

Commission Directive 2009/145/EC of 26 November 2009 providing for certain derogations, for acceptance of vegetable landraces and varieties which have been traditionally grown in particular localities and regions and are threatened by genetic erosion and of vegetable varieties with no intrinsic value for commercial crop production but developed for growing under particular conditions and for marketing of seed of those landraces and varieties (Text with EEA relevance)

## CHAPTER I

### **Subject matter and definitions**

#### *Article 1*

#### **Subject matter**

- 1 As regards the vegetable species covered by Directive 2002/55/EC, this Directive lays down certain derogations, in relation to the conservation *in situ* and the sustainable use of plant genetic resources through growing and marketing:
  - a for acceptance for inclusion in the national catalogues of varieties of vegetable species, as provided for in Directive 2002/55/EC, of landraces and varieties which have been traditionally grown in particular localities and regions and threatened by genetic erosion, hereinafter ‘conservation varieties’; and
  - b for acceptance for inclusion in the catalogues referred to in point (a) of varieties with no intrinsic value for commercial crop production but developed for growing under particular conditions, hereinafter ‘varieties developed for growing under particular conditions’; and
  - c for the marketing of seed of such conservation varieties and varieties developed for growing under particular conditions.
- 2 Unless otherwise provided in this Directive, Directive 2002/55/EC shall apply.

#### *Article 2*

#### **Definitions**

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

- (a) ‘conservation *in situ*’ means the conservation of genetic material in its natural surroundings and, in the case of cultivated plant species, in the farmed environment where they have developed their distinctive properties;
- (b) ‘genetic erosion’ means loss of genetic diversity between and within populations or varieties of the same species over time, or reduction of the genetic basis of a species due to human intervention or environmental change;
- (c) ‘landrace’ means a set of populations or clones of a plant species which are naturally adapted to the environmental conditions of their region.

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## CHAPTER II

### Conservation varieties

#### Section I

#### Acceptance of conservation varieties

##### Article 3

#### Conservation varieties

- 1 Member States may accept conservation varieties subject to the requirements provided for in Articles 4 and 5.
- 2 Conservation varieties shall be accepted as follows:
  - a Member States may accept a variety as a variety whose seed may either be certified as ‘certified seed of a conservation variety’ or verified as ‘standard seed of a conservation variety’. Such a variety shall be entered into the common catalogue of varieties of vegetable species as a ‘conservation variety whose seed shall be certified in accordance with Article 10 of Commission Directive 2009/145/EC or verified in accordance with Article 11 of that Directive’;
  - b Member States may accept a variety as a variety whose seed may only be verified as ‘standard seed of a conservation variety’. Such a variety shall be entered into the common catalogue of varieties of vegetable species as a ‘conservation variety whose seed shall be verified in accordance with Article 11 of Commission Directive 2009/145/EC’.

##### Article 4

#### Substantive requirements

- 1 In order to be accepted as a conservation variety, a landrace or variety referred to in Article 1(1)(a) shall present an interest for the conservation of plant genetic resources.
- 2 By way of derogation from Article 1(2) of Directive 2003/91/EC, Member States may adopt their own provisions as regards distinctness, stability and uniformity of conservation varieties.

In such cases Member States shall ensure that for distinctness and stability at least the characteristics shall apply which are referred to in:

- a the technical questionnaires associated with the test protocols of the Community Plant Variety Office (CPVO), for the species listed in Annex I to Directive 2003/91/EC, which apply to those species; or
- b the technical questionnaires of the Guidelines of the International Union for the Protection of New Varieties of Plants (UPOV), for the species listed in Annex II to Directive 2003/91/EC, which apply to those species.

For the assessment of uniformity, Directive 2003/91/EC shall apply.

However, if the uniformity level is established on the basis of off-types, a population standard of 10 % and an acceptance probability of at least 90 % shall be applied.

## Article 5

### Procedural requirements

By way of derogation from the first sentence of Article 7(1) of Directive 2002/55/EC, no official examination shall be required if the following information is sufficient for the decision on the acceptance of the conservation varieties:

- (a) the description of the conservation variety and its denomination;
- (b) the results of unofficial tests;
- (c) knowledge gained from practical experience during cultivation, reproduction and use as notified by the applicant to the Member State concerned;
- (d) other information, in particular from the plant genetic resource authorities or from organisations recognised for this purpose by the Member States.

## Article 6

### Exclusion of acceptance

A conservation variety shall not be accepted for inclusion in the national catalogue of varieties if:

- (a) it is already listed in the common catalogue of varieties of vegetable species as a variety other than a conservation variety, or it was deleted from that common catalogue within the last 2 years, or the period granted under Article 15(2) of Directive 2002/55/EC expired less than 2 years ago; or
- (b) it is protected by a Community plant variety right, as provided for in Council Regulation (EC) No 2100/94<sup>(1)</sup>, or by a national plant variety right, or an application for such a right is pending.

