

Commission Directive 2010/60/EU of 30 August 2010 providing for certain derogations for marketing of fodder plant seed mixtures intended for use in the preservation of the natural environment (Text with EEA relevance)

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Directive 66/401/EEC of 14 June 1966 on the marketing of fodder plant seed⁽¹⁾, and in particular the fourth subparagraph of Article 13(1) thereof,

Whereas:

- (1) The questions of biodiversity and the conservation of plant genetic resources have grown in importance in recent years, as shown by different developments at international and EU level. Examples include Council Decision 93/626/EEC of 25 October 1993 concerning the conclusion of the Convention on Biological Diversity⁽²⁾, Council Decision 2004/869/EC of 24 February 2004 concerning the conclusion, on behalf of the European Community, of the International Treaty on Plant Genetic Resources for Food and Agriculture⁽³⁾, Council Regulation (EC) No 870/2004 of 26 April 2004 establishing a Community programme on the conservation, characterisation, collection and utilisation of genetic resources in agriculture and repealing Regulation (EC) No 1467/94⁽⁴⁾ and Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD)⁽⁵⁾. Specific conditions should be established under the EU legislation governing the marketing of fodder plant seed mixtures, namely Directive 66/401/EEC, in order to take account of these issues.
- (2) To allow the marketing of fodder plant seed mixtures which are intended for use in the preservation of the natural environment in the context of the conservation of genetic resources (hereinafter preservation mixtures), even where the components of those mixtures do not comply with some of the general requirements for marketing provided for in Directive 66/401/EEC, it is necessary to provide for certain derogations.
- (3) To ensure that mixtures marketed as preservation mixtures fulfil the requirements of those derogations, it is necessary to provide that marketing of such mixtures is subject to authorisation. Authorisation should be granted on application.
- (4) As regards preservation mixtures containing conservation varieties within the meaning of Commission Directive 2008/62/EC of 20 June 2008 providing for certain derogations

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for acceptance of agricultural landraces and varieties which are naturally adapted to the local and regional conditions and threatened by genetic erosion and for marketing of seed and seed potatoes of those landraces and varieties⁽⁶⁾, this Directive should, however, be without prejudice to Directive 2008/62/EC.

- (5) Special areas of conservation designated by the Member States in accordance with Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora⁽⁷⁾ host natural and semi-natural habitats worthy of conservation. Such areas should be considered as source areas for preservation mixtures. Member States should also have the possibility to designate other areas contributing to the conservation of plant genetic resources if they comply with comparable rules.
- (6) It should be provided that the components of the preservation mixture are indicated as species and, where relevant, subspecies in the authorisation and on the label. The specific germination rate for components of the mixture covered by Directive 66/401/EEC which do not comply with the germination requirements set out in Annex II to that Directive should also be provided. As regards these requirements, for directly harvested preservation mixtures it is necessary to take into account the harvesting method.
- (7) It is necessary to provide for derogations concerning the examination of the preservation mixture by the Member States before it is authorised for marketing. The manner in which these mixtures are examined should in certain cases also allow for the differences between the harvesting methods of crop-grown and of directly harvested preservation mixtures.
- (8) To ensure that the marketing of preservation mixtures takes place in the context of the conservation of genetic resources, restrictions should be provided for, in particular, regarding the region of origin and the source area.
- (9) A maximum quantity should be fixed for the marketing of preservation mixtures. To make sure that this maximum quantity is respected, Member States should require producers to notify the quantities of preservation mixtures for which they intend to apply for authorisation, and Member States should allocate the quantities to producers if necessary.
- (10) The traceability of preservation mixtures should be ensured through appropriate sealing and labelling requirements.
- (11) To ensure that the rules laid down in this Directive are correctly applied, official monitoring should be carried out.
- (12) After an appropriate period the Commission should assess whether the measures provided for in this Directive are effective.
- (13) The measures provided for in this Directive are in accordance with the opinion of the Standing Committee on Seeds and Propagating Material for Agriculture, Horticulture and Forestry,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Definitions

For the purposes of this Directive the following definitions apply:

- (a) 'source area' means:
 - (i) an area designated by a Member State as a special area of conservation in accordance with Article 4(4) of Directive 92/43/EEC; or
 - (ii) an area contributing to the conservation of plant genetic resources and which is designated by a Member State in accordance with a national procedure based on criteria comparable to those provided for in Article 4(4) of Directive 92/43/EEC in conjunction with Article 1(k) and (l) of that Directive, and which is managed, protected and under surveillance in a manner equivalent to Article 6 and Article 11 of that Directive;
- (b) 'collection site' means a part of the source area, where the seed has been collected;
- (c) 'directly harvested mixture' means a seed mixture marketed as collected at the collection site, with or without cleaning;
- (d) 'crop-grown mixture' means a seed mixture produced in accordance with the following process:
 - (i) seed of individual species is taken at the collection site;
 - (ii) the seed referred to in point (i) is multiplied outside the collection site as single species;
 - (iii) the seeds of those species are then mixed to create a mixture which is composed of those genera, species and, where relevant, subspecies which are typical for the habitat type of the collection site.

