

Council Directive 2008/72/EC of 15 July 2008 on the
marketing of vegetable propagating and planting material,
other than seed (Text with EEA relevance) (Codified version)

Article 1

1 This Directive shall apply to the marketing of vegetable propagating and planting materials, other than seeds, within the Community.

2 Articles 2 to 20 and Article 23 shall apply to the genera and species, and their hybrids, listed in Annex II.

Rootstocks and other parts of plants of other genera or species or their hybrids shall also be subject to those Articles if material of one of those genera or species, or of their hybrids, is, or has to be, grafted on to them.

3 Amendments to the list of genera and species in Annex II shall be adopted in accordance with the procedure referred to in Article 21(3).

Article 2

This Directive shall not apply to propagating or planting material shown to be intended for export to third countries, if properly identified as such and kept sufficiently isolated, without prejudice to the health rules laid down in Directive 2000/29/EC.

Implementing measures for the first paragraph, with particular reference to identification and isolation, shall be adopted in accordance with the procedure referred to in Article 21(2).

Article 3

For the purposes of this Directive, the following definitions shall apply:

- (a) 'propagating material' means parts of plants and all plant material, including rootstocks intended for the propagation and production of vegetables;
- (b) 'planting material' means entire plants and parts of plants including, for grafted plants, the grafted components, intended for planting for the production of vegetables;
- (c) 'supplier' means any natural or legal person carrying out professionally at least one of the following activities with regard to vegetable propagating and planting material: reproducing, producing, preserving and/or treating and marketing;
- (d) 'marketing' means the holding available or in stock, displaying or offering for sale, selling and/or delivering to another person, in whatever form, of propagating or planting material;
- (e) 'responsible official body' means:
 - (i) the sole and central authority, established or designated by the Member State under the supervision of the national government and responsible for questions concerning quality;
 - (ii) any State authority established:
 - either at national level,

- or at regional level, under the supervision of the national authorities within the limits set by the national legislation of the Member State concerned.

The bodies referred to in (i) and (ii) may, in accordance with their national legislation, delegate the tasks provided for in this Directive to be accomplished under their authority and supervision to any legal person, whether governed by public or private law, which, under its officially approved statute, is charged exclusively with specific public functions, provided that such person, and its members, has no personal interest in the outcome of the measures it takes.

The Member States shall ensure that there is close cooperation between the bodies referred to in (i) and those referred to in (ii).

Moreover, in accordance with the procedure referred to in Article 21(2), another legal person established on behalf of any body referred to in (i) and (ii) and acting under the authority and supervision of such body may be approved, provided that such person has no personal interest in the outcome of the measures it takes.

The Member States shall notify the Commission of their responsible official bodies. The Commission shall forward that information to the other Member States;

- (f) ‘official measures’ means measures taken by the responsible official body;
- (g) ‘official inspection’ means an inspection carried out by the responsible official body;
- (h) ‘official statement’ means a statement issued by, or under the responsibility of, the responsible official body;
- (i) ‘lot’ means a number of units of a single commodity, identifiable by its homogeneity of composition and origin;
- (j) ‘laboratory’ means a public or private law entity carrying out analysis and proper diagnosis, enabling the producer to monitor production quality.

Article 4

In accordance with the procedure referred to in Article 21(3), a schedule shall be established in Annex I for each genus and species referred to in Annex II and for rootstocks of other genera and species if material of the genus or species is, or has to be, grafted on to them, with a reference to the plant health conditions laid down in Directive 2000/29/EC applying to the genus and/or species concerned, and laying down:

- (a) the conditions with which vegetable planting material must comply, in particular those relating to the quality and purity of the crop and, where appropriate varietal characteristics. These conditions shall be added to Annex I, Part A;
- (b) the conditions with which propagating material must comply, in particular those relating to the propagation system applied, the purity of the growing crop and, where appropriate, the varietal characteristics. These conditions shall be set out in Annex I, Part B.

Article 5

1 Member States shall ensure that suppliers take all the necessary measures to guarantee compliance with the standards set by this Directive at all stages of the production and marketing of vegetable propagating and planting material.

