COUNCIL DIRECTIVE

of 19 December 1991

on the marketing of ornamental plant propagating material and ornamental plants

(91/682/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 the production of ornamental plants occupies an important place in the agriculture of the Community;

Whereas satisfactory results in the cultivation of ornamental plants depend to a large extent on the quality and health of the material used for their propagation and of the plants themselves; whereas certain Member States have in consequence introduced rules intended to guarantee the quality and health of the propagating material of ornamental plants and ornamental plants placed on the market;

Whereas the different treatment accorded to propagating material and ornamental plants in different Member States is likely to create barriers to trade and thus hinder the free movement of these goods within the Community; whereas, with a view to achieving the internal market, these barriers should be removed, by adopting Community provisions to replace those laid down by the Member States;

Whereas the establishment of harmonized conditions at Community level will ensure that purchasers throughout the Community receive propagating material and ornamental plants which are healthy and of good quality;

Whereas, so far as they relate to plant health, such harmonized conditions must be consistent with Council Directive 77/93/EEC of 21 December 1976 on protective measures against the introduction in to the Member States of organisms harmful to plants or plant products (4), as last amended by Directive 91/683/EEC (5);

Whereas it is appropriate initially to establish Community rules for those genera and species of ornamental plant which are of major economic importance in the Community, with a Community procedure for adding further genera and species later;

Whereas, without prejudice to the plant health provisions of Directive 77/93/EEC, it is not appropriate to apply the Community rules on the marketing of propagating material and ornamental plants when it is shown that such material and plants are intended for export to third countries, as the rules applicable there may be different from those contained in this Directive;

Whereas the determination of plant health and quality standards for each genus and species of ornamental plant requires lengthy and detailed technical and scientific consideration; whereas a procedure should accordingly be established for the determination of these standards;

Whereas in the first instance it is the responsibility of the suppliers of propagating material and/or ornamental plants to ensure that their products fufil the conditions laid down in this Directive;

Whereas the competent authorities of the Member States must, when carrying out controls and inspections, ensure that suppliers fulfil those conditions;

Whereas Community control measures should be introduced to ensure uniform application in all the Member States of the standards laid down in this Directive;

Whereas it is in the interests of the purchasers of propagating materials and ornamental plants that the names of varieties or of groups of plants be known and that their identity be safeguarded;

Whereas the characteristics specific to the industry operating in the ornamental plant sector are a complicating factor; whereas, accordingly, the objective stated above can best be achieved either through common knowledge of the variety or, in the case of varieties or groups of plants, through the availability of a description drawn up and kept by the supplier;

Whereas, in order to ensure the identity and orderly marketing of propagating material and ornamental plants, Community rules must be laid down concerning the separation of lots and marking; whereas the labels should give the particulars needed both for official control and for the information of the grower;

(1) OJ No C 52, 3. 3. 1990, p. 16 and OJ No C 307, 27. 11. 1991, p. 15.
(2) OJ No C 240, 16. 9. 1991, p. 197.
(3) OJ No C 182, 23. 7. 1990, p. 21.
(4) OJ No L 26, 31. 1. 1977, p. 20.
(5) See p. 29 of this Official Journal

Whereas rules should be established permitting, in the case of temporary supply difficulties, the marketing of propagating material and ornamental plants subject to requirements less stringent than those contained in this Directive;

Whereas, as a first step towards harmonized conditions, Member States should be prohibited in the case of the genera and species referred to in the Annex, for which fact sheets will be drawn up, from imposing new conditions or marketing restrictions on propagating material or ornamental plants, other than those provided for in this Directive;

Whereas provision should be made for authorizing the marketing, within the Community, of propagating material and ornamental plants produced in third countries, provided always that they afford the same assurance as propagating material and ornamental plants produced in the Community and complying with Community rules;

Whereas, in order to harmonize technical methods of examination used in the Member States and to compare propagating material and ornamental plants produced in the Community with those produced in third countries, comparative trials should be carried out to check compliance of propagating material and ornamental plants with the requirements of this Directive;

Whereas, in order to facilitate the effective operation of this Directive, the Commission should be entrusted with the task of adopting measures for its implementation and for the amendment of its Annex; whereas such measures should be adopted by a procedure involving close cooperation between the Commission and the Member States within a Standing Committee on Propagating Material and Ornamental Plants,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. This Directive applies to the marketing of ornamental-plant-propagating material and ornamental plants within the Community.

