COUNCIL DIRECTIVE 1999/105/EC
of 22 December 1999
on the marketing of forest reproductive material

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 [1],

Having regard to the Opinion of the European Parliament [2],

Having regard to the Opinion of the Economic and Social Committee [3],

Whereas:

(1) Council Directive 66/404/EEC of 14 June 1966 on the marketing of forest reproductive material [4] and Council Directive 71/161/EEC of 30 March 1971 on external quality standards for forest reproductive material marketed within the Community [5] have been substantially amended several times; since further substantial amendments are to be made, the Directives should be combined and recast in the interests of clarity;

(2) Forests cover a large area of the Community and fulfil a multifunctional role based on their social, economic, environmental, ecological and cultural functions; there is a need for specific approaches and actions for the different types of forests, recognising the wide range of natural, social, economic and cultural conditions of the forests in the Community; both the restocking of these forests and new afforestation require a sustainable forest management in relation to the Forestry Strategy for the European Union as set out in the Council Resolution of 15 December 1998 [6];

(3) Forest reproductive material of tree species and artificial hybrids which are important for forestry purposes should be genetically suited to the various site conditions and of high quality; the conservation and enhancement of biodiversity of the forests including the genetic diversity of the trees is essential to sustainable forest management;

(4) So far as they relate to plant health, harmonised conditions must be consistent with Council Directive 77/93/EEC of 21 December 1976 on protective measures against the introduction into the Member States of organisms harmful to plants or plant products and against their spread in the Community [7];

(5) Research on forestry has shown that, if forests are to be of increased value including the aspects of stability, adaptation, resistance, productivity and diversity, it is necessary to use reproductive material which is genetically and phenotypically suited to the site and of high quality; forestry seeds should meet, where appropriate, certain external quality standards;

(6) In the context of the consolidation of the internal market, it is necessary to remove any actual or potential barriers to trade which may hinder the free movement of forest reproductive material within the Community; it is in the interests of all the Member States that Community rules imposing the highest possible standards should be established;

(7) Community rules should refer to the phenotypic and genetic characteristics of seeds and plants and to the external quality of forest reproductive material;

(8) Such rules should apply to marketing both in other Member States and on domestic markets;

(9) Such rules should take account of practical needs and should apply only to those species and artificial hybrids which are important for forestry purposes in all or part of the Community;

(10) In some Member States the use of forest reproductive material of the category 'source-identified', which was not approved for marketing by Directive 66/404/EEC, is traditional, compatible with the climate and indispensable for forestry purposes and it is therefore appropriate to approve for marketing such material in Member States wishing to do so; however it is inappropriate to impose the marketing to the end-user of such material in all Member States;

(11) Certain regions of the Community, such as the Alpine, Mediterranean or Nordic regions, have specific climatic conditions or vulnerable site conditions which justify particular requirements for the external quality of forest reproductive material of certain species;

(12) According to the General Declaration of the Third Ministerial Conference on the Protection of Forest in Europe in Lisbon, for reforestation and afforestation, origins of native species and local provenances that are well adapted to site conditions should be preferred;

(13) Reproductive material intended for export or re-export to third countries should not be covered by the measures set out in this Directive;

[1] OJ C 199, 14.7.1999, p. 1.
[2] Opinion delivered on 1 December 1999 (not yet published in the Official Journal).
[3] OJ C 329, 17.11.1999, p. 15.
[4] OJ 125, 11.7.1966, p. 2326/66. Directive as last amended by the 1994 Act of Accession.
[5] OJ L 87, 17.4.1971, p. 14. Directive as last amended by the 1994 Act of Accession.
[6] OJ C 56, 26.2.1999, p. 1.
[7] OJ L 26, 31.1.1977, p. 20. Directive as last amended by Commission Directive 1999/53/EC (OJ L 142, 5.6.1999, p. 29).