Article 2

Preservation mixtures

1 By way of derogation from Article 3(1) and (2) of Directive 66/401/EEC, Member States may authorise marketing of mixtures of various genera, species and, where relevant, subspecies, intended for use in the preservation of the natural environment in the context of the conservation of genetic resources referred to in Article 22a(1)(b) of that Directive.

Such mixtures may contain seed of fodder plants covered by Directive 66/401/EEC and, in addition, seed of plants which are not fodder plants within the meaning of that Directive.

Such mixtures are hereinafter referred to as 'preservation mixtures'.

2 Where a preservation mixture contains a conservation variety, Directive 2008/62/EC shall apply.

3 Unless otherwise provided in this Directive, Directive 66/401/EEC shall apply.

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Article 3

Region of origin

When a Member State authorises the marketing of a preservation mixture, it shall define the region with which that mixture is naturally associated, hereinafter referred to as 'region of origin'. It shall take into account information from plant genetic resource authorities or organisations recognised for this purpose by the Member States. Where the region of origin is located in more than one Member State, it shall be identified by all Member States concerned by common accord.

Article 4

Authorisation

1 Member States may authorise preservation mixtures for marketing in their region of origin provided those mixtures fulfil the requirements in Article 5 in the case of directly harvested preservation mixtures or the requirements in Article 6 in the case of crop-grown preservation mixtures.

2 The authorisation shall include the following:

- a name and address of the producer;
- b harvesting method: whether directly harvested or crop-grown;
- c percentage by weight of the components as species and, where relevant, subspecies;
- d in the case of crop-grown preservation mixtures, a specific germination rate for components of the mixture covered by Directive 66/401/EEC which do not comply with the germination requirements set out in Annex II to that Directive;
- e quantity of the mixture to which the authorisation is to apply;
- f region of origin;
- g restriction to marketing in the region of origin;
- h source area;
- i collection site, and in the case of a crop-grown preservation mixture, in addition, the multiplication site;
- j habitat type of the collection site; and
- k year of collection.

3 As regards paragraph 2(c), for directly harvested preservation mixtures it shall suffice to give those components as species and, where relevant, subspecies which are typical for the habitat type of the collection site and which are, as components of the mixture, of importance for the preservation of the natural environment in the context of the conservation of genetic resources.

Article 5

Authorisation requirements for directly harvested preservation mixtures

1 A directly harvested preservation mixture shall have been collected in its source area at a collection site which has not been sown in the 40 years previous to the date of the application

by the producer, referred to in Article 7(1). The source area shall be located in the region of origin.

2 The percentage of the components of the directly harvested preservation mixture that are species and, where relevant, subspecies which are typical for the habitat type of the collection site and which are, as components of the mixture, of importance for the preservation of the natural environment in the context of conservation of genetic resources, shall be adequate for the purpose of recreating the habitat type of the collection site.

3 The germination rate of the components referred to in paragraph 2 shall be sufficient for the purpose of recreating the habitat type of the collection site.

4 The maximum content of species and, where relevant, subspecies which do not comply with paragraph 2 shall not exceed 1 % by weight. The directly harvested preservation mixture shall not contain *Avena fatua*, *Avena sterilis* and *Cuscuta* spp. The maximum content of *Rumex* spp. other than *Rumex acetosella* and *Rumex maritimus* shall not exceed 0,05 % by weight.

Article 6

Authorisation requirements for crop-grown preservation mixtures

1 As regards crop-grown preservation mixtures, the collected seed from which the crop-grown seed mixture is produced shall have been collected in its source area at a collection site which has not been sown in the 40 years previous to the date of the application by the producer, referred to in Article 7(1). The source area shall be located in the region of origin.

2 The seed of the crop-grown preservation mixture shall be of species and, where relevant, subspecies which are typical for the habitat type of the collection site and which are, as components of the mixture, of importance for the preservation of the natural environment in the context of conservation of genetic resources.

3 Components of a crop-grown preservation mixture which are seeds of fodder plants within the meaning of Directive 66/401/EEC shall, before mixing, comply with the requirements for commercial seed set out in Section III of Annex II to Directive 66/401/EEC as regards analytical purity, as set out in columns 4 to 11 of the table in Section I(2)A of that Annex, as regards maximum content of other plant species in a sample of the weight specified in column 4 of Annex III thereof (total per column), as set out in columns 12, 13 and 14 of the table in Section I(2)A of Annex II thereof, and as regards conditions concerning Lupin seeds, as set out in column 15 of the table in Section I(2)A of that Annex.

4 Multiplication may take place for five generations.

Article 7

Procedural requirements

1 Authorisation shall be granted on application by the producer.

The application shall be accompanied by the information necessary to verify compliance with Articles 4 and 5 in the case of directly harvested preservation mixtures or with Articles 4 and 6 in the case of crop-grown preservation mixtures.

