COUNCIL DIRECTIVE

of 19 December 1991

amending Directive 77/93/EEC on protective measures against the introduction into the Member States of organisms harmful to plants or plant products

(91/683/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic 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),

Whereas by Directive 77/93/EEC (4), as last amended by Directive 91/27/EEC (5), the Council laid down protective measures against the introduction into the Member States of organisms harmful to plants or plant products; whereas the protection of plants against such organisms is absolutely necessary to increase agricultural productivity, which is one of the objectives of the common agricultural policy;

Whereas the completion of the internal market at the end of 1992 will entail the application of the Community plant health regime established by Directive 77/93/EEC, with effect from that time, to the Community as an area without internal frontiers; whereas it is furthermore considered that areas which are not affected by particular harmful organisms need protection wherever they are located in the Community; whereas, accordingly, the scope of the regime should no longer be restricted to trade between Member States and third countries, but should also be extended to marketing within single Member States;

Whereas, in principle, all parts of the Community should benefit from the same degree of protection against harmful organisms; whereas, however, differences in ecological conditions and in the distribution of certain harmful organisms must be taken into account; whereas, in consequence, 'protected zones' exposed to particular plant health risks should be defined and should be accorded special protection under conditions compatible with the internal market;

Whereas to ensure more effective application of the Community plant-health regime in the internal market, it must be possible to use, for the purpose of plant-health checks, available official manpower other than that of Member States' official plant-protection organizations, whose training shall be coordinated and supported financially by the Community;

Whereas the application of the Community plant health regime to the Community as an area without internal frontiers, and the introduction of protected zones will necessitate a restructuring, based in particular on a more realistic assessment of plant health risks arising from Community products, of the requirements laid down in the Annexes to Directive 77/93/EEC, so as to classify them as applicable to Community products on the one hand and to imports from third countries on the other, and to identify harmful organisms relevant for protected zones; whereas this restructuring should lead to a simplification of the Annexes, in particular by the removal of a number of harmful organisms established in certain parts of the Community and the related requirements;

Whereas some of this restructuring should be entrusted to the Commission assisted by the Standing Committee on Plant Health established by Decision 76/894/EEC (6);

Whereas in the context of the internal market it must be possible to rely on plant health checks carried out in consignor Member States; whereas it is accordingly necessary to establish more detailed and more uniform rules for these checks;

Whereas the most appropriate place for carrying out plant-health checks is the place of production; whereas, in respect of Community products, these checks must therefore be made mandatory at the place of production and should extend to all relevant plants and plant products grown, produced, used or otherwise present there, and to the growing medium used there; whereas, for the efficient operation of such a system of checks, all producers should be officially registered;

Whereas, if the results of the checks are satisfactory, instead of the phytosanitary certificate used in international trade, an agreed mark ('plant passport'), adapted to the type of product, should be attached to the product, in order to ensure its free movement throughout the Community or those parts thereof for which it is valid;

(1) OJ No C 29, 8. 2. 1990, p. 10.
(2) OJ No C 106, 22. 4. 1991, p. 32.
(3) OJ No C 182, 23. 7. 1990, p. 16.
(4) OJ No L 26, 31. 1. 1977, p. 20.
(5) OJ No L 16, 22. 1. 1991, p. 29.
(6) OJ No L 340, 9. 12. 1976, p. 25.

Whereas the official measures to be taken when the results of the checks are not satisfactory should be specified;

Whereas, to ensure compliance with the Community plant-health regime in the context of the internal market, a system of official checks during marketing should be established; whereas this system should be as reliable and uniform as possible throughout the Community but should exclude specific controls at borders between Member States;

Whereas, as from completion of the internal market, products originating in third countries should in principle be subjected to plant health checks on first introduction into the Community; whereas, if the results of the checks are satisfactory, third country products should be issued with a plant passport, ensuring free movement, in the same way as Community products;

Whereas, in order to confront the new situation created by the completion of the internal market with the necessary guarantees, it is essential to reinforce the plant-health infrastructure at national and Community level at the Community's external frontiers, paying particular attention to those Member States which, by reason of their geographical situation, are points of entry to the Community; whereas the Commission will propose the inclusion in the General Budget of the European Communities of the necessary appropriations for that purpose;

Whereas, with a view to improving the efficiency of the Community plant health regime in the context of the internal market, the Member States should standardize the practices of the personnel responsible for plant health; whereas the Commission will submit, before 1 January 1993, a Community code of plant health practice;

Whereas it should no longer be possible for Member States to adopt any special plant-health provisions on the introduction into their territory of plants or plant products originating in other Member States; whereas all provisions on plant health requirements for plants and plant products should be established at Community level; whereas Article 18 (2) of Directive 77/93/EEC should therefore be deleted and replaced by a simplified procedure for establishing the coherence of the provisions of the Directive with other Community provisions on plant health requirements,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 77/93/EEC is hereby amended as follows:

1. The title shall be replaced by the following:

   'Council Directive of 21 December 1976 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community'.

