

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)

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)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 37 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament<sup>(1)</sup>,

Whereas:

- (1) Council Directive 92/34/EEC of 28 April 1992 on the marketing of fruit plant propagating material and fruit plants intended for fruit production<sup>(2)</sup> has been substantially amended several times<sup>(3)</sup>. Since further amendments are to be made, it should be recast in the interests of clarity.
- (2) Fruit production occupies an important place in the agriculture of the Community.
- (3) Satisfactory results in the cultivation of fruit depend to a large extent on the quality and plant health of the material used for their propagation and of the fruit plants intended for fruit production.
- (4) Harmonised conditions at Community level ensure that purchasers throughout the Community receive propagating material and fruit plants which are healthy and of good quality.
- (5) In so far as they relate to plant health, such harmonised conditions must be consistent with 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<sup>(4)</sup>.
- (6) It is appropriate to establish Community rules for those genera and species of fruit plant which are of major economic importance in the Community, with a Community procedure for adding further genera and species later to the list of genera and species to which this Directive applies. The genera and species listed should be those which are widely grown in Member States and for whose propagating material and/or fruit plants there is a substantial market which covers more than one Member State.

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- (7) Without prejudice to the plant health provisions of Directive 2000/29/EC, it is not appropriate to apply the Community rules on the marketing of propagating material and fruit plants when it is shown that such products are intended for export to third countries, as the rules applicable there may be different from those contained in this Directive.
- (8) In the interest of clarity the necessary definitions should be established. Those definitions should be based on technical and scientific progress and cover the term concerned in a complete and clear manner, in order to facilitate the harmonisation of the internal market taking into account all new opportunities of the market and all new processes used for the production of propagating material. Those definitions should be harmonised with those adopted for the marketing of other propagating material covered by Community legislation.
- (9) It is desirable to establish plant health and quality standards for each genus and species of fruit plant based on international schemes which may include, *inter alia*, provisions for pathogen testing. It is appropriate to provide, therefore, for a system of harmonised rules for the different categories of propagating material and fruit plants to be marketed by reference to those international schemes, where available.
- (10) It is consistent with current agricultural practice to require that propagating material and fruit plants are either officially examined or examined under official supervision as foreseen for other species covered by Community legislation.
- (11) Genetically modified propagating material and fruit plants should not be placed on the market and fruit varieties should not be officially registered unless all the appropriate measures have been taken to avoid any risk to human health or the environment as referred to in Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms<sup>(5)</sup> and Regulation (EC) No 1829/2003 of the European Parliament and of the Council of 22 September 2003 on genetically modified food and feed<sup>(6)</sup>.
- (12) It is desirable to ensure that genetic diversity is preserved and used in a sustainable way. Appropriate biodiversity conservation measures to guarantee the conservation of existing varieties should be taken in line with other relevant Community legislation.
- (13) It is appropriate to establish conditions for the marketing of material intended for trials, scientific purposes or selection work if this material cannot fulfil the normal plant health and quality standards due to the particular use.
- (14) In the first instance it is the responsibility of the suppliers of propagating material and/or fruit plants to ensure that their products fulfil the conditions laid down in this Directive. It is appropriate to define the role of the suppliers and the conditions to which they are to refer. Suppliers should be officially registered in order to create a transparent and economically valid process of certification of propagating material and fruit plants.
- (15) Suppliers marketing only to non-professional final consumers may be exempted from the obligation of registration.

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- (16) It is in the interests of the purchasers of propagating materials and fruit plants that the names of varieties be known and that their identity be safeguarded to permit the traceability of the system and to increase the confidence on the market.
- (17) That objective can best be achieved either through common knowledge of the variety, in particular for old varieties, or through the availability of a description based on Community Plant Variety Office (CPVO) protocols or in their absence on other international or national rules.
- (18) In order to ensure the identity and orderly marketing of propagating material and fruit plants, Community rules should be laid down concerning the separation of lots and marking. The labels should give the particulars needed both for official control and for the information of the user.
- (19) The competent authorities of the Member States should, when carrying out controls and inspections, ensure that conditions with regard to propagating material or fruit plants and suppliers are fulfilled. The level, intensity and frequency of such inspections should be determined taking account of the category of material concerned.
- (20) Community control measures should be provided for to ensure uniform application in all the Member States of the standards laid down in this Directive.
- (21) Rules should be established permitting, in the case of temporary supply difficulties due to natural disasters, such as fire and gales or unforeseen circumstances, the marketing of propagating material and fruit plants subject to requirements less stringent than those contained in this Directive for a limited period and subject to specific conditions.
- (22) In accordance with the principle of proportionality, provision should be made to allow Member States to exempt 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) from the conditions on labelling and from the checks and official inspections.
- (23) Member States should be prohibited in the case of the genera and species referred to in Annex I from imposing new conditions or restrictions to the market other than those provided for in this Directive.
- (24) Provision should be made for authorising the marketing, within the Community, of propagating material and fruit plants produced in third countries, provided always that they afford the same guarantees as propagating material and fruit plants produced in the Community and complying with Community rules.
- (25) In order to harmonise the technical methods of examination used in the Member States and to compare propagating material and fruit plants produced in the Community with those produced in third countries, comparative trials should be carried out to check compliance of such products with the requirements of this Directive.
- (26) In order to avoid any disruption of trade, Member States should be allowed to authorise the marketing in their own territory of certified and CAC (*Conformitas Agraria Communitatis*) material taken from parent plants in existence and already certified or

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accepted as CAC material at the date of application of this Directive for a transitional period even if that material does not fulfil the new conditions.

- (27) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>(7)</sup>.
- (28) This Directive should be 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,

HAS ADOPTED THIS DIRECTIVE:

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- (1) Opinion delivered on 11 December 2007 (not yet published in the Official Journal).
- (2) [OJ L 157, 10.6.1992, p. 10.](#)
- (3) See Annex II, Part A.
- (4) [OJ L 169, 10.7.2000, p. 1.](#)
- (5) [OJ L 106, 17.4.2001, p. 1.](#)
- (6) [OJ L 268, 18.10.2003, p. 1.](#)
- (7) [OJ L 184, 17.7.1999, p. 23.](#)