

Council Directive 2008/90/EC of 29 September 2008 on the marketing of fruit plant propagating material and fruit plants intended for fruit production (Recast version)

CHAPTER 1

SCOPE AND DEFINITIONS

Article 1

Scope

1 This Directive shall apply to the marketing of fruit plant propagating material and fruit plants intended for fruit production within the Community.

2 This Directive shall apply to the genera and species listed in Annex I as well as to their hybrids. It shall also apply to rootstocks and other parts of plants of other genera or species than those listed in Annex I or their hybrids, if material of genera or species listed in Annex I or their hybrids is grafted or is to be grafted onto them.

3 This Directive shall apply without prejudice to the plant health rules laid down by Directive 2000/29/EC.

4 This Directive shall not apply to propagating material or fruit plants shown to be intended for export to third countries, provided they are identified as such and kept sufficiently isolated.

Implementing measures for the first subparagraph, with particular reference to identification and isolation, shall be adopted in accordance with the procedure referred to in Article 19(2).

Article 2

Definitions

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

1. 'propagating material' means seeds, parts of plants and all plant material, including rootstocks, intended for the propagation and production of fruit plants;
2. 'fruit plants' means plants intended to be planted or replanted, after marketing;
3. 'variety' means a plant grouping within a single botanical taxon of the lowest known rank, which can be:
 - (a) defined by the expression of the characteristics resulting from a given genotype or combination of genotypes;
 - (b) distinguished from any other plant grouping by the expression of at least one of the said characteristics; and
 - (c) considered as an entity in view of its ability to be propagated unchanged;
4. 'clone' means the vegetative genetically uniform progeny of a single plant;

5. 'pre-basic material' means propagating material which:
- (a) has been produced, according to generally accepted methods, for the maintenance of the identity of the variety including the relevant pomological characteristics and for the prevention of diseases;
 - (b) is intended for the production of basic material or certified material other than fruit plants;
 - (c) satisfies the specific requirements for pre-basic material established pursuant to Article 4; and
 - (d) has been found by official inspection to satisfy the conditions in (a), (b) and (c);
6. 'basic material' means propagating material which:
- (a) has been produced either directly or in a known number of stages in a vegetative way from pre-basic material, according to generally accepted methods, for the maintenance of the identity of the variety including the relevant pomological characteristics and for the prevention of diseases;
 - (b) is intended for the production of certified material;
 - (c) satisfies the specific requirements for basic material, established pursuant to Article 4; and
 - (d) has been found by official inspection to satisfy the conditions in (a), (b) and (c);
7. 'certified material' means:
- (a) propagating material which:
 - (i) has been produced directly in a vegetative way from basic material or pre-basic material or, if intended to be used for the production of rootstocks, by certified seeds from basic or certified material of rootstocks;
 - (ii) is intended for the production of fruit plants;
 - (iii) satisfies the specific requirements for certified material, established pursuant to Article 4; and
 - (iv) has been found by official inspection to satisfy the conditions in (i), (ii) and (iii);
 - (b) fruit plants which:
 - (i) have been produced directly from certified, basic or pre-basic propagating material;
 - (ii) are intended for the production of fruits;
 - (iii) satisfy the specific requirements for certified material, established pursuant to Article 4; and
 - (iv) have been found by official inspection to satisfy the conditions in (i), (ii) and (iii);

8. ‘CAC (*Conformitas Agraria Communitatis*) material’ means propagating material and fruit plants which:
- (a) have varietal identity and adequate varietal purity;
 - (b) are intended for:
 - the production of propagating material,
 - the production of fruit plants, and/or
 - the production of fruits;
 - (c) satisfy the specific requirements for CAC material established pursuant to Article 4;
9. ‘supplier’ means any natural or legal person carrying out professionally at least one of the following activities with regard to propagating material or fruit plants: reproducing, producing, preserving and/or treating, importing and marketing;
10. ‘marketing’ means the sale, holding with a view to sale, offer for sale, and any disposal, supply or transfer aimed at commercial exploitation of propagating material or fruit plants to third parties, whether or not for consideration;
11. ‘responsible official body’ means:
- (a) an authority, established or designated by the Member State under the supervision of the national government and responsible for questions concerning the quality of propagating material and fruit plants;
 - (b) 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;
12. ‘official inspection’ means inspection carried out by the responsible official body or under the responsibility of the responsible official body;
13. ‘lot’ means a number of units of a single commodity, identifiable by its homogeneity of composition and origin.

CHAPTER 2

REQUIREMENTS FOR PROPAGATING MATERIAL AND FRUIT PLANTS

Article 3

General requirements for placing on the market

- 1 Propagating material and fruit plants may only be marketed if:
- a the propagating material has been officially certified as ‘pre-basic material’, ‘basic material’ or ‘certified material’ or if it meets the conditions to be qualified as CAC material;
 - b the fruit plants have been officially certified as certified material or they meet the conditions to be qualified as CAC material.