2. In Article 1, the following paragraphs shall be added:

   '5. With effect from 1 January 1993, this Directive shall also concern protective measures against the spread of harmful organisms within the Community by means related to movements of plants, plant products and other related objects within a Member States.

   6. Each Member State shall establish or designate one single and central authority responsible, under the control of the national government, in particular for coordination and contacts in matters related to plant health within the context of this Directive. The official plant protection service set up under the International Plant Protection Convention (IPPC) shall preferably be designated for this purpose. This authority and any subsequent change shall be notified to the other Member States and to the Commission.'

3. In Article 2 (1), point (f) shall be replaced by the following points:

   '(f) plant passport: shall be considered to mean an official label which gives evidence that the provisions of this Directive related to plant health standards and special requirements are satisfied, and which is:

   — standardized at Community level for different types of plants or plant products, and

   — prepared by the responsible official body in a Member State and issued in accordance with the implementing rules governing the details of the procedure for issuing plant passports.

   For specific types of product, official agreed marks other than a label may be decided on in accordance with the procedure laid down in Article 16a.

   The standardization shall be established in accordance with the same procedure. Under this standardization, different marks shall be determined for plant passports which are not valid, in accordance with the second subparagraph, of Article 10 (1), for all parts of the Community.

   (g) The responsible official bodies in a Member State shall be:

   (a) the official plant protection service(s) of a Member State referred to in Article 1 (6); or

   (b) any State authority established

   — at national level,

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

   The bodies referred to in the first subparagraphs (a) and (b) may, in accordance with 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.

The Member States shall ensure that there is close cooperation between the bodies referred to in the first subparagraph (b) and those referred to in (a).

Moreover, in accordance with the procedure laid down in Article 16a, other legal persons established on behalf of the body(ies) referred to in the first subparagraph (a) 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.

The single central authority referred to in Article 1 (6) shall inform the Commission of the responsible official bodies in the Member State concerned. The Commission shall forward that information to the other Member States.'

4. In Article 2 (1) the following points shall be added:

'(h) protected zone: shall be considered to mean a zone in the Community:

— in which one or more harmful organisms referred to in this Directive, which are established in one or more parts of the Community, are not endemic or established, despite favourable conditions for them to establish there,

— in which there is a danger that certain harmful organisms will establish themselves, given propitious ecological conditions, for particular crops, despite the fact that these organisms are not endemic or established in the Community,

and which has been recognized, in accordance with the procedure laid down in Article 16a, as fulfilling the conditions set out in the first and second indents and, in the case referred to in the first indent, at the request of the Member State(s) concerned and on the grounds that the results of appropriate surveys which have been monitored by the experts referred to in Article 19a under the procedure laid down therein show no evidence to the contrary. Surveys in the eventuality referred to in the second indent are optional.

A harmful organism shall be considered to be established in an area if it is known to occur there and if either no official measures have been taken there with a view to its eradication or such measures have proved, for a period of at least two successive years, to be ineffective.

The Member State(s) concerned shall conduct, with respect to the case provided for in the first indent of the first subparagraph, regular and systematic official surveys on the presence of organisms in respect of which the protected zone has been recognized. Each finding of such organisms shall immediately be notified to the Commission. The risk arising from such finding shall be assessed by the Standing Committee on Plant Health and appropriate action decided on in accordance with the procedure referred to in Article 16a.

The details of the surveys referred to in the first and third subparagraphs may be established in accordance with the said procedure, account being taken of sound scientific and statistical principles.

The results of the above surveys shall be notified to the Commission. The Commission shall forward this information to the other Member States.

The Commission shall, before 1 January 1998, submit a report to the Council on the operation of the system of protected zones together, if necessary, with any appropriate proposals;

(i) a statement or measure shall be considered to be official if made or taken, without prejudice to the provisions of Article 19a:

— by representatives of the official plant protection organization of a Member State or, under their responsibility, by other public servants, in the case of statements or measures related to the issuing of the certificates specified in Article 7 (1) or Article 8 (2);

— either by such representatives or public servants or by "qualified agents" employed by one of the responsible official bodies as specified in (f) of a Member State, in all other cases, provided that such agents have no personal interest in the outcome of the measures they take, and satisfy minimum standards of qualification.