(14) As regards Community reproductive material, approval of basic material and, consequently, demarcations of regions of provenance are fundamental to selection; the Member States should apply uniform rules imposing the highest possible standards for the approval of basic material; only reproductive material derived from such material should be placed on the market;

(15) Genetically modified forest reproductive material should not be placed on the market unless it is safe for human health and the environment;

(16) An environmental risk assessment should be carried out on forest reproductive material consisting of genetically modified organisms; the Commission should then submit to the Council a proposal for a Regulation ensuring that the procedures for such environmental risk assessment and other relevant elements, including the authorisation procedure, are equivalent to those laid down in Council Directive 90/220/EEC of 23 April 1990 on the deliberate release into the environment of genetically modified organisms [1]; until such a Regulation enters into force, Directive 90/220/EEC should apply;

(17) Reproductive material satisfying the requirements of this Directive should be subject to no marketing restrictions other than those provided for in this Directive;

(18) Member States should, however, be authorised to provide that only such parts of plants and planting stock as conform to the standards laid down should be placed on the market in their territories;

(19) Member States should be permitted to impose additional or more stringent requirements for the approval of basic material produced in their own territory;

(20) The Member States should establish lists of regions of provenance specifying, where known, the origin of basic material; Member States should draw up maps showing the demarcations of the regions of provenance;

(21) Member States should draw up national registers of the basic material approved on their territory; a summary of the national register in the form of a national list should also be drawn up by each Member State;

(22) On the basis of such a national list, the Commission should ensure a Community publication;

(23) After harvesting, a master certificate should be issued by the official bodies for all reproductive material derived from approved basic material;

(24) It is necessary to ensure that, in addition to possessing the required phenotypic or genetic quality, reproductive material which is intended for marketing or which is placed on the market is properly identified from collection to delivery to the end user;

(25) Moreover, separate Community quality standards for stem cuttings and where appropriate for sets of poplar should be introduced;

(26) Seed should be marketed only if it conforms to certain quality standards and is contained in sealed packages;

(27) In order to ensure that requirements as to the phenotypic or genetic quality, proper identification and external quality standards are satisfied at the time of marketing, the Member States must make provision for appropriate control arrangements;

(28) Reproductive material satisfying those requirements must be subject only to such marketing restrictions as are provided for in Community rules; Member States should in certain circumstances be allowed to prohibit the marketing to the end user of forest reproductive material which is unsuitable for use in their territory;

(29) During periods in which there are temporary difficulties in obtaining supplies of certain species of reproductive material complying with the principles of this Directive, reproductive material satisfying less stringent requirements should, subject to certain conditions, be temporarily approved;

(30) Forest reproductive material coming from third countries should not be marketed within the Community unless it affords, as regards the approval of its basic material and the measures taken for its production, the same assurances as Community forest reproductive material; a master certificate or an official certificate issued by the country of origin as well as records which shall contain details of all consignments to be exported should accompany imported forest reproductive material when it is placed on the market within the Community;

(31) Under certain conditions, a Member State should be released wholly or partially from the provisions of this Directive in respect of certain tree species;

(32) It is desirable to organise temporary experiments for the purpose of seeking improved alternatives to certain provisions set out in this Directive;

(33) Community control measures should be introduced to ensure uniform application in all Member States of the requirements and conditions laid down in this Directive;

[1] OJ L 117, 8.5.1990, p. 15. Directive as last amended by Commission Directive 97/35/EC (OJ L 169, 27.6.1997, p. 72).

(34) Basically technical adjustments to the Annexes should be facilitated by an expeditious procedure;

(35) The measures necessary for the implementation of this instrument should be adopted in accordance with Council Decision 1999/468/EC laying down the procedures for the exercise of implementing powers conferred on the Commission [1];

(36) In the 1994 Treaty of Accession the Republic of Finland and the Kingdom of Sweden were granted a transitional period until 31 December 1999 for applying the Directive 66/404/EEC and the Republic of Finland also for applying Directive 71/161/EEC; this transitional period should be extended in order to allow the above mentioned countries to maintain their national schemes until the implementation date of this Directive at the latest,

HAS ADOPTED THIS DIRECTIVE:

Article 1

This Directive shall apply to the production with a view to marketing and to the marketing of forest reproductive material within the Community.

Article 2

For the purposes of this Directive the following definitions and/or classifications shall apply:

(a) Forest reproductive material:

reproductive material of those tree species and artificial hybrids thereof which are important for forestry purposes in all or part of the Community and in particular those which are listed in Annex I;

(b) Reproductive material means any of the following:

(i) Seed unit:

cones, infructescenses, fruits and seeds intended for the production of planting stock;

(ii) parts of plants:

stem cuttings, leaf cuttings and root cuttings, explants or embryos for micropropagation, buds, layers, roots, scions, sets and any parts of a plant intended for the production of planting stock;

(iii) planting stock:

plants raised from seed units, from parts of plants, or from plants from natural regeneration;

(c) Basic material means any of the following:

(i) Seed Source:

Trees within an area from which seed is collected;

(ii) Stand:

A delineated population of trees possessing sufficient uniformity in composition;

(iii) Seed Orchard:

A plantation of selected clones or families which is isolated or managed so as to avoid or reduce pollination from outside sources, and managed to produce frequent, abundant and easily harvested crops of seed;

(iv) Parents of Family:

Trees used to obtain progeny by controlled or open pollination of one identified parent used as a female, with the pollen of one parent (full-sibling) or a number of identified or unidentified parents (half sibling);

(v) Clone:

Group of individuals (ramets) derived originally from a single individual (ortet) by vegetative propagation, for example by cuttings, micropropagation, grafts, layers or divisions;

(vi) Clonal Mixture:

A mixture of identified clones in defined proportions.

(d) Autochthonous and indigenous means either of the following:

(i) Autochthonous stand or seed source:

An autochthonous stand or seed source is one which normally has been continuously regenerated by natural regeneration. The stand or seed source may be regenerated artificially from reproductive material collected in the same stand or seed source or autochthonous stands or seed sources within the close proximity;

(ii) Indigenous stand or seed source:

An indigenous stand or seed source is an autochthonous stand or seed source or is a stand or seed source raised artificially from seed, the origin of which is situated in the same region of provenance.

(e) Origin:

For an autochthonous stand or seed source, the origin is the place in which the trees are growing. For a non-autochthonous stand or seed source, the origin is the place from which the seed or plants were originally introduced. The origin of a stand or seed source may be unknown.

(f) Provenance:

The place in which any stand of trees is growing.

(g) Region of Provenance:

For a species or sub-species, the region of provenance is the area or group of areas subject to sufficiently uniform ecological conditions in which stands or seed sources showing similar phenotypic or genetic characters are found, taking into account altitudinal boundaries where appropriate.

(h) Production:

Production includes all stages in the generation of the seed unit, the conversion from seed unit to seed and the raising of planting stock from seed and parts of plants.

[1] OJ L 184, 17.7.1999, p. 23.

(i) Marketing:

Display with a view to sale, offering for sale, sale or delivery to another person including delivery under a service contract.

(j) Supplier:

Any natural or legal person engaged professionally in marketing or importing of forest reproductive material.

(k) Official body:

(i) an authority, established or designated by the Member State under the supervision of the national government and responsible for questions concerning the control of marketing and/or the quality of forest reproductive material;

(ii) any State authority established:

— either at national level, or

— at regional level, under the supervision of national authorities, within the limits set by the constitution of the Member State concerned.

The bodies referred to above 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 by private law, which, under its officially approved constitution, 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.

Moreover, in accordance with the procedure referred to in Article 26(2), other legal persons established on behalf of the body referred to in point (i) 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.

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

(l) Forest reproductive material is divided into the following categories:

(i) 'Source-identified'

Reproductive material derived from basic material which may be either a seed source or stand located within a single region of provenance and which meets the requirements set out in Annex II;

(ii) 'Selected'

Reproductive material derived from basic material which shall be a stand located within a single region of provenance, which has been phenotypically selected at the population level and which meets the requirements set out in Annex III;

(iii) 'Qualified'

Reproductive material derived from basic material which shall be seed orchards, parents of families, clones or clonal mixtures, the components of which have been phenotypically selected at the individual level, and which meets the requirements set out in Annex IV. Testing need not necessarily have been undertaken or completed;

(iv) 'Tested'

Reproductive material derived from basic material which shall consist of stands, seed orchards, parents of families, clones or clonal mixtures. The superiority of the reproductive material must have been demonstrated by comparative testing or an estimate of the superiority of the reproductive material calculated from the genetic evaluation of the components of the basic material. The material shall meet the requirements set out in Annex V.

Article 3

1. The list of species and artificial hybrids in Annex I may be amended in accordance with the procedure referred to in Article 26(3).

2. Insofar as certain species and artificial hybrids are not subject to the measures contained in this Directive, Member States may take such measures, or less stringent measures, in respect of their own territory.

3. The measures contained in this Directive shall not apply to forest reproductive material in the form of planting stock or parts of plants, which is shown to be intended for purposes other than forestry.

In such cases, the material shall be accompanied by a label or other document required by other Community or national provisions which are applicable to such material for the intended purpose. In the absence of any such provisions, where a supplier handles both material intended for forestry purposes and material which is shown to be intended for purposes other than forestry, the latter shall be accompanied by a label or other document bearing the following statement: 'Not for forestry purposes'.

