COUNCIL DIRECTIVE

of 26 June 1989

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

(89/439/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),

Whereas by Directive 77/93/EEC (3), as last amended by Directive 89/359/EEC (4), 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 plant health laws applicable to the French overseas departments have not been harmonized in accordance with Directive 77/93/EEC; whereas, given the importance of their trade in plant and plant products with the remainder of the Community, it is now desirable to apply the provisions of that Directive to them; whereas in view of the special nature of the agricultural production of the French overseas departments it is appropriate to provide for additional protective measures justified on grounds of the protection of health and life of plants therein; whereas the provisions of Directive 77/93/EEC should also be extended to protective measures against the introduction of harmful organisms into the French overseas departments from other parts of France;

Whereas it has become necessary to clarify the requirement in Article 9 (1) of Directive 77/93/EEC that the official phytosanitary certificate required under Article 7 of the Directive must be issued in the country of origin of the plants, plant products or other objects concerned; whereas it appears appropriate to define the exceptions to this requirement in a more general manner so that Article 9 (1) need to be amended whenever a relevant amendment is made by the Commission to Annex IV;

Whereas it is appropriate to provide in certain cases that the official inspection of plants, plant products and other objects coming from third countries, provided for in Article 12 (1) of the said Directive, should be carried out by the Commission in the third country of origin;

Whereas it has become necessary to improve the functioning of the safeguard clause provided for in Article 15 of that Directive with a view to allowing more rapid, more comprehensive and more effective Community action in cases where that clause is used; whereas the Commission should have broader powers in connection with the adoption of safeguard measures by Member States;

Whereas the measures taken with a view to the progressive reduction of checks by Member States of destination will necessitate a strengthening of the checks carried out by consignor Member States; whereas it therefore appears necessary to reinforce Community plant health régime, with a view to improving the productivity of agriculture and achieving the single market by the end of 1992, but in particular with a view to increasing confidence in all plant health checks carried out on plant products intended for marketing within the Community;

Whereas these reinforced Community inspections must be made by experts employed by the Commission, and also by experts employed by Member States, whose services are made available to the Commission;

Whereas the role of these experts should be defined in connection with the activities required under the Community plant health régime,

HAS ADOPTED THIS DIRECTIVE:

Article 1

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

1. Article 1 is amended as follows:

   (a) in paragraph 2, 'to the French overseas departments, nor' is deleted;

   (b) the following paragraphs are added:

   '3. This Directive shall also concern protective measures against the introduction of harmful organisms into the French overseas departments from other parts of France and, conversely, into other parts of France from the French overseas departments.

   4. Without prejudice to the conditions to be established for the protection of the plant health situation existing in certain regions in the

(1) OJ No C 117, 4. 5. 1988, p. 11.
(2) OJ No C 187, 18. 7. 1988, p. 213.
(3) OJ No L 26, 31. 1. 1977, p. 20.
(4) OJ No L 153, 6. 6. 1989, p. 28.

Community, taking into account the differences in agricultural and ecological conditions, protective measures which are justified on grounds of the protection of health and life of plants in the French overseas departments and which are additional to those laid down in this Directive may be determined in accordance with the procedure laid down in Article 16a.'

2. Article 9 (1) is replaced by the following:

'1. In the case of plants, plant products or other objects to which special requirements laid down in Annex IV, Part A apply, the official phytosanitary certificate required pursuant to Article 7 shall have been issued in the country in which the plant, plant products and other objects originate, save:

— in the case of wood, if under the special requirements laid down in Annex IV, Part A, it is sufficient that it is stripped of its bark,

— in other cases, to the extent that the special requirements laid down in Annex IV Part A can be fulfilled also at places other than that of origin.'

3. In Article 11 (1), first sentence, 'at the time of their introduction' is replaced by 'in the event of their introduction'.

4. In Article 11 (1), second sentence, the text under (b) is deleted.

5. Article 11 (4) is replaced by the following:

'4. If it is ascertained that part of a consignment of plants, plant products or other objects is contaminated by harmful organisms listed in Annexes I and II, the introduction of the other part shall not be prohibited provided that it is not suspected of being contaminated and provided that there appears to be no possibility of harmful organisms spreading.'

6. The following paragraph shall be added to Article 12:

'5. It may be agreed, in technical arrangements made between the Commission and the competent bodies in certain third countries and approved in accordance with the procedure laid down in Article 16a that activities related to the inspections referred to in paragraph 1 (a) may also be carried out under the authority of the Commission and in accordance with the relevant provisions of Article 19a in the third country concerned, in cooperation with the official plant protection organization of that country.'

7. In Article 14 (2), second sentence, the following is inserted after 'after adoption of the said provisions':

'and, where appropriate, following investigations carried out under the authority of the Commission and in accordance with the relevant provisions of Article 19a in the country of origin of the plants or plant products concerned.'

8. In Article 14 (3), the following subparagraph is added:

'The risk shall be assessed on the basis of available scientific and technical information; where such information is insufficient, it shall be supplemented by additional enquiries or, where appropriate, by investigations carried out under the authority of the Commission and in accordance with the relevant provisions of Article 19a in the country of origin of the plants, plant products or other objects concerned.'

9. Article 15 (2) is replaced by the following:

'2. In cases referred to in paragraph 1 the Commission shall examine the situation as soon as possible within the Standing Committee on Plant Health. On-site investigations may be made under the authority of the Commission and in accordance with the relevant provisions of Article 19a. The necessary measures may be adopted, including those whereby it may be decided whether measures taken by the Member States should be rescinded or amended, under the procedure laid down in Article 17. The Commission shall follow the development of the situation and, under the same procedure, shall amend or repeal, as that development requires, the said measures. Until a measure has been adopted under the aforesaid procedure, the Member State may maintain the measures that it has employed.'

10. The following Article is inserted:

'Article 16a

1. Where the procedure laid down in this Article is to be followed, the matter shall be referred without delay to the Standing Committee on Plant Health (hereinafter referred to as "the committee"), by its chairman, either on his own initiative or at the request of a Member State.

2. Within the committee, the votes of the Member States shall be weighted as provided for in Article 148 (2) of the Treaty. The chairman shall not vote.

3. The representative of the Commission shall submit a draft of the measures to be taken. The committee shall deliver its opinion on these measures within a time limit set by the chairman having regard to the urgency of the matters to be examined. Opinions shall be delivered by a majority of 54 votes.

4. Where the measures are in accordance with the opinion of the committee, the Commission shall adopt them and shall implement them forthwith. Where the measures are not in accordance with the opinion of the committee or if no opinion is delivered, the Commission shall immediately submit to the Council a proposal on the measures to be taken. The Council shall adopt the measures by a qualified majority.

If, within three months following the date on which the matter was referred to it, the Council has not adopted measures, the Commission shall adopt the proposed measures.'