2 For the purposes of paragraph 1, the said suppliers shall either carry out themselves, or have carried out by an accredited supplier or a responsible official body, checks based on the following principles:

- identification of critical points in their production process on the basis of the production methods used,
- establishment and implementation of methods for monitoring and checking the critical points referred to in the first indent,
- taking samples for analysis in a laboratory accredited by the responsible official body for the purpose of checking compliance with the standards established by this Directive,
- keeping a written record or a record registered in an indelible fashion of the data referred to in the first, second and third indents, as well as records on production and marketing of propagating and planting material, to be held at the disposal of the responsible official body. These documents and records shall be kept for a period of at least one year.

However, suppliers whose activity in this connection is confined merely to the distribution of vegetable propagating and planting material produced and packaged on premises other than their own shall be required only to keep a written record or a record registered in an indelible fashion of the buying and selling and/or delivery of such products.

This paragraph shall not apply to suppliers whose activity in this connection is confined to the supply of small quantities of vegetable propagating and planting material to non-professional final consumers.

3 If the result of their own checks or any information at the disposal of the suppliers referred to in paragraph 1 reveals the presence of one or more of the harmful organisms referred to in Directive 2000/29/EC or, in quantities greater than those normally allowed for in order to meet the standards, of those specified in the relevant schedules established pursuant to Article 4 of this Directive, the suppliers shall immediately report this to the responsible official body and shall take the measures indicated by that body or any other measure necessary to reduce the risk of such harmful organisms from spreading. The supplier shall keep records of all occurrences of harmful organisms on his premises and of all measures taken in relation to such occurrences.

4 Detailed rules for the application of the second subparagraph of paragraph 2 shall be established in accordance with the procedure referred to in Article 21(2).

Article 6

1 The responsible official body shall accredit suppliers once it has verified that their production methods and establishments meet the requirements of this Directive with regard to the nature of the activities they carry out. Accreditation must be renewed if a supplier decides to carry out activities other than those for which he has received accreditation.

2 The responsible official body shall accredit laboratories once it has verified that these laboratories, their methods and their establishments meet the requirements of this Directive to be specified in accordance with the procedure referred to in Article 21(2), with regard to the testing activities they carry out. Accreditation must be renewed if a laboratory decides to carry out activities other than those for which it has received accreditation.

3 The responsible official body shall take the necessary measures if the requirements referred to in paragraphs 1 and 2 cease to be met. To this end, it shall take particular account of the conclusions of any check carried out in accordance with Article 7.

4 The supervision and monitoring of suppliers, establishments and laboratories shall be carried out regularly by or under the responsibility of the responsible official body, which shall at all times have free access to all parts of establishments, in order to ensure compliance with the requirements of this Directive. Implementing measures concerning supervision and monitoring shall be adopted, as necessary, in accordance with the procedure referred to in Article 21(2).

If such supervision and monitoring reveal that the requirements of this Directive are not being met, the responsible official body shall take appropriate action.

Article 7

1 Commission experts may, in cooperation with the responsible official bodies of the Member States, make on-the-spot checks in so far as this is necessary to ensure uniform application of this Directive, and in particular to verify whether suppliers are in effect complying with the requirements of this Directive. A Member State in whose territory a check is being carried out shall give all necessary assistance to the experts in carrying out their duties. The Commission shall inform the Member States of the result of the investigations.

2 Detailed rules for the application of paragraph 1 shall be adopted in accordance with the procedure referred to in Article 21(2).

Article 8

1 Vegetable propagating and planting material may be marketed only by accredited suppliers and provided that they meet the requirements laid down in the schedule referred to in Article 4.

2 Without prejudice to the provisions of Directive 2000/29/EC, paragraph 1 shall not apply to vegetable propagating and planting material intended for:

- a trials or scientific purposes; or
- b selection work; or
- c measures aimed at preserving genetic diversity.

3 Detailed rules for the application of points (a), (b) and (c) of paragraph 2 shall be adopted as necessary in accordance with the procedure referred to in Article 21(2).

Article 9

1 Without prejudice to Article 2, vegetable propagating and planting material which belongs to genera or species listed in Annex II and is also covered by Directive 2002/55/EC shall not be marketed within the Community unless it belongs to a variety accepted in accordance with that Directive.

2 Without prejudice to Article 2 and paragraph 3 of this Article, vegetable propagating and planting material which belongs to genera or species listed in Annex II but which is not covered by Directive 2002/55/EC shall not be marketed within the Community unless it belongs to a variety officially accepted in at least one Member State.

The provisions laid down in Articles 4 and 5 and Article 9(3) of Directive 2002/55/EC shall apply to the conditions for acceptance.

