COUNCIL DIRECTIVE

of 21 December 1976

on protective measures against the introduction into the Member States of harmful organisms of plants or plant products

(77/93/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 43 and 100 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament (1),

Having regard to the opinion of the Economic and Social Committee (2),

Whereas plant production is very important to the Community;

Whereas plant production yields are consistently reduced through the effects of harmful organisms;

Whereas the protection of plants against such organisms is absolutely necessary not only to avoid reduced yields but also to increase agricultural productivity;

Whereas action taken by Member States and aimed at the systematic eradication of harmful organisms within Member States would have only a limited effect if protective measures against their introduction were not applied at the same time;

Whereas the need for such measures has long been recognized; whereas they have formed the subject of many national regulations and international conventions, including the International Plant Protection Convention of 6 December 1951 concluded at the United Nations Food and Agricultural Organization, which is of world-wide interest;

Whereas this International Plant Protection Convention and the close cooperation of States in the European and Mediterranean Plant Protection Organization have, to a certain extent, already resulted in the harmonization of plant-health laws;

Whereas, independently of this international cooperation, closer harmonization of the provisions against the introduction of harmful organisms into the Member States of the Community is required;

Whereas it is necessary to make common protection arrangements against the introduction of harmful organisms from non-member countries and also to re-organize plant-health inspection in conjunction with the gradual removal of obstacles to and checks on intra-Community trade;

Whereas, in this respect, one of the most important measures consists in listing the particularly dangerous harmful organisms whose introduction into the Member States must be totally prohibited and also the harmful organisms whose introduction into the Member States when carried by certain plants or plant products must also be prohibited;

Whereas the presence of some of these harmful organisms, when plants or plant products are introduced from countries in which these organisms occur, cannot be effectively checked; whereas it is therefore necessary to make minimum provision for bans on the introduction of certain plants and plant products, or to provide for special checks to be made in the producer countries;

Whereas, due to special circumstances, certain other harmful organisms are significant in certain Member States only; whereas it is sufficient to allow these States the option to subject these harmful organisms to the Community rules on plant health;

Whereas in intra-Community trade, a plant health control currently operates for all plants, plant products and other objects not only in the consignor country but also in the country of destination; whereas it is desirable to abolish the latter controls gradually and, to that end, to render those of the

(1) OJ No 187, 9. 11. 1965, p. 2900/65.
(2) Opinion delivered 13 October 1965 (not published in the Official Journal).

consignor country compulsory and more stringent, in order to forestall as far as possible any introduction of harmful organisms into the country of destination;

Whereas, if the result of the plant-health check made in the consignor Member State is satisfactory, a phytosanitary certificate conforming to the model introduced by the International Plant Protection Convention must generally be issued;

Whereas, in order to avoid any further unnecessary checking, provision must be made for drawing up re-forwarding phytosanitary certificates under certain conditions for consignments covered by a phytosanitary certificate and coming from other Member States;

Whereas, if a plant-health check carried out in the consignor Member State constitutes a guarantee that the products are free from harmful organisms, it is possible to dispense with the systematic checks carried out in the Member State of destination;

Whereas, until confidence is established between Member States regarding the correct operation of inspection systems in the consignor Member States, systematic checks can only be dispensed with gradually;

Whereas in this respect, it would appear justified for systematic checks to continue to be allowed in the country of destination for a period of four years from the notification of this Directive, while all the other provisions of this Directive must be transposed into national laws by the end of the second year following this notification;

Whereas, on expiry of the four-year period, the plant-health checks carried out in the country of destination on fruit, vegetables and potatoes, apart from seed potatoes, will no longer be permitted, except for special reasons or, to a limited extent, apart from certain inspection formalities;

Whereas such plant-health checks must be limited to introductions of products originating in non-member countries and to cases where there is strong evidence that one of the plant-health provisions has not been observed; whereas, in all other cases, occasional checks only may be allowed;

Whereas on the other hand, it is necessary for Member States to require, with regard to introductions of products from non-member countries, checks to be carried out at least on the principal carriers of harmful organisms;

Whereas it is also necessary to make provision under certain conditions for Member States to be able to permit derogations from a certain number of provisions;

Whereas Member States must also have the right to take protective measures not laid down in this Directive, in the case of imminent danger of the introduction or spread of harmful organisms;

Whereas in this case in particular, it is appropriate for Member States to cooperate closely with the Commission within the Standing Committee on Plant Health set up by Decision 76/894/EEC [1];

Whereas the Community provisions laying down plant health measures are not in principle affected by this Directive; whereas this also applies to any plant health provisions laid down by Member States on protection against harmful organisms which generally attack plants or plant products in storage and certain other plant health measures laid down by Member States concerning both national and imported products;

Whereas the situation in the French overseas departments differs from that in the other parts of the Community owing to the conditions as regards climate, agricultural production, harmful organisms and trade patterns, taken as a whole; whereas, for the time being it is therefore not possible to apply the provisions of this Directive to the said departments until they have been suitably adjusted,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. This Directive concerns protective measures against the introduction into the Member States from other Member States or non-member countries of organisms which are harmful to plants or plant products.