2 Propagating material and fruit plants which consist of a genetically modified organism within the meaning of points 1 and 2 of Article 2 of Directive 2001/18/EC shall be placed on the market only if the genetically modified organism has been authorised pursuant to that Directive or pursuant to Regulation (EC) No 1829/2003.

3 Where products derived from fruit plants or propagating material are intended to be used as or in food falling within the scope of Article 3 or as or in a feed falling within the scope of Article 15 of Regulation (EC) No 1829/2003, the propagating material and fruit plants concerned shall be placed on the market only if the food or the feed derived from this material has been authorised pursuant to that Regulation.

4 Notwithstanding paragraph 1, Member States may authorise suppliers on their own territory to place on the market appropriate quantities of propagating material and fruit plants intended:

- a for trials or scientific purposes;
- b for selection work; or
- c to help preserve genetic diversity.

The conditions under which Member States may grant such authorisation may be adopted in accordance with the procedure referred to in Article 19(2).

Article 4

Specific requirements for genus and species

In accordance with the procedure referred to in Article 19(3), specific requirements for each genus or species referred to in Annex I shall be established, specifying:

- (a) the conditions with which CAC material must comply, in particular those relating to the propagation system applied, to the purity of the growing crop, plant health, and, except in the case of rootstocks, where the material does not belong to a variety, to varietal aspects;
- (b) the conditions with which pre-basic, basic and certified material must comply, relating to quality (including, for pre-basic and basic material, methods for the maintenance of the identity of the variety and, where applicable, of the clone, including the relevant pomological characteristics), plant health, the testing methods and procedures applied, the propagation system(s) applied and, except in the case of rootstocks where the material does not belong to a variety, to varietal aspects;
- (c) the conditions with which rootstocks and other parts of plants of genera or species other than those listed in Annex I, or their hybrids, must comply if propagating material of the genus or species listed in Annex I or their hybrids is grafted onto them.

CHAPTER 3

REQUIREMENTS TO BE MET BY SUPPLIERS

Article 5

Registration

1 Member States shall ensure that suppliers are officially registered in relation to the activities which they carry out under this Directive.

2 Member States may decide not to apply paragraph 1 to suppliers marketing only to non-professional final consumers.

3 Detailed rules for the application of paragraphs 1 and 2 may be established in accordance with the procedure referred to in Article 19(2).

Article 6

Specific requirements

1 Member States shall ensure that pre-basic, basic, certified material as well as CAC material is produced under the responsibility of suppliers that are engaged in the production or reproduction of propagating material and fruit plants. To this effect, those suppliers shall:

- identify and monitor critical points in their production process which influence the quality of the material,
- keep information on the monitoring referred to in the first indent available for examination when requested by the responsible official body,
- take samples where necessary for analysis in a laboratory, and
- ensure that, during production, lots of propagating material remain separately identifiable.

2 Member States shall ensure that in the case of the appearance, on the premises of a supplier, of a harmful organism listed in the Annexes to Directive 2000/29/EC or referred to in the specific requirements established pursuant to Article 4 of this Directive at a level higher than the level allowed in these specific requirements, the supplier reports it to the responsible official body without delays, notwithstanding any reporting obligations under Directive 2000/29/EC and carries out any measures imposed by that body.

3 Member States shall ensure that suppliers shall keep records of their sales or purchases for at least 3 years when propagating material or fruit plants are marketed.

The first subparagraph shall not apply to suppliers who are exempted from registration in accordance with Article 5(2).

4 Detailed rules for the application of paragraph 1 may be established in accordance with the procedure referred to in Article 19(2).

CHAPTER 4

VARIETY IDENTIFICATION AND LABELLING*Article 7***Variety identification**

1 Propagating material and fruit plants shall be marketed with a reference to the variety to which they belong. Where, in the case of rootstocks, the material does not belong to a variety, reference shall be made to the species or interspecific hybrid concerned.

- 2 The varieties to which reference is to be made pursuant to paragraph 1 shall be:
- a legally protected by a plant variety right in accordance with provisions on the protection of new varieties;
 - b officially registered pursuant to paragraph 4 of this Article; or
 - c commonly known; a variety is considered to be commonly known if:
 - (i) it has been officially registered in another Member State;
 - (ii) it is the subject of an application for official registration in any Member State, or of an application for a plant variety right referred to in point (a); or
 - (iii) it has been already marketed before 30 September 2012 in the territory of the Member State concerned or of another Member State, provided that it has an officially recognised description.

