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COUNCIL DIRECTIVE 98/95/EC

of 14 December 1998

amending, in respect of the consolidation of the internal market, genetically modified plant varieties and plant genetic resources, Directives 66/400/EEC, 66/401/EEC, 66/402/EEC, 66/403/EEC, 69/208/EEC, 70/457/EEC and 70/458/EEC on the marketing of beet seed, fodder plant seed, cereal seed, seed potatoes, seed of oil and fibre plants and vegetable seed and on the common catalogue of varieties of agricultural plant species

(OJ L 25, 1.2.1999, p. 1)

Amended by:

		Official Journal		
		No	page	date
►**M1**	Council Directive 2002/53/EC of 13 June 2002	L 193	1	20.7.2002
►**M2**	Council Directive 2002/54/EC of 13 June 2002	L 193	12	20.7.2002
►**M3**	Council Directive 2002/55/EC of 13 June 2002	L 193	33	20.7.2002
►**M4**	Council Directive 2002/56/EC of 13 June 2002	L 193	60	20.7.2002
►**M5**	Council Directive 2002/57/EC of 13 June 2002	L 193	74	20.7.2002

Corrected by:

►**C1** Corrigendum, OJ L 126, 20.5.1999, p. 23 (98/95/EC)

►**C2** Corrigendum, OJ L 161, 16.6.2001, p. 47 (98/95/EC)

►**C3** Corrigendum, OJ L 82, 26.3.2002, p. 20 (98/95/EC)

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 43 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],

(1) Whereas, for the reasons given below, the following Directives on the marketing of seed and propagating material should be amended:

— Council Directive 66/400/EEC of 14 June 1966 on the marketing of beet seed [4],

— Council Directive 66/401/EEC of 14 June 1966 on the marketing of fodder plant seed [5],

— Council Directive 66/402/EEC of 14 June 1966 on the marketing of cereal seed [6],

— Council Directive 66/403/EEC of 14 June 1966 on the marketing of seed potatoes [7],

— Council Directive 69/208/EEC of 30 June 1969 on the marketing of seed of oil and fibre plants [8],

— Council Directive 70/457/EEC of 29 September 1970 on the common catalogue of varieties of agricultural plant species [9],

— Council Directive 70/458/EEC of 29 September 1970 on the marketing of vegetable seed [10];

(2) Whereas, in the context of the consolidation of the internal market, it is necessary to amend or repeal certain provisions of the said Directives in order to remove any actual or potential barriers to trade which may hinder the free movement of seeds within the Community; whereas, to this end, any possibilities for Member States to derogate unilaterally from the provisions of the said Directives should be removed;

(3) Whereas, for the same reasons, the scope of the said Directives should be enlarged to cover also the production of seed, with a view to marketing;

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(1) OJ C 29, 31.1.1994, p. 1, and OJ C 53, 20.2.1995, p. 8.
(2) OJ C 286, 22.9.1997, p. 36.
(3) OJ C 195, 18.7.1994, p. 36.
(4) OJ 125, 11.7.1966, p. 2290/66. Directive as last amended by Directive 96/72/EC (OJ L 304, 27.11.1996, p. 10).
(5) OJ 125, 11.7.1966, p. 2298/66. Directive as last amended by Directive 96/72/EC.
(6) OJ 125, 11.7.1966, p. 2309/66. Directive as last amended by Directive 96/72/EC.
(7) OJ 125, 11.7.1966, p. 2320/66. Directive as last amended by Commission Decision 98/111/EC (OJ L 28, 4.2.1998, p. 42).
(8) OJ L 169, 10.7.1969, p. 3. Directive as last amended by Directive 96/72/EC.
(9) OJ L 225, 12.10.1970, p. 1. Directive as last amended by the 1994 Act of Accession.
(10) OJ L 225, 12.10.1970, p. 7. Directive as last amended by Directive 96/72/EC.

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(4) Whereas it should be possible under specified conditions to place on the market bred seed of generations prior to basic seed and seed as grown;

(5) Whereas Member States making use of derogations still permitted under the said Directives should assist each other administratively as regards inspection; whereas the use of such derogations is without prejudice to Article 7a of the Treaty;

(6) Whereas the conditions under which Member States may authorise small quantities of seed for tests, scientific purposes or selection work to be placed on the market should be determined by the Standing Committee on Seeds and Propagating Material for Agriculture, Horticulture and Forestry;

(7) Whereas, in certain cases, the Standing Committee on Seeds and Propagating Material for Agriculture, Horticulture and Forestry should determine whether packages of basic or certified seed should bear a supplier's label;

(8) Whereas, in the case of certain species of seed covered by Directive 66/401/EEC, it should be permitted to certify seed of the first and second generations;

(9) Whereas, in the case of certain species of seed covered by Directive 66/402/EEC, Member States should be permitted to restrict the certification of seed to that of the first generation;

(10) Whereas the minimum size of seed potatoes which may be placed on the market under Directive 66/403/EEC should be changed and a legal basis established to enable the minimum size of the square mesh used to measure the size of seed potatoes to be altered in the future; whereas a provision in respect of separation of seed potatoes from other potatoes for plant health reasons should be introduced;

(11) Whereas seed covered by Directive 70/457/EEC should be freely marketable within the Community two months after publication in the common catalogue;

(12) Whereas the conditions under which mixtures of certain species covered by Directive 70/458/EEC may be placed on the market should be determined in accordance with the procedure of the Standing Committee on Seeds and Propagating Material for Agriculture, Horticulture and Forestry; whereas in respect of the same Directive the provisions on the renewal of the official acceptance of certain varieties should be adapted in order to avoid disturbing current practice in marking packages;