Article 3(2) and (4), Articles 6, 7, 8, 9(1), (2) and (4) and Articles 10 to 15 of that Directive shall apply *mutatis mutandis* to the procedures and formalities for acceptance and maintenance production.

The results of unofficial tests and practical information gathered in the course of growing may be taken into consideration in each instance.

3 Varieties officially accepted in accordance with paragraph 2 shall be entered in the Common Catalogue of Varieties of Vegetable Species referred to in Article 17 of Directive 2002/55/EC. Articles 16(2), 17, 18 and 19 of that Directive shall apply *mutatis mutandis*.

Article 10

1 While growing and during lifting or removal from the parent material, vegetable propagating and planting material shall be kept in separate lots.

2 If vegetable propagating and planting material of different origins is put together or mixed during packaging, storage, transport or at delivery, the supplier shall keep records including the following data: composition of the lot and origin of the individual components.

3 Member States shall ensure compliance with the requirements of paragraphs 1 and 2 by carrying out official inspections.

Article 11

1 Without prejudice to Article 10(2), vegetable propagating and planting material shall be marketed only in sufficiently homogeneous lots and if they are recognised as complying with this Directive and are accompanied by a document made out by the supplier in accordance with the conditions laid down in the schedule established pursuant to Article 4. If an official statement appears on this document, it shall be clearly separated from all other contents of the document.

Requirements on vegetable propagating and planting material for labelling and/or sealing and packaging shall be set out in the schedule referred to in Article 4.

2 In the case of supply by the retailer of vegetable propagating and planting material to a non-professional final consumer, requirements on labelling may be confined to appropriate product information.

Article 12

1 Member States may exempt:

- a from the application of Article 11, small producers all of whose production and sales of vegetable propagating and planting material is intended for final use by persons on the local market who are not professionally involved in plant production ('local circulation');
- b from the controls and official inspection referred to in Article 18, the local circulation of vegetable propagating and planting materials produced by such exempt persons.

2 Implementing measures relating to other requirements concerning the exemptions referred to in paragraph 1, in particular as regards the concepts of 'small producers' and 'local market', and to the relevant procedures, shall be adopted in accordance with the procedure referred to in Article 21(2).

Article 13

In the event of temporary difficulties in the supply of vegetable propagating and planting material satisfying the requirements of this Directive, measures may be adopted, in accordance with the procedure referred to in Article 21(2), concerning the marketing of vegetable propagating and planting material meeting less stringent requirements, without prejudice to the plant health rules laid down in Directive 2000/29/EC.

Article 14

1 The marketing of vegetable propagating and planting material which complies with the requirements and conditions of this Directive shall be subject to no restrictions as regards supplier, plant health, growing medium and inspection arrangements other than those laid down in this Directive.

2 The marketing of vegetable propagating and planting material whose variety is entered in the Common Catalogue of Varieties of Vegetable Species shall not be subject to any restriction as regards variety other than those laid down or referred to in this Directive.

Article 15

As regards the products referred to in Annex II, Member States shall refrain from imposing more stringent conditions or marketing restrictions other than the conditions laid down in the schedules referred to in Article 4 or, failing that, those existing on 28 April 1992.

Article 16

1 In accordance with the procedure referred to in Article 21(2), it shall be decided whether vegetable propagating and planting material produced in a third country and affording the same guarantees as regards obligations on the supplier, identity, characteristics, plant health, growing medium, packaging, inspection arrangements, marking and sealing, is equivalent in all these respects to vegetable propagating and planting material produced in the Community and complying with the requirements and conditions of this Directive.

2 Pending the decision referred to in paragraph 1, Member States may, until 31 December 2012, and without prejudice to the provisions of Directive 2000/29/EC, apply to the import of vegetable propagating and planting material from third countries conditions at least equivalent to those laid down temporarily or permanently in the schedules referred to in Article 4 of this Directive. Where no such conditions are laid down in those schedules, the import conditions must be at least equivalent to those applicable to production in the Member State concerned.

In accordance with the procedure referred to in Article 21(2), the date referred to in the first subparagraph of this paragraph may, for the various third countries, be deferred pending the decision referred to in paragraph 1 of this Article.

Vegetable propagating and planting material imported by a Member State in accordance with a decision taken by that Member State pursuant to the first subparagraph shall be subject to no marketing restrictions in the other Member States as regards the matters referred to in paragraph 1.