A reference pursuant to paragraph 1 may also be made to a variety of no intrinsic value for commercial crop production provided that the variety has an officially recognised description and the propagating material and fruit plants are marketed as CAC material in the territory of the Member State concerned and are identified by a reference to this provision on the label and/or document.

3 As far as possible, each variety shall bear the same denomination in all the Member States, in accordance with implementing measures which may be adopted in accordance with the procedure referred to in Article 19(2) or, in their absence, in accordance with accepted international guidelines.

4 Varieties may be officially registered if they have been found to satisfy certain officially approved conditions and have an official description. They may also be officially registered if their material has been already marketed before 30 September 2012 in the territory of the Member State concerned, provided that they have an officially recognised description.

A genetically modified variety may be officially registered only if the genetically modified organism of which it consists has been authorised pursuant to Directive 2001/18/EC or pursuant to Regulation (EC) No 1829/2003.

Where products derived from fruit plants or propagating material are intended to be used as or in food falling within the scope of Article 3 or as or in a feed falling within the scope of Article 15 of Regulation (EC) No 1829/2003, the variety concerned shall be officially registered only if the food or feed derived from this material has been authorised pursuant to that Regulation.

5 Requirements for the official registration referred to in paragraph 4 shall be established in accordance with the procedure referred to in Article 19(2), taking into account current scientific and technical knowledge and covering:

- a the conditions of official registration, which may include, in particular, distinctness, stability and sufficient uniformity;
- b the characteristics which as a minimum the examinations of the various species must cover;
- c the minimum requirements for carrying out the examinations;
- d the maximum period of validity of the official registration of a variety.

6 In accordance with the procedure referred to in Article 19(2):

- a system for the notification of varieties or species or interspecific hybrids to the responsible official bodies of the Member States may be set up,
- it may be decided that a common list of varieties may be established and published.

Article 8

Lot composition and identification

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

2 If propagating material and fruit plants of different origins are 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 its individual components.

Article 9

Labelling

1 Propagating material and fruit plants shall be marketed only in sufficiently homogeneous lots and if they are:

- a qualified as CAC material and accompanied by a document made out by the supplier in accordance with the specific requirements established pursuant to Article 4. If an official declaration appears on this document, it shall be clearly separate from all other information in the document; or
- b qualified as pre-basic, basic or certified material, and certified as such by the responsible official body in accordance with the specific requirements established pursuant to Article 4.

Requirements in respect of propagating material and/or fruit plants with regard to labelling and/or sealing and packaging may be indicated in implementing measures adopted in accordance with the procedure referred to in Article 19(3).

2 In the case of retail supply of propagating material or fruit plants to a non-professional final consumer, requirements regarding labelling referred to in paragraph 1 may be confined to appropriate product information.

3 In the case of propagating material or a fruit plant of a variety which has been genetically modified, any label and document, official or otherwise, which is affixed to or accompanies the material under this Directive shall clearly indicate that the variety has been genetically modified and shall identify the genetically modified organisms.

CHAPTER 5

EXEMPTIONS

Article 10

Local circulation

- 1 Member States may exempt:
 - a from the application of Article 9(1), small producers all of whose production and sales of propagating material and fruit plants is intended for final use by persons on the local market who are not professionally involved in plant production (local circulation);
 - b from the checks and official inspections provided for in Article 13, the local circulation of propagating materials and fruit plants produced by such exempt persons.
- 2 In accordance with the procedure referred to in Article 19(2), implementing measures relating to other requirements concerning the exemptions referred to in paragraph 1 of this Article, in particular as regards the concepts of ‘small producers’ and ‘local market’, and to the related procedures, may be adopted.

Article 11

Temporary difficulties in supply

In the event of temporary difficulties in the supply of propagating material and fruit plants satisfying the requirements of this Directive due to natural disasters or unforeseen circumstances, measures may be adopted, in accordance with the procedure referred to in Article 19(2), concerning the marketing of propagating material and fruit plants meeting less stringent requirements.

CHAPTER 6

PROPAGATING MATERIAL AND FRUIT PLANTS PRODUCED IN THIRD COUNTRIES

Article 12

- 1 In accordance with the procedure referred to in Article 19(2), it shall be decided whether propagating material and fruit plants 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, are equivalent in all these respects to propagating material and fruit plants 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 2010, and without prejudice to the provisions of Directive 2000/29/EC, apply to the import of propagating material and fruit plants from third countries conditions at least equivalent to those indicated, on a temporary or permanent basis, in the specific requirements adopted pursuant to Article 4. If such conditions are not laid down in the specific requirements the conditions for importation must be at least equivalent to those applicable to production in the Member State concerned.

