has been found by official examination or by examination carried out under official supervision to satisfy the conditions set out in (a), (b) and (c).;
 - (e) in (Cb), point (d) shall be replaced by the following:
 - (d) which has been found by official examination or by examination carried out under official supervision to satisfy the conditions set out in (a), (b) and (c).;
 - (f) in (D), point (c) shall be replaced by the following:
 - (c) which has been found by official examination or by examination carried out under official supervision to satisfy the conditions set out in (a) and (b).;
2. Article 2(3) shall be replaced by the following:
3. When the examination under official supervision set out in paragraphs (1) (B)(1)(d), (1)(B)(2)(d), (1)(C)(d), (1)(Ca)(d), (1)(Cb)(d) and (1)(D)(c) is carried out, the following requirements shall be complied with:
 - A. Field inspection

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- (a) The inspectors shall:
 - (i) have the necessary technical qualifications;
 - (ii) derive no private gain in connection with the carrying out of the inspections;
 - (iii) have been officially licensed by the seed certification authority of the Member State concerned and this licensing shall include either the swearing-in of inspectors or the signature by inspectors of a written statement of commitment to the rules governing official examinations;
 - (iv) carry out inspections under official supervision in accordance with the rules applicable to official inspections.
- (b) The seed crop to be inspected shall be grown from seed, which has undergone official post-control, the results of which have been satisfactory.
- (c) A proportion of the seed crops shall be checked by official inspectors. That proportion shall be at least 5 %.
- (d) A proportion of samples from the seed lots harvested from the seed crops shall be drawn for official post control and, where appropriate, for official laboratory seed testing in respect of varietal identity and purity.
- (e) The Member States shall lay down the rules on penalties applicable to infringements of the national provisions governing examination under official supervision, adopted pursuant to this Directive. The penalties provided for must be effective, proportionate and dissuasive. Penalties may include the withdrawal of the licence provided for in (a)(iii) from officially licensed inspectors who are found guilty of deliberately or negligently contravening the rules governing official examinations. The Member States shall ensure that any certification of the seed examined is annulled in the event of such contravention unless it can be shown that such seed still meets all relevant requirements.

B. Seed testing

- (a) Seed testing shall be carried out by seed-testing laboratories which have been authorised for that purpose by the seed certification authority of the Member State concerned under the conditions set out in (b) to (d).
- (b) The seed-testing laboratory shall have a seed analyst-in-charge who has direct responsibility for the technical operations of the laboratory and has the necessary qualifications for technical management of a seed-testing laboratory.

Its seed analysts shall have the necessary technical qualifications obtained in training courses organised under conditions applicable to official seed analysts and confirmed by official examinations.

The laboratory shall be maintained in premises and with equipment officially considered by the seed certification authority to be satisfactory for the purpose of seed testing, within the scope of the authorisation.

It shall carry out seed testing in accordance with current international methods.

- (c) The seed-testing laboratory shall be:
 - (i) an independent laboratory;
 - or
 - (ii) a laboratory belonging to a seed company.

In the case referred to in (ii), the laboratory may carry out seed testing only on seed lots produced on behalf of the seed company to which it belongs, unless it has been otherwise agreed between that seed company, the applicant for certification and the seed certification authority.

- (d) The seed-testing laboratory's performance of seed testing shall be subject to appropriate supervision by the seed certification authority.
- (e) For the purposes of the supervision referred to in (d) a proportion of the seed lots entered for the official certification shall be checked by official seed testing. That proportion shall in principle be as evenly spread as possible over natural and legal persons entering seed for certification, and the species entered, but may also be oriented to eliminate specific doubts. That proportion shall be at least 5 %.
- (f) The Member States shall lay down the rules on penalties applicable to infringements of the national provisions governing examination under official supervision, adopted pursuant to this Directive. The penalties provided for must be effective, proportionate and dissuasive. Penalties may include the withdrawal of the authorisation provided for in (a), from officially authorised seed-testing laboratories which are found guilty of deliberately or negligently contravening the rules governing official examinations. The Member States shall ensure that any certification of the seed examined is annulled in the event of such contravention unless it can be shown that such seed still meets all relevant requirements.;

3. in Article 2(4), the second subparagraph shall be deleted;

4. Article 7 shall be amended as follows:

- (a) paragraph 1 shall be replaced by the following:

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1. Member States shall require that, for the checking of varieties, the examination of seed for certification and the examination of commercial seed, samples are drawn officially or under official supervision in accordance with appropriate methods. However seed sampling with a view to controls pursuant to Article 19 shall be carried out officially.;

(b) the following paragraphs shall be inserted:

1a. When the seed sampling under official supervision provided for in paragraph 1 is carried out, the following requirements shall be complied with:

- a seed sampling shall be carried out by seed samplers who have been authorised for that purpose by the seed certification authority of the Member State concerned under the conditions set out in (b), (c), and (d);
- b seed samplers shall have the necessary technical qualifications obtained in training courses organised under conditions applicable to official seed samplers and confirmed by official examinations.

They shall carry out seed sampling in accordance with current international methods;

c seed samplers shall be:

- (i) independent natural persons;
 - (ii) persons employed by natural or legal persons whose activities do not involve seed production, seed growing, seed processing or seed trade;
- or
- (iii) persons employed by natural or legal persons whose activities involve seed production, seed growing, seed processing or seed trade.

In the case referred to in (iii), a seed sampler may carry out seed sampling only on seed lots produced on behalf of his employer, unless it has been otherwise agreed between his employer, the applicant for certification and the seed certification authority;

- d the performance of the seed samplers shall be subject to proper supervision by the seed certification authority. When automatic sampling is in operation appropriate procedures must be adhered to and officially supervised;
- e for the purposes of the supervision referred to in (d) a proportion of the seed lots entered for official certification shall be check-sampled by official seed samplers. That proportion shall in principle be as evenly spread as possible over natural and legal persons entering seed for certification, and the species entered, but may also be oriented to eliminate specific doubts. That proportion shall be at least 5 %. This check sampling does not apply to automatic sampling.

The Member States shall compare the seed samples drawn officially with those of the same seed lot drawn under official supervision;

f the Member States shall lay down the rules on penalties applicable to infringements of the national provisions governing examination under official supervision, adopted pursuant to this Directive. The penalties provided for must be effective, proportionate and dissuasive. Penalties may include the withdrawal of the authorisation provided for in (a), from officially authorised seed samplers who are found guilty of deliberately or negligently contravening the rules governing official examinations. The Member States shall ensure that any certification of the seed sampled is annulled in the event of such contravention unless it can be shown that such seed still meets all relevant requirements.

1b Further measures applicable to the carrying out of seed sampling under official supervision may be adopted in accordance with the procedure laid down in Article 21(2).;

5. Article 15(3) shall be replaced by the following:

3. The Member States shall also provide that fodder plant seed harvested in a third country shall, on request, be officially certified if:

a it has been produced directly from:

(i) basic seed or certified seed officially certified either in one or more Member States or in a third country which has been granted equivalence under Article 16(1)(b);

or

(ii) the crossing of basic seed officially certified in a Member State with basic seed officially certified in a third country referred to in (i);

b it has undergone field inspection satisfying the conditions laid down in an equivalence decision made under Article 16(1)(a) for the relevant category;

c official examination has shown that the conditions laid down in Annex II for the same category are satisfied.;

6. in Article 16(1), point b shall be replaced by the following:

(b) fodder plant seed harvested in a third country and affording the same assurances as regards its characteristics and the arrangements for its examination, for ensuring identity, for marking and for control is equivalent in these respects to seed harvested within the Community and complying with the provisions of this Directive.