## Article 7

### Denomination

1 With respect to denominations of conservation varieties which were known before 25 May 2000, Member States may permit derogations from Regulation (EC) No 637/2009, except where such derogations would violate prior rights of a third party which are protected under Article 2 of that Regulation.

2 Notwithstanding Article 9(2) of Directive 2002/55/EC, Member States may accept more than one name for a variety if the names concerned are historically known.

## Article 8

### Region of origin

1 When a Member State accepts a conservation variety, it shall identify the locality or localities, region or regions, in which the variety has historically been grown and to which it is

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naturally adapted, hereinafter ‘region of origin’. It shall take into account information from plant genetic resource authorities or from organisations recognised for that purpose by the Member States.

Where the region of origin is located in more than one Member States, it shall be identified by all Member States concerned by common accord.

2 The Member State or Member States performing the identification of the region of origin shall notify the identified region to the Commission.

#### *Article 9*

### **Maintenance**

Member States shall ensure that a conservation variety must be maintained in its region of origin.

#### *Section II*

### ***Seed production and marketing of conservation varieties***

#### *Article 10*

### **Certification**

By way of derogation from Article 20 of Directive 2002/55/EC, Member States may provide that seed of a conservation variety may be certified as certified seed of a conservation variety if it meets the following requirements:

- (a) the seed descends from seed produced according to well defined practices for the maintenance of the variety;
- (b) the seed complies with the requirements for certification of ‘certified seed’ provided for in Article 2(1)(d) of Directive 2002/55/EC, with the exception of the requirements in respect of minimal varietal purity and the requirements concerning official examination or examination under official supervision;
- (c) the seed has sufficient varietal purity.

#### *Article 11*

### **Verification**

By way of derogation from Article 20 of Directive 2002/55/EC, Member States may provide that seed of a conservation variety may be verified as standard seed of a conservation variety if it meets the following requirements:

- (a) the seed complies with the requirements for the marketing of ‘standard seed’ provided for in Directive 2002/55/EC, with the exception of the requirements in respect of minimal varietal purity;
- (b) the seed has sufficient varietal purity.

## Article 12

### Seed testing

1 Member States shall ensure that tests are carried out to check that seed of conservation varieties complies with the requirements provided for in Articles 10 and 11.

2 The tests referred to in paragraph 1 shall be carried out in accordance with current international methods, or, where such methods do not exist, in accordance with any appropriate methods.

3 Member States shall ensure that samples taken for the tests referred to in paragraph 1 are drawn from homogeneous lots. They shall ensure that the rules on lot weight and sample weight provided for in Article 25(2) of Directive 2002/55/EC are applied.

## Article 13

### Region of seed production

1 Member States shall ensure that seed of a conservation variety may only be produced in the region of origin.

If the seed cannot be produced in that region, due to a specific environmental problem, Member States may approve additional regions for seed production taking into account information from plant genetic resource authorities or from organisations recognised for this purpose by the Member States. However, seed produced in those additional regions shall be used exclusively in the region of origin.

2 Member States shall notify to the Commission and to the other Member States the additional regions which they intend to approve for seed production pursuant to paragraph 1.

The Commission and the other Member States may, within 20 working days from receipt of those notifications, request the matter to be referred to the Standing Committee on Seeds and Propagating Material for Agriculture, Horticulture and Forestry. A decision shall be taken in accordance with Article 48(1)(b) of Directive 2002/55/EC, to lay down, if necessary, restrictions or conditions for the designation of such regions.

If neither the Commission nor other Member States make a request under the second subparagraph, the Member State in question may approve the additional regions for seed production as notified.

## Article 14

### Marketing conditions

1 Member States shall ensure that seed of a conservation variety may only be marketed subject to the following conditions:

- a it has been produced in its region of origin or in a region referred to in Article 13;
- b marketing takes place in its region of origin.

2 By way of derogation from paragraph 1(b), a Member State may approve additional regions in its own territory for the marketing of seed of a conservation variety provided that

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those regions are comparable to the region of origin as regards the natural and semi-natural habitats of that variety.

Where Member States approve such additional regions, they shall ensure that the amount of seed necessary for the production of at least the quantity of seed referred to in Article 15 is reserved to conserve the variety in its region of origin.

The Member States shall inform the Commission and the other Member States of the approval of such additional regions.

3 Where a Member State approves additional regions for seed production in accordance with Article 13, it shall not use the derogation provided for in paragraph 2 of this Article.

#### *Article 15*

### **Quantitative restrictions**

Each Member State shall ensure that, for each conservation variety, the quantity of seed marketed per year does not exceed the quantity necessary for producing vegetables on the number of hectares set out in Annex I for the respective species.