(13) Whereas, in the light of experience, it is useful to clarify and update certain provisions of the abovementioned Directives;

(14) Whereas, in the light of scientific and technical developments, it is now possible to breed varieties through genetic modification; whereas, therefore, when determining whether to accept genetically modified varieties within the meaning of Council Directive 90/220/EEC of 23 April 1990 on the deliberate release into the environment of genetically modified organisms [1] under Directives 70/457/EEC and 70/458/EEC, Member States should have regard to any risk related to their deliberate release into the environment; whereas, furthermore, a legal basis to establish the conditions under which such genetically modified varieties may be marketed should be introduced;

(15) Whereas the marketing of novel foods and novel food ingredients is regulated at Community level by Regulation (EC) No 258/97 of the European Parliament and of the Council of 27 January 1997 [2]; whereas, therefore, it is appropriate for Member States also to have regard to any food health risks

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

[2] OJ L 43, 14.2.1997, p. 1.

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when determining whether to accept varieties under Directives 70/457/EEC and 70/458/EEC; whereas, furthermore, a legal basis should be established to take account of these developments;

(16) Whereas, in the light of scientific and technical developments, a legal basis to establish the conditions under which chemically treated seed may be marketed should be introduced;

(17) Whereas it is essential to ensure that plant genetic resources are conserved; whereas a legal basis to that end should be introduced to permit, within the framework of legislation on the seed trade, the conservation, by use *in situ,* of varieties threatened with genetic erosion;

(18) Whereas a legal basis to establish conditions under which seed suitable for organic growing may be marketed should be introduced;

(19) Whereas, in order to facilitate the introduction of the measures envisaged in this Directive, certain transitional measures should be introduced,

HAS ADOPTED THIS DIRECTIVE:

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Article 2

Directive 66/401/EEC is hereby amended as follows:

1. Article 1 shall be replaced by the following:

   'Article 1

   This Directive shall apply to the production with a view to marketing, and to the marketing, of fodder plant seed within the Community.';

2. the following Article shall be inserted after Article 1:

   'Article 1a

   For the purposes of this Directive "marketing" shall mean the sale, holding with a view to sale, offer for sale and any disposal, supply or transfer aimed at commercial exploitation of seed to third parties, whether or not for consideration.

   Trade in seed not aimed at commercial exploitation of the variety, such as the following operations, shall not be regarded as marketing:

   — the supply of seed to official testing and inspection bodies,

   — the supply of seed to providers of services for processing or packaging, provided the provider of services does not acquire title to seed thus supplied.

   The supply of seed under certain conditions to providers of services for the production of certain agricultural raw materials, intended for industrial purposes, or seed propagation for that purpose, shall not be regarded as marketing, provided the provider of services does not acquire title to either the seed thus supplied or the product of the harvest. The supplier of seed shall provide the Certification Authority with a copy of the relevant parts of the contract made with the provider of services and this shall include the standards and conditions currently met by the seed provided.

   The conditions for the application of this provision shall be determined in accordance with the procedure laid down in Article 21.';

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3. Article 2(1)(C) shall be replaced by the following:

'C. Certified seed: seed of all the species listed under A other than *Lupinus* spp., *Pisum sativum, Vicia* spp. and *Medicago sativa:*

(a) which has been produced directly from basic seed or, if the breeder so requests, from seed of a generation prior to basic seed which has been found by official examination to satisfy the conditions laid down in Annexes I and II for basic seed;

(b) which is intended for purposes other than the production of seed;

(c) which, subject to of Article 4(b), satisfies the conditions laid down in Annexes I and II for certified seed; and

(d) which has been found by official examination to satisfy the abovementioned conditions.';

4. the following points shall be inserted after Article 2(1)(C):

'Ca. Certified seed, first generation (*Lupinus* spp., *Pisum sativum, Vicia* spp. and *Medicago sativa*) seed:

(a) which has been produced directly from basic seed or, if the breeder so requests, from seed of a generation prior to basic seed which can satisfy and has been found by official examination to satisfy the conditions laid down in Annexes I and II for basic seed;

(b) which is intended either for the production of seed of the category "certified seed, second generation" or for purposes other than the production of seed of fodder plants;

(c) which, subject to Article 4(b), satisfies the conditions laid down in Annexes I and II for certified seed; and

(d) which has been found by official examination to satisfy the abovementioned conditions.

Cb. Certified seed, second generation (*Lupinus* spp., *Pisum sativum, Vicia* spp. and *Medicago sativa*) seed:

(a) which has been produced directly from basic seed, from certified seed of the first generation or, if the breeder so requests, from seed of a generation prior to basic seed which can satisfy and has been found by official examination to satisfy the conditions laid down in Annexes I and II for basic seed;

(b) which is intended for purposes other than the production of seed of fodder plants;

(c) which, subject to Article 4(b), satisfies the conditions laid down in Annexes I and II, for certified seed; and

(d) which has been found by official examination to satisfy the abovementioned conditions.';

5. in Article 2(1)(G), the words 'basic seed,' shall be inserted before the words 'certified seed';

6. Article 2(1)(c) shall be repealed;

7. in Article 3(1), the words 'and unless it satisfies the conditions laid down in Annex II' shall be deleted;

8. in Article 3(2) the words 'and unless it satisfies the conditions laid down in Annex II shall be deleted;

9. Article 3(5) shall be repealed;

10. the following Article shall be inserted after Article 3:

'Article 3a

Notwithstanding Article 3(1), Member States shall provide that

— bred seed of generations prior to basic seed, and

— seed as grown, marketed for processing, provided that the identity of the seed is ensured,