2. This Directive shall not apply to the French overseas departments.

Article 2

1. For the purposes of this Directive:

(a) plants: shall be considered to mean living plants and living parts of plants, including fresh fruit and seeds;

[1] OJ No L 340, 9. 12. 1976, p. 25.

(b) plant products: shall be considered to mean products of plant origin, unprocessed or having undergone simple preparation, in so far as these are not plants;

(c) planting: shall be considered to mean any operation for the placing of plants to ensure their subsequent growth, reproduction or propagation;

(d) harmful organisms: shall be considered to mean pests of plants or of plant products, which belong to the animal or plant kingdoms, or which are viruses, mycoplasmas or other pathogens;

(e) official statement: shall be considered to mean statement made by representatives of the official plant-protection organization or, under their responsibility, by other public servants.

2. This Directive concerns wood only in so far as it retains all or part of its natural round surface, with or without bark.

Article 3

1. Member States shall ban the introduction into their territory of the harmful organisms listed in Annex I, Part A.

2. Paragraph 1 shall not apply during the period 16 October to 30 April in the case of slight contamination of cut flowers by the harmful organisms referred to in Annex I, Part A (a) (1) and (4).

Under the procedure laid down in Article 16, Member States may be authorized on request to shorten the aforesaid period.

3. Paragraph 1 shall not apply in the case of slight contamination of fruit by the harmful organism referred to in Annex I, Part A (b) (3). However, paragraph 1 shall apply during the period 1 May to 15 September, in so far as this harmful organism is young and mobile.

4. Member States shall ban the introduction into their territory of the plants and plant products listed in Annex II, Part A, where they are contaminated by the relevant harmful organisms listed in that part of the Annex.

5. Member States may ban the introduction into their territory of the harmful organisms listed in Annex II, Part A, whether in an isolated state or occurring on objects other than the relevant ones listed in that part of the Annex.

6. The Member States listed in Annex I, Part B, and in Annex II, Part B, may ban the introduction into their territory of:

(a) the harmful organisms listed in Annex I, Part B, against their names;

(b) the plants and plant products listed in Annex II, Part B, against their names, where they are contaminated by the relevant harmful organisms listed in that part of the Annex.

7. Member States may lay down that the introduction into their territory of organisms in an isolated state other than those listed in Annexes I and II which might be considered harmful shall be prohibited or require special authorization.

Article 4

1. Member States shall ban the introduction into their territory of the plants or plant products listed in Annex III, Part A, where they originate in the relevant countries referred to in that part of the Annex.

2. Member States may:

(a) ban the introduction into their territory of the plants, plant products and other objects listed in Annex III, Part B, against their names;

(b) require of the other Member States, from which the plants or plant products listed in Annex III, Part A, other than those listed in (9) and (10) are introduced into their territory, an official certificate stating the country from which these products originate.

Article 5

1. Member States shall ban the introduction into their territory of the plants, plant products and other objects listed in Annex IV, Part A, unless the relevant special requirements indicated in that part of the Annex are met.

2. Member States may:

(a) lay down that the special requirements listed in Annex IV, Part A (1), (2), (3) or (5) shall also apply to non-member countries not referred to therein, if they do not lay down equivalent

conditions for wood originating in the relevant countries described in therein;

(b) ban the introduction into their territory of the plants listed in Annex IV, Part B, against their names unless the relevant special requirements indicated in that part of the Annex are met;

(c) require of the other Member States, from which the plant products listed in Annex IV, Part A (1), (2), (3) or (5) are introduced into their territory, an official certificate stating the country in which these products originate.

Article 6

1. Member States shall lay down, at least in respect of the introduction into another Member State of the plants, plant products and other objects listed in Annex V, that the latter and their packaging shall be meticulously examined on an official basis, either in their entirety or by representative sample, and that, if necessary, the vehicles transporting them shall also be officially examined in order to make sure:

(a) that they are not contaminated by the harmful organisms listed in Annex I, Part A;

(b) in the case of the plants and plant products listed in Annex II, Part A, that they are not contaminated by the relevant harmful organisms listed in that part of the Annex;

(c) in the case of the plants, plant products and other objects listed in Annex IV, Part A, that they comply with the relevant special requirements indicated in that part of the Annex.

2. Member States shall lay down the inspection measures referred to in paragraph 1 in order to ensure compliance with Article 3 (5), (6) and (7) or Article 5 (2), where the Member State of destination avails itself of one of the options listed in the above-mentioned Articles.

3. Member States shall lay down that the seeds referred to in Annex IV, Part A, which are to be introduced into another Member State shall be officially examined in order to make sure that they comply with the relevant special requirements listed in that part of the Annex.