2. Articles 2 to 20 and 24 shall apply to the genera and species listed in the Annex.

Rootstocks of other genera or species shall also be subject to the abovementioned Articles if material of one of the said genera or species is grafted on to them.

3. Amendments to the list of genera and species in the Annex shall be adopted in accordance with the procedure laid down in Article 22.

Article 2

This Directive shall not apply to propagating material or ornamental plants shown to be intended for export to third countries, if properly identified as such and kept sufficiently isolated, without prejudice to the health rules laid down by Directive 77/93/EEC.

Implementing measures for the first subparagraph, with particular reference to identification and isolation, shall be adopted in accordance with the procedure laid down in Article 21.

Article 3

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

(a) *Propagating material:* seeds, parts of plants and all plant material intended for the propagation and production of ornamental plants and other plants for ornamental purposes;

(b) *Ornamental plants:* plants intended, after marketing, to be planted or replanted;

(c) *Supplier:* any natural or legal person carrying out professionally at least one of the following activities with regard to propagating material or ornamental plants: reproducing, producing, preserving and/or treating and placing on the market;

(d) *Placing on the market:* the holding available or in stock, displaying or offering for sale, selling and/or delivering to another person, in whatever form, of propagating material or ornamental plants;

(e) *Responsible official body:*

1. the sole and central authority, established or designated by the Member State under the supervision of the national government and responsible for questions concerning quality;

2. 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 in 1 and 2 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.

The Member States shall ensure that there is close cooperation between the bodies referred to in 2 and those referred to in 1.

Moreover, in accordance with the procedure laid down in Article 21, other legal persons established on behalf of the body referred to in 1 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;

(f) *Official measures:* measures taken by the responsible official body;

(g) *Official inspection:* inspection carried out by the responsible official body;

(h) *Official statement:* statement issued by, or under the responsibility of, the responsible official body;

(i) *Lot:* a number of units of a single commodity, identifiable by its homogeneity of composition and origin;

(j) *Laboratory:* a public — or private — law entity carrying out analysis and proper diagnosis, enabling the producer to monitor production quality.

Article 4

In accordance with the procedure laid down in Article 22, a schedule shall be established for each genus or species referred to in the Annex, with a reference to the plant health conditions laid down in Directive 77/93/EEC applying to the genus or species concerned, and laying down:

1. the conditions concerning the quality with which propagating material and ornamental plants must comply, in particular those related to the propagation system applied, the purity of the growing crop and, where appropriate, varietal characteristics;

2. the conditions with which rootstocks of other genera and species must comply if material of the genus or species concerned is grafted onto them.

Article 5

1. Member States shall ensure that suppliers take all the necessary measures to guarantee compliance with the standards set by this Directive at all stages of the production and marketing of ornamental-plant-propagating material and ornamental plants.

2. To that end, the said suppliers shall either carry out themselves, or have carried out by an accredited supplier or the responsible official body, checks based on the following principles:

— identification of critical points in their production process on the basis of the production methods used,

— establishment and implementation of methods for monitoring and checking the critical points referred to in the first indent,

— taking samples for analysis in a laboratory accredited by the responsible official body for the purpose of checking compliance with the standards established by this Directive,

— keeping a written record, or a record registered in an indelible fashion, of the data referred to in the first, second and third indents, as well as records on production and marketing of propagating material and ornamental plants, to be held at the disposal of the responsible official body. These documents and records shall be kept for a period of at least one year.

However, suppliers whose activity in this connection is confined merely to the distribution of propagating material and ornamental plants produced and packaged on premises other than their own shall be required only to keep a written record or a record registered in an indelible fashion of the buying and selling and/or delivery of propagating material and ornamental plants.

This paragraph shall not apply to suppliers whose activity in this connection is confined to the supply of small quantities of propagating material and ornamental plants to non-professional final consumers.