Member States shall ensure that their public servants and qualified agents have the qualifications necessary for the proper operation of this Directive. In accordance with the procedure laid down in Article 16a, guidelines may be established for such qualifications.

The Commission shall, acting within the Standing Committee on Plant Health, draw up Community programmes, the implementation of which it shall monitor, regarding the further training of the public servants and qualified agents concerned, in an effort to raise the knowledge and experience acquired at national level to the level of the aforementioned qualifications. It shall contribute to the financing of this further training and shall propose the inclusion of the necessary appropriations for that purpose in the Community budget.'

5. In Article 3, paragraphs 4, 5, 6 and 7 shall be replaced by the following:

'4. With effect from 1 January 1993, Member States shall provide that paragraphs 1 and 2 shall be applied also to the spread of the harmful organisms concerned by means connected with the movement of plants, plant products or other objects within the territory of a Member State.

5. Member States shall ban from the same date the introduction into, and the spread within the relevant protected zones, of:

(a) the harmful organisms listed in Annex I, part B;

(b) the plants and plant products listed in Annex II, part B, where they are contaminated by the relevant harmful organisms listed therein.

6. In accordance with the procedure laid down in Article 16a:

(a) the harmful organisms listed in Annexes I and II shall be subdivided as follows:

— organisms not known to occur in any part of the Community and relevant for the entire Community shall be listed in Annex I, part A, section I and Annex II, part A, section I respectively,

— organisms known to occur in the Community but not endemic or established throughout the Community and relevant for the entire Community shall be listed in Annex I, part A, section II and Annex II, part A, section II respectively,

— the other organisms shall be listed in Annex I, part B, and Annex II, part B, respectively, against the protected zone for which they are relevant;

(b) harmful organisms endemic or established in one or more parts of the Community shall be deleted, save those referred to in the second and third indents of point (a);

(c) the titles of Annexes I and II, as well as the different parts and sections thereof, shall be adapted to the above.

7. In accordance with the procedure laid down in Article 16a, it may be decided that Member States shall lay down that the introduction into their territories, and the spread within their territories, of specified organisms, whether singly or not, which are considered to be harmful to plants or plant products but are not listed in Annexes I and II, shall be prohibited or require special authorization under conditions specified under the same procedure.

This provision shall also apply to such organisms where they are not affected by Directive 90/220/EEC (*) or other more specific Community provisions regarding genetically modified organisms.

(*) OJ No L 117, 8. 5. 1990, p. 15.'

6. Article 4 (2) (a) shall be replaced by the following:

'(a) The Member States shall provide that, from 1 January 1993, the introduction of plants, plant products and other objects listed in Annex III, part B, into the relevant protected zones located in their territory is prohibited.'

7. In Article 4, the following paragraphs shall be added:

'3. In accordance with the procedure laid down in Article 16a, Annex III shall be revised in such a way that part A contains plants, plant products and other objects which constitute a plant-health risk for all parts of the Community, and part B contains plants, plant products and other objects which constitute a plant-health risk only for protected zones. The protected zones shall be specified there respectively.

4. With effect from 1 January 1993, paragraph 1 shall no longer apply to plants, plant products and other objects originating in the Community, and paragraph 2 (b) shall be deleted.'

8. In Article 5, the second sentence of paragraph 1 shall be deleted.

9. Article 5 (2) shall be replaced by the following:

'2. Member States shall ban from 1 January 1993 the introduction into and the movement within the protected zones of the plants, plant products and other objects listed in Annex IV, part B, unless the relevant special requirements indicated in that part of the Annex are met.'

10. In Article 5, the following paragraphs shall be added:

'3. In accordance with the procedure laid down in Article 16a, Annex IV shall be amended in accordance with the criteria laid down in Article 3 (6).

4. With effect from 1 January 1993, Member States shall provide that paragraph 1 shall also apply to the movement of plants, plant products and other objects within the territory of a Member State, without prejudice however to Article 6 (6).'

11. In Article 6 (1) the words 'part A' shall be inserted after the words 'Annex V'.

12. In Article 6, the following paragraph shall be inserted after paragraph 1:

'1a. As soon as the measures provided for in Article 3 (6) (a) and in Article 5 (3) are adopted, paragraph 1