Article 7

1. Where it is considered, on the basis of the examination laid down in Article 6, that the conditions therein are fulfilled, a phytosanitary certificate shall be issued in accordance with the specimen in Annex VIII, Part A, drawn up in at least one of the official languages of the Community, preferably that of the Member State of destination. For other objects, the words 'plants or plant products described' shall be replaced on the certificate by the words 'objects described'.

2. Member States shall lay down that the plants, plant products and other objects listed in Annex V may not be introduced into another Member State unless they are accompanied by a phytosanitary certificate issued in accordance with paragraph 1. The phytosanitary certificate may not be made out more than 14 days before the date on which the plants, plant products or other objects leave the consignor Member State.

3. The action to be taken by the Member States in order to implement Article 6 (3) shall be determined in accordance with the procedure laid down in Article 16 before expiry of the period referred to in Article 20 (1) (b).

Article 8

1. Unless one of the eventualities provided for in paragraph 2 arises, Member States shall lay down that the plants, plant products and other objects listed in Annex V which have been introduced into their territory from a Member State and which are to be introduced into the territory of another Member State shall be exempted from a further inspection complying with Article 6, if they are accompanied by a phytosanitary certificate from a Member State, made out in accordance with the specimen in Annex VIII, Part A.

2. Where plants, plant products or other objects from a Member State have been split up or stored or their packaging changed in a second Member State and are then introduced into a third Member State, the second Member State shall be absolved from making a new inspection complying with Article 6 if it is officially ascertained that no change in these products has occurred in its territory which would involve non-compliance with the conditions laid down in Article 6. In this case a re-forwarding phytosanitary certificate in accordance with the specimen in Annex VIII, Part B, drawn up in at least one official Community language, preferably that of the Member State of destination, shall be issued. This certificate must be attached to the phytosanitary certificate issued by the first Member State or to a certified copy of the latter certificate. This certificate may be entitled 'phytosanitary certificate for re-export'.

The re-forwarding phytosanitary certificate may not be made out more than 14 days before the date on which the plants, plant products or other objects leave the re-forwarding country.

3. Paragraphs 1 and 2 shall also apply when plants, plant products or other objects are introduced successively into several Member States. If, in that case, more than one re-forwarding certificate has been issued, the products must be accompanied by the following documents:

(a) the latest phytosanitary certificate or a certified copy thereof;

(b) the latest re-forwarding phytosanitary certificate;

(c) the re-forwarding phytosanitary certificates previous to the certificate referred to under (b) or certified copies thereof.

Article 9

1. Member States shall lay down that the plants, plant products and other objects which originate in another Member State or in a non-member country and are listed in Annex IV, Part A, except those in (1), (2), (3) (b), (4) (b), (5), (6), (35) and (36), shall not be introduced into another Member State unless accompanied by an official phytosanitary certificate in accordance with the specimen in Annex VIII, Part A, issued in the country in which they originate, or by a certified copy of that certificate, in addition to the certificates provided for in Articles 7 and 8.

2. Paragraph 1 shall also apply to the introduction of the plants and plant products listed in Annex IV, Part B, into the relevant Member States whose names are indicated against those products in that part of the Annex.

Article 10

1. Member States shall lay down that the plants listed in Annex VI introduced into their territory must be disinfected effectively against San José scale on their arrival. However they shall not require such disinfection if there is absolutely no likelihood of San José scale being propagated.

2. Under the procedure laid down in Article 16, Member States may be authorized on request to require that the plants referred to in paragraph 1 must be disinfected before entry into their territory.

Article 11

1. Member States may lay down that plants, plant products and other objects and their packaging and the vehicles transporting them be subject, at the time of their introduction into their territory from another Member State, to an inspection to ascertain compliance with the prohibitions and restrictions laid down in Articles 3, 4 and 5. Member States shall ensure that these plants, plant products and other objects, where their introduction is not prohibited under Article 3, 4 or 5, are not subjected to prohibitions or restrictions relating to plant-health measures except where:

(a) the certificates referred to in Article 4, 5, 7, 8 or 9 are not not produced;

(b) the plants, plant products or other objects are not introduced at one of the prescribed entry-points;

(c) the plants, plant products or other objects are not submitted as laid down in the regulations to an official inspection permitted in accordance with paragraph 3;

(d) these prohibitions or restrictions are laid down on the basis of Article 18.

2. They may not require any additional statement on the phytosanitary certificate.

3. With regard to fruit and vegetables and potatoes other than seed potatoes, Member States may not supplement the official check on identity and the requirements permitted under paragraph 1 by systematic official checks on compliance with the provisions adopted pursuant to Articles 3 and 5, except where:

(a) there is serious reason to believe that one of these provisions has not been complied with;

(b) the plants referred to above originate in a non-member country and the examination provided for in Article 12 (1) (a) has not already been carried out in another Member State.

In all other cases, only occasional official inspections of fruit and vegetables and potatoes other than seed potatoes shall be carried out, by sampling. They shall be deemed occasional if they are made on no more than one-third of the consignments introduced from a given Member State and are as evenly spread as possible over time and over all the products.

4. If it is ascertained at the time of introduction that part of a consignment of plants, plant products