Article 17

Member States shall ensure that official inspection by sampling checks on propagating and planting material is carried out during production and marketing, with the aim of verifying compliance with the requirements and conditions of this Directive.

Article 18

Detailed implementing procedures for the controls provided for in Article 5 and for the official inspection provided for in Articles 10 and 17, including sampling methods, shall be adopted, as necessary, in accordance with the procedure referred to in Article 21(2).

Article 19

1 If, during the supervision and monitoring provided for in Article 6(4), the official inspection provided for in Article 17, or the trials provided for in Article 20, it is found that vegetable propagating and planting material does not meet the requirements of this Directive, the responsible official body of the Member State shall take appropriate action to ensure that it does comply with the provisions of this Directive or, if that is not possible, to ban the marketing of that vegetable propagating and planting material in the Community.

2 If it is found that vegetable propagating and planting material marketed by a particular supplier does not comply with the requirements and conditions of this Directive, the Member State concerned shall ensure that appropriate measures are taken against that supplier. If the supplier is forbidden to market vegetable propagating and planting material, the Member State shall notify the Commission and the competent national authorities in the Member States.

3 Any measures taken under paragraph 2 shall be withdrawn as soon as it has been established with adequate certainty that the vegetable propagating and planting material intended for marketing by the supplier will, in future, comply with the requirements and conditions of this Directive.

Article 20

1 Trials, or, where appropriate, tests shall be carried out in the Member States on samples to check that vegetable propagating and planting material complies with the requirements and conditions of this Directive, including those relating to plant health. The Commission may organise inspections of the trials by representatives of the Member States and of the Commission.

2 Community comparative tests and trials may be carried out within the Community for the post-control of samples of vegetable propagating and planting material placed on the market under the provisions of this Directive whether mandatory or discretionary, including those relating to plant health. The comparative tests and trials may include the following:

- vegetable propagating and planting material produced in third countries,
- vegetable propagating and planting material suitable for organic farming,
- vegetable propagating and planting material marketed in relation to measures aimed at preserving genetic diversity.

3 Those comparative tests and trials shall be used to harmonise the technical methods of examination of vegetable propagating and planting material and to check satisfaction of the conditions with which the material must comply.

4 In accordance with the procedure referred to in Article 21(2), the necessary arrangements shall be made for the comparative tests and trials to be carried out. The Commission shall inform the Committee referred to in Article 21(1) about the technical arrangements for holding those tests and trials and the results thereof. When plant health problems occur, the Commission shall notify the Standing Committee on Plant Health.

5 The Community may make a financial contribution to the performance of the comparative tests and trials provided for in paragraphs 2 and 3.

The financial contribution shall not exceed the annual appropriations decided by the budgetary authority.

6 The comparative tests and trials which may benefit from a Community financial contribution, and detailed rules for the provision of the financial contribution, shall be established in accordance with the procedure referred to in Article 21(2).

7 The comparative tests and trials provided for in paragraphs 2 and 3 may be performed only by State authorities or legal persons acting under the responsibility of the State.

Article 21

1 The Commission shall be assisted by the ‘Standing Committee on Seeds and Propagating Materials for Agriculture, Horticulture and Forestry’, hereinafter referred to as ‘the Committee’.

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 1999/468/EC shall be set at one month.

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

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

Article 22

Amendments to the schedules referred to in Article 4 and to the conditions and detailed rules adopted for the implementation of this Directive shall be adopted in accordance with the procedure referred to in Article 21(2).

Article 23

1 Member States shall ensure that vegetable propagating and planting material produced in their territory and intended for marketing complies with the requirements of this Directive.

2 If it is found, during an official inspection, that vegetable propagating and planting material cannot, by reason of non-compliance with a condition relating to plant health, be marketed, the Member State concerned shall take appropriate official measures to eliminate any consequent plant health risk.

Article 24

As far as Articles 5 to 11, 14, 15, 17, 19 and 23 are concerned, the date of application for each of the genera or species referred to in Annex II shall be fixed in accordance with the procedure referred to in Article 21(2), when the schedule referred to in Article 4 is drawn up.

Article 25

Directive 92/33/EEC, as amended by the acts listed in Annex III, Part A, is repealed, without prejudice to the obligations of the Member States relating to the time limits for transposition into national law and application of the Directives set out in Annex III, Part B.

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

Article 26

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

Article 27

This Directive is addressed to the Member States.

Done at Brussels, 15 July 2008.

For the Council

The President

M. BARNIER