#### *Article 16*

### **Application of quantitative restrictions**

1 Member States shall ensure that producers notify them before the beginning of each production season of the size and the location of the area for the seed production.

2 If, based on the notifications referred to in paragraph 1, the quantities laid down by the Member States in accordance with Article 15 are likely to be exceeded, Member States shall allocate to each producer concerned the quantity it may market in the respective production season.

#### *Article 17*

### **Sealing of packages**

1 Member States shall ensure that seed of conservation varieties may be marketed only in closed packages bearing a sealing device.

2 Seed packages shall be sealed by the supplier in such a manner that they cannot be opened without damaging the sealing system or leaving evidence of tampering on the supplier's label or on the package.

3 In order to ensure sealing in accordance with paragraph 2, the sealing system shall comprise at least the label or the affixing of a seal.

## Article 18

### Labelling

Member States shall ensure that packages or containers of seed of conservation varieties bear a supplier's label or a printed or stamped notice including the following information:

- (a) the words 'EC rules and standards';
- (b) the name and address of the person responsible for affixing the labels or his identification mark;
- (c) the year of sealing expressed as: 'sealed ...' (year), or the year of the last sampling for the purposes of the last testing of germination expressed as: 'sampled ...' (year);
- (d) the species;
- (e) the denomination of the conservation variety;
- (f) the words 'certified seed of a conservation variety' or 'standard seed of a conservation variety';
- (g) the region of origin;
- (h) where the region of seed production is different from the region of origin, the indication of the region of seed production;
- (i) the reference number of the lot given by the person responsible for affixing the labels;
- (j) the declared net or gross weight, or declared number of seeds;
- (k) where weight is indicated and granulated pesticides, pelleting substances or other solid additives are used, the nature of the chemical treatment or additive and the approximate ratio between the weight of clusters or pure seeds and the total weight.

## Article 19

### Official post control

Member States shall ensure that the seed of a conservation variety marketed under this Directive is subject to official post control by random inspections to verify its varietal identity and varietal purity.

The official post control referred to in paragraph 1 shall be carried out in accordance with current international methods, or, where such methods do not exist, in accordance with any appropriate methods.

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## *Article 20*

### **Monitoring**

Member States shall ensure by official monitoring during production and marketing that the seed complies with this Chapter, paying particular attention to the variety, locations of the seed production and quantities.

## *CHAPTER III*

### *Varieties developed for growing under particular conditions*

#### *Section I*

#### *Acceptance of varieties developed for growing under particular conditions*

### *Article 21*

#### **Varieties developed for growing under particular conditions**

1 Member States may accept varieties developed for growing under particular conditions subject to the requirements provided for in Articles 22 and 23.

2 Member States may accept a variety developed for growing under particular conditions as a variety whose seed may only be verified as 'standard seed of a variety developed for growing under particular conditions'. Such a variety shall be entered into the common catalogue of varieties of vegetable species as a 'variety developed for growing under particular conditions whose seed shall be verified in accordance with Article 26 of Commission Directive 2009/145/EC'.

### *Article 22*

#### **Substantive requirements**

1 In order to be accepted as a variety developed for growing under particular conditions, as referred to in Article 1(1)(b), a variety shall be with no intrinsic value for commercial crop production but developed for growing under particular conditions.

A variety shall be considered as having been developed for growing under particular conditions if it has been developed for growing under particular agro-technical, climatic or pedological conditions.

2 By way of derogation from Article 1(2) of Directive 2003/91/EC, Member States may adopt their own provisions as regards distinctness, stability and uniformity of varieties developed for growing under particular conditions.

In such cases Member States shall ensure that for distinctness and stability at least the characteristics shall apply which are referred to in:



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- a the technical questionnaires associated with the test protocols of the Community Plant Variety Office (CPVO), for the species listed in Annex I to Directive 2003/91/EC, which apply to those species; or
- b the technical questionnaires of the Guidelines of the International Union for the Protection of New Varieties of Plants (UPOV), for the species listed in Annex II to Directive 2003/91/EC, which apply to those species.

For the assessment of uniformity, Directive 2003/91/EC shall apply.

However, if the uniformity level is established on the basis of off-types, a population standard of 10 % and an acceptance probability of at least 90 % shall be applied.

### *Article 23*

#### **Procedural requirements**

By way of derogation from the first sentence of Article 7(1) of Directive 2002/55/EC, no official examination shall be required if the following information is sufficient for the decision on the acceptance of the varieties developed for growing under particular conditions:

- (a) the description of the variety developed for growing under particular conditions and its denomination;
- (b) the results of unofficial tests;
- (c) knowledge gained from practical experience during cultivation, reproduction and use, as notified by the applicant to the Member State concerned;
- (d) other information, in particular from the plant genetic resource authorities or from organisations recognised for this purpose by the Member States.