2 As regards directly harvested preservation mixtures, the Member State in which the collection site is located shall carry out visual inspections.

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Those visual inspections shall be carried out on the collection site during the period of growth at intervals appropriate to ensure that the mixture complies, at least, with the authorisation requirements provided for in Article 5(2) and (4).

The Member State that carried out the visual inspections shall document the results thereof.

3 As regards crop-grown preservation mixtures, when a Member State examines an application, it shall carry out tests or tests shall be carried out under official supervision of the Member State to check that the preservation mixture complies, at least, with the authorisation requirements provided for in Article 6(2) and (3).

Such tests shall be carried out in accordance with current international methods, or, where such methods do not exist, in accordance with any appropriate methods.

For those tests the Member State concerned shall ensure that samples are drawn from homogenous lots. It shall ensure that the rules on lot weight and sample weight provided for in Article 7(2) of Directive 66/401/EEC are applied.

Article 8

Quantitative restriction

Each Member State shall ensure that the total quantity of seed of preservation mixtures marketed each year does not exceed 5 % of the total weight of all fodder plant seed mixtures covered by Directive 66/401/EEC and marketed in the respective year in the Member State concerned.

Article 9

Application of quantitative restrictions

1 In the case of directly harvested preservation mixtures, Member States shall ensure that producers notify before the beginning of each production season the quantity of seed of preservation mixtures for which they intend to apply for authorisation together with size and location of the intended collection site or sites.

In the case of crop-grown preservation mixtures, Member States shall ensure that producers notify before the beginning of each production season the quantity of seed of preservation mixtures for which they intend to apply for authorisation together with both, size and location of the intended collection site or sites and size and location of the intended multiplication site or sites.

2 If, based on the notifications referred to in paragraph 1, the quantities laid down in Article 8 are likely to be exceeded, Member States shall allocate to each producer concerned the quantity it is allowed to market in the respective production season.

Article 10

Sealing of packages and containers

1 Member States shall ensure that preservation mixtures may be marketed only in closed packages and containers bearing a sealing device.

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

3 The packages and containers referred to in paragraph 1 shall be sealed in such a manner that they cannot be opened without damaging the sealing system or leaving evidence of tampering on the producer's label, or on the package or container.

Article 11

Labelling

1 Member States shall ensure that packages and containers of preservation mixtures bear a producer's label or a printed or stamped notice including at least the following information:

- a the words 'EU rules and standards';
- b name and address of the person responsible for affixing the labels or his identification mark;
- c harvesting method: whether directly harvested or crop-grown;
- d year of the sealing expressed as: 'sealed ...' (year);
- e region of origin;
- f source area;
- g collection site;
- h habitat type of the collection site;
- i the words 'preservation fodder plant seed mixture, intended for use in an area of the same habitat type as the collection site, not considering the biotic conditions';
- j reference number of the lot given by the person responsible for affixing the labels;
- k the percentage by weight of the components as species and, where relevant, subspecies;
- l declared net or gross weight;
- m where granulated pesticides, pelleting substances or other solid additives are used, the nature of the additive and also the approximate ratio between the weight of clusters or pure seeds and the total weight shall be indicated; and
- n in the case of crop-grown preservation mixtures, a specific germination rate for components of the mixture covered by Directive 66/401/EEC which do not comply with the germination requirements set out in Annex II to that Directive.

2 As regards paragraph 1(k), it shall suffice to indicate the components of directly harvested preservation mixtures as provided for Article 4(3).

3 As regards paragraph 1(n), it shall suffice to indicate an average of these required specific germination rates in case the number of required specific germination rates is more than five.

Article 12

Monitoring

Member States shall ensure by official monitoring that this Directive is complied with.

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Article 13

Reporting

Member States shall ensure that producers operating in their territory report for each production season the amount of preservation mixtures marketed.

The Member States shall report on request to the Commission and to the other Member States the amount of preservation mixtures marketed in their territory.

Article 14

Notification of the recognised organisations of plant genetic resources

Member States shall notify on request to the Commission the plant genetic resource authorities or organisations recognised for this purpose by the Member States.

Article 15

Evaluation

The Commission shall evaluate the implementation of this Directive by 31 December 2014.

Article 16

Transposition

1 Member States shall bring into force, by 30 November 2011 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. 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 17

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 18

Addressees

This Directive is addressed to the Member States.

Done at Brussels, 30 August 2010.

For the Commission

The President

José Manuel BARROSO

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- (1) OJ 125, 11.7.1966, p. 2298/66.
- (2) OJ L 309, 13.12.1993, p. 1.
- (3) OJ L 378, 23.12.2004, p. 1.
- (4) OJ L 162, 30.4.2004, p. 18.
- (5) OJ L 277, 21.10.2005, p. 1.
- (6) OJ L 162, 21.6.2008, p. 13.
- (7) OJ L 206, 22.7.1992, p. 7.