4. The measures contained in this Directive shall not apply to forest reproductive material which is shown to be intended for export or re-export to third countries.

Article 4

1. Member States shall provide that only approved basic material is used for the production of forest reproductive material which is to be marketed.

2. Basic material may only be approved by:

(a) the official bodies if it meets the requirements set out in Annexes II, III, IV or V hereto, as appropriate;

(b) reference to a unit known as 'the unit of approval'. Each unit of approval shall be identified by a unique register reference.

3. Member States shall provide that:

(a) approval shall be withdrawn if the requirements of this Directive are no longer met;

(b) after approval, the basic material for the production of reproductive material under the selected, qualified and tested categories shall be re-inspected at regular intervals.

4. In the interest of conserving plant genetic resources used in forestry as specified in specific conditions which shall be established in accordance with the procedure laid down in Article 26(3) to take account of developments in relation to the conservation *in situ* and the sustainable use of plant genetic resources through growing and marketing of forestry reproductive material of origin which are naturally adapted to the local and regional conditions and threatened by genetic erosion, the Member States may depart from the requirements as laid down in paragraph 2 and Annexes II, III, IV and V insofar as specific conditions are established in accordance with the procedure referred to in Article 26(3).

5. Member States may approve, for a maximum period of ten years, in all or part of their territory, basic material for the production of tested reproductive material where, from the provisional results of the genetic evaluation or comparative tests referred to in Annex V, it can be assumed that the basic material will, when tests have been completed, satisfy the requirements for approval under this Directive.

Article 5

1. If the basic material referred to in Article 4(1) consists of a genetically modified organism within the meaning of points 1 and 2 of Article 2 of Directive 90/220/EEC, such material shall only be accepted if it is safe for human health and the environment.

2. In the case of genetically modified basic material referred to in paragraph 1:

(a) an environmental risk assessment equivalent to that laid down in Directive 90/220/EEC shall be carried out;

(b) the procedures ensuring that the environmental risk assessment and other relevant elements are equivalent to those laid down in Directive 90/220/EEC shall be introduced on a proposal from the Commission, in a Regulation of the European Parliament and of the Council based on the appropriate legal basis in the Treaty. Until such Regulation enters into force, genetically modified basic material shall only be accepted for inclusion in the National Register under Article 10 of this Directive after having been authorised in accordance with Directive 90/220/EEC;

(c) Articles 11 to 18 of Directive 90/220/EEC shall no longer apply to genetically modified basic material authorised in conformity with the Regulation referred to in subparagraph (b);

(d) the technical and scientific details of the implementation of the environmental risk assessment shall be adopted in accordance with the procedure referred to in Article 26(3).

Article 6

1. Member States shall provide for forest reproductive material derived from approved basic material in the manner set out in points (a) to (d):

(a) Material of the species listed in Annex I shall not be marketed unless it is of the categories 'source-identified', 'selected', 'qualified' or 'tested' and meets the requirements of Annexes II, III, IV and V respectively,

(b) Material of the artificial hybrids listed in Annex I shall not be marketed unless it is of the 'selected', 'qualified' or 'tested' categories and meets the requirements of Annexes III, IV and V respectively,

(c) Material of the species and artificial hybrids listed in Annex I which are vegetatively reproduced shall not be marketed unless it is of the 'selected', 'qualified' or 'tested' categories and meets the requirements of Annexes III, IV and V respectively. In the case of reproductive material of the 'selected' category, it may only be marketed if it has been mass propagated from seeds,

(d) Material of the species and artificial hybrids listed in Annex I, which consists wholly or partly of genetically modified organisms, shall not be marketed unless it is of the 'tested' category and meets the requirements of Annex V.

2. The categories under which reproductive material from the different types of basic material may be marketed are as set out in the table in Annex VI.

3. Forest reproductive material of the species and artificial hybrids listed in Annex I shall not be marketed unless it meets the relevant requirements in Annex VII.

Parts of plants and planting stock may not be marketed unless they meet the requirements of prevailing international standards, once those standards are approved in accordance with the procedure referred to in Article 26(3).

4. Member States shall provide that suppliers of forest reproductive material are officially registered. The responsible official body may deem suppliers, who are already registered under Directive 77/93/EEC, to be registered for the purposes of this Directive. Such suppliers shall nonetheless comply with the requirements of this Directive.