### *Article 24*

#### **Exclusion of acceptance**

A variety developed for growing under particular conditions shall not be accepted for inclusion in the national catalogue of varieties if:

- (a) it is already listed in the common catalogue of varieties of vegetable species as a variety other than a variety developed for growing under particular conditions, or it was deleted from that common catalogue of varieties of vegetable species within the last 2 years, or the period granted under Article 15(2) of Directive 2002/55/EC expired less than 2 years ago; or
- (b) it is protected by a Community plant variety right, as provided for in Regulation (EC) No 2100/94, by a national plant variety right, or if an application for such rights is pending.

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## Article 25

### Denomination

1 With respect to denominations of varieties developed for growing under particular conditions which were known before 25 May 2000, Member States may permit derogations from Regulation (EC) No 637/2009, except where such derogations would violate prior rights of a third party which are protected under Article 2 of that Regulation.

2 Notwithstanding Article 9(2) of Directive 2002/55/EC, Member States may accept more than one name for a variety if the names concerned are historically known.

## Section II

### *Marketing of seed of varieties developed for growing under particular conditions*

## Article 26

### Verification

By way of derogation from Article 20 of Directive 2002/55/EC, Member States may provide that seed of a variety developed for growing under particular conditions may be verified as standard seed of a variety developed for growing under particular conditions if it meets the following requirements:

- (a) the seed complies with the requirements for the marketing of 'standard seed' provided for in Directive 2002/55/EC, with the exception of the requirements in respect of minimal varietal purity;
- (b) the seed has sufficient varietal purity.

## Article 27

### Seed testing

1 Member States shall ensure that tests are carried out to check that seed of varieties developed for growing under particular conditions complies with the requirements provided for in Article 26.

2 The tests referred to in paragraph 1 shall be carried out in accordance with current international methods, or, where such methods do not exist, in accordance with any appropriate methods.

## Article 28

### Quantitative restrictions

Member States shall ensure that seed of varieties developed for growing under particular conditions is marketed in small packages, not exceeding the maximum net weight set out per species in Annex II.

### Article 29

#### Sealing of packages

1 Member States shall ensure that seed of varieties developed for growing under particular conditions may be marketed only in closed packages bearing a sealing device.

2 Seed packages shall be sealed by the supplier in such a manner that they cannot be opened without damaging the sealing system or leaving evidence of tampering on the supplier's label or on the package.

3 In order to ensure sealing in accordance with paragraph 2, the sealing system shall comprise at least the label or the affixing of a seal.

### Article 30

#### Labelling

Member States shall ensure that packages of seed of varieties developed for growing under particular conditions bear a supplier's label or a printed or stamped notice including the following information:

- (a) the words 'EC rules and standards';
- (b) the name and address of the person responsible for affixing the labels or his identification mark;
- (c) the year of sealing expressed as: 'sealed ...' (year), or the year of the last sampling for the purposes of the last testing of germination expressed as: 'sampled ...' (year);
- (d) the species;
- (e) the denomination of the variety;
- (f) the words 'variety developed for growing under particular conditions';
- (g) the reference number of the lot given by the person responsible for affixing the labels;
- (h) the declared net or gross weight, or declared number of seeds;
- (i) where weight is indicated and granulated pesticides, pelleting substances or other solid additives are used, the nature of the chemical treatment or additive and the approximate ratio between the weight of clusters or pure seeds and the total weight.

### Article 31

#### Official post control

Member States shall ensure that the seed of a variety developed for growing under particular conditions is subject to official post control by random inspections to verify its varietal identity and purity.

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The official post control referred to in paragraph 1 shall be carried out in accordance with current international methods, or, where such methods do not exist, in accordance with any appropriate methods.

#### *Article 32*

### **Monitoring**

Member States shall ensure by official monitoring during production and marketing that the seed complies with this Chapter, paying particular attention to the variety and quantities.

## *CHAPTER IV*

### ***General and final provisions***

#### *Article 33*

### **Reporting**

Member States shall ensure that suppliers operating in their territory report for each production season the amount of seed of each conservation variety and of each variety developed for growing under particular conditions placed on the market.

Member States shall report on request to the Commission and to the other Member States the amount of seed of each conservation variety and of each variety developed for growing under particular conditions placed on the market in their territory.

#### *Article 34*

### **Notification of the recognised organisations of plant genetic resources**

Member States shall notify to the Commission the recognised organisations referred to in Article 5(d), Article 8(1), Article 13(1) and Article 23(d).

#### *Article 35*

### **Evaluation**

By 31 December 2013 the Commission shall evaluate the implementation of this Directive.

#### *Article 36*

### **Transposition**

1 Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2010 at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

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. Member States shall determine how such reference is to be made.

2 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 37*

#### **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 38*

#### **Addressees**

This Directive is addressed to the Member States.

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- (1) [OJ L 227, 1.9.1994, p. 1.](#)