3. If the results of their own checks or any information at the disposal of the suppliers referred to in paragraph 1 reveal the presence of one or more of the harmful organisms listed in the relevant schedules established pursuant to Article 4, the suppliers shall immediately report this to the responsible official body and shall carry out the measures indicated by that body. The supplier shall keep records of all occurrences of harmful organisms on his premises and of all measures taken in relation to such occurrences.

4. Rules for the application of the second subparagraph of paragraph 2 shall be established in accordance with the procedure laid down in Article 21.

Article 6

1. The responsible official body shall accredit suppliers once it has verified that their production methods and establishments meet the requirements of this Directive with regard to the nature of the activities they carry out. The accreditation must be renewed if a supplier decides to carry out activities other than those for which he has received accreditation.

2. The responsible official body shall accredit laboratories once it has verified that these laboratories, their

methods and their establishments meet the requirements of this Directive to be specified according to the procedure laid down in Article 21, with regard to the testing activities they carry out. The accreditation must be renewed if a laboratory decides to carry out activities other than those for which it has received accreditation.

3. The responsible official body shall take the necessary measures if the requirements referred to in paragraphs 1 and 2 cease to be met. To this end, it shall take particular account of the conclusions of any check carried out in accordance with Article 7.

4. The supervision and monitoring of suppliers, establishments and laboratories shall be carried out regularly by or under the responsibility of the responsible official body, which shall at all times have free access to all parts of establishments, in order to ensure compliance with the requirements of this Directive. Implementing measures concerning supervision and monitoring may be adopted, in accordance with the procedure laid down in Article 21.

If such supervision and monitoring reveal that the requirements of this Directive are not being met, the responsible official body shall take appropriate action.

Article 7

1. Experts from the Commission may, in cooperation with the responsible official bodies of the Member States, make on-the-spot checks in so far as this is necessary to ensure the uniform application of this Directive. They may in particular verify whether suppliers are in effect complying with the requirements of this Directive. A Member State in whose territory a check is being carried out shall give all necessary assistance to the experts in carrying out their duties. The Commission shall inform the Member States of the results of the investigations.

2. Detailed rules for the application of paragraph 1 shall be adopted in accordance with the procedure laid down in Article 21.

Article 8

1. Propagating material or ornamental plants shall not be placed on the market except by accredited suppliers and unless they meet the requirements for propagating material and ornamental plants laid down in the schedule referred to in Article 4.

2. Without prejudice of Directive 77/93/EEC, paragraph 1 shall not apply to propagating material or ornamental plants intended for:

(a) trials or scientific purposes;

(b) selection work.

Article 9

1. Propagating material and ornamental plants shall be marketed with a reference either to the variety or to the group of plants to which they belong.

2. The varieties to which reference is made pursuant to paragraph 1 shall be:

— either commonly known, and protected in accordance with provisions on the protection of new varieties of plants, officially registered on a voluntary or other basis,

— or entered on lists kept by suppliers, with their detailed descriptions and relevant denominations. These lists must be accessible, upon request, to the responsible official body of the Member State concerned.

Each variety shall be described and, as far as possible, bear the same denomination in all the Member States, in accordance with accepted international guidelines.

3. Where reference is made to a group of plants, the supplier should describe and quote the denomination of the group of plants in such a way as to avoid confusion with any of the varieties referred to in paragraph 2.

4. Except where the varietal aspect is explicitly mentioned in the schedules referred to in Article 4, paragraphs 1, 2 and 3 shall not mean any extra responsibility for the responsible official body.

5. A system for the notification of varieties or other groups of plants to the responsible official bodies of the Member States may be set up in accordance with the procedure laid down in Article 21. Additional implementing provisions for the second indent of paragraph 2 may be adopted in accordance with the same procedure.

Article 10

1. While growing and during lifting or removal from the parent material, propagating material or ornamental plants shall be kept in separate lots.

2. If propagating material or ornamental plants of different origins are put together or mixed during packaging, storage, transport or at delivery, the supplier shall keep records including the following data: composition of the lot and origin of the individual components.

3. Member States shall ensure compliance with the requirements referred to in paragraphs 1 and 2 by carrying out official inspections.

Article 11

Without prejudice to Article 10 (2), propagating material and ornamental plants shall be marketed only in sufficiently homogeneous lots.