In accordance with the procedure referred to in Article 19(2), the date referred to in the first subparagraph of this paragraph may, for the various third countries, be extended pending the decision referred to in paragraph 1 of this Article.

Propagating material and fruit plants 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.

CHAPTER 7

CONTROL MEASURES

Article 13

Official inspection

1 Member States shall ensure that propagating material and fruit plants are officially inspected during production and marketing to verify compliance with the requirements and conditions set out in this Directive. To this effect, the responsible official body shall have free access to all parts of premises of suppliers at all reasonable times.

2 The responsible official bodies 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.

In accordance with the procedure referred to in Article 19(2), any other legal persons established on behalf of a responsible official body and acting under the authority and the supervision of such body, may be approved, provided that such person has no personal interest in the outcome of the measures it takes.

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

3 Detailed rules for the application of paragraph 1 shall be adopted in accordance with the procedure referred to in Article 19(2). These rules shall be proportionate to the category of material concerned.

Article 14

Community monitoring

1 Trials, or, where appropriate, tests shall be carried out in the Member States on samples to check that propagating material or fruit plants comply 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 propagating material or fruit plants 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:

- propagating material or fruit plants produced in third countries,
- propagating material or fruit plants suitable for organic farming,
- propagating material or fruit plants marketed in relation to measures for the conservation of genetic diversity.

3 The comparative tests and trials referred to in paragraph 2 shall be used to harmonise the technical methods of examination of propagating material and fruit plants and to check satisfaction of the conditions with which the material must comply.

4 The Commission, acting in accordance with the procedure referred to in Article 19(2), shall make the necessary arrangements for the comparative tests and trials to be carried out. The Commission shall inform the Committee referred to in Article 19(2) about the technical arrangements for holding the 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 tests and trials foreseen in paragraphs 2 and 3.

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

6 The 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 19(2).

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

Article 15

Community checks in Member States

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 the 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 19(2).

Article 16

Follow-up actions by Member States

1 Member States shall ensure that propagating material and fruit plants produced in their territory and intended for marketing comply with the requirements of this Directive.

2 If, during the official inspection referred to in Article 13, or the trials referred to in Article 14, it is found that propagating material or fruit plants do not meet the requirements of this Directive, the responsible official body of the Member State shall take appropriate action to ensure that they do comply with the provisions of this Directive or, if that is not possible, to ban the marketing of that propagating material or those fruit plants in the Community.

3 If it is found that propagating material or fruit plants marketed by a particular supplier do 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 propagating material and fruit plants, the Member State shall accordingly inform the Commission and the competent national bodies in the Member States.

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

CHAPTER 8

GENERAL AND FINAL PROVISIONS

Article 17

Free movement clause

1 Propagating material and fruit plants which comply with the requirements and conditions of this Directive shall be subject to no marketing restrictions as regards supplier, plant health, growing medium and inspection arrangements, other than those laid down in this Directive.

2 As regards the propagating material and fruit plants of the genera and species referred to in Annex I, Member States shall refrain from imposing more stringent conditions or marketing restrictions other than those laid down in this Directive or in the specific requirements established pursuant to Article 4 or those existing on 28 April 1992, as the case may be.

Article 18

Amendments and adaptation of Annexes

The Commission may, in accordance with the procedure referred to in Article 19(3), amend Annex I, for the purpose of adapting it to developments in scientific and technical knowledge.

Article 19

Committee

1 The Commission shall be assisted by the Standing Committee on Propagating Material and Plants of Fruit Genera and Species, 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.

4 The Committee shall adopt its Rules of Procedure.

Article 20

Transposition

1 Member States shall adopt and publish, by 31 March 2010 at the latest, the laws, regulations and administrative provisions necessary to comply with Articles 1(2) and (3), 2, 3, 5, 6, 7(2), (3) and (4), 9(3), 12(2), 13(1), 16, and 21. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

They shall apply those provisions from 30 September 2012.

2 When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to the Directive repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.

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

Article 21

Transitional measures

Member States may, until 31 December 2018, allow the marketing in their own territory of propagating material and fruit plants taken from parent plants that existed before 30 September 2012 and have been officially certified or meet the conditions to be qualified as CAC material before 31 December 2018. When marketed, such propagating material and fruit plants shall be identified by a reference to this Article on the label and/or document. Beyond 31 December 2018 propagating material and fruit plants may be marketed if the requirements of this Directive are fulfilled.

Article 22

Repeal

1 Directive 92/34/EEC, as amended by the acts listed in Annex II, Part A, is repealed with effect from 30 September 2012, 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 II, Part B.

2 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 III.

Article 23

Entry into force

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

Article 24

This Directive is addressed to the Member States.

Done at Brussels, 29 September 2008.

For the Council

The President

M. BARNIER