

Commission Directive 2008/62/EC

of 20 June 2008

providing for certain derogations for acceptance of agricultural landraces and varieties which are naturally adapted to the local and regional conditions and threatened by genetic erosion and for marketing of seed and seed potatoes of those landraces and varieties

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 66/401/EEC of 14 June 1966 on the marketing of fodder plant seed [1], and in particular Article 22a(1)(b) thereof,

Having regard to Council Directive 66/402/EEC of 14 June 1966 on the marketing of cereal seed [2], and in particular Article 22a(1)(b) thereof,

Having regard to Council Directive 2002/53/EC of 13 June 2002 on the common catalogue of varieties of agricultural plant species [3], and in particular Article 4(6), Article 20(2) and Article 21 thereof,

Having regard to Council Directive 2002/54/EC of 13 June 2002 on the marketing of beet seed [4], and in particular Article 30(1)(b) thereof,

Having regard to Council Directive 2002/56/EC of 13 June 2002 on the marketing of seed potatoes [5], and in particular Article 10(1) and Article 27(1)(b) thereof,

Having regard to Council Directive 2002/57/EC of 13 June 2002 on the marketing of seed of oil and fibre plants [6], and in particular Article 27(1)(b) thereof,

Whereas:

(1) The questions of biodiversity and the conservation of plant genetic resources have grown in importance in recent years, as shown by different developments at international and Community level. Examples include Council Decision 93/626/EEC of 25 October 1993 concerning the conclusion of the Convention on Biological Diversity [7], Council Decision 2004/869/EC of 24 February 2004 concerning the conclusion, on behalf of the European Community, of the International Treaty on Plant Genetic Resources for Food and Agriculture [8], Council Regulation (EC) No 870/2004 of 24 April 2004 establishing a Community programme on the conservation, characterisation, collection and utilisation of genetic resources in agriculture and repealing Regulation (EC) No 1467/94 [9] and Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) [10]. Specific conditions should be established under the Community legislation governing the marketing of seed of agricultural plants, namely Directives 66/401/EEC, 66/402/EEC, 2002/53/EC, 2002/54/EC, 2002/56/EC and 2002/57/EC, in order to take account of these issues.

(2) In order to ensure in situ conservation and the sustainable use of plant genetic resources, landraces and varieties which are naturally adapted to local and regional conditions and threatened by genetic erosion (conservation varieties) should be grown and marketed even where they do not comply with the general requirements as regards the acceptance of varieties and the marketing of seed and seed potatoes. In order to achieve that objective it is necessary to provide for derogations as regards the acceptance of conservation varieties, for inclusion in the national catalogues of varieties of agricultural plant species as well as for the production and marketing of seed and seed potatoes of those varieties.

(3) Those derogations should concern the substantive requirements for the acceptance of a variety and the procedural requirements provided for in Commission Directive 2003/90/EC of 6 October 2003 setting out implementing measures for the purposes of Article 7 of Council Directive 2002/53/EC as regards the characteristics to be covered as a minimum by the examination and the minimum conditions for examining certain varieties of agricultural plant species [11].

(4) Member States should, in particular, be authorised to adopt their own provisions as regards distinctness, stability and uniformity. These provisions should, as regards distinctness and stability, at least be based on the characteristics listed in the technical questionnaire to be completed by the applicant in connection with the application for the variety acceptance as referred to in Annexes I and II to Directive 2003/90/EC. Where uniformity is established on the basis of off-types, the provisions should be based on defined standards.

(5) The procedural requirements should be provided for under which a variety may be accepted without official examination. Furthermore, as regards the denomination, it is necessary to provide for certain derogations from the requirements laid down in Directive 2002/53/EC and Commission Regulation (EC) No 930/2000 of 4 May 2000 establishing implementing rules as to the suitability of the denominations of varieties of agricultural plant species and vegetable species [12].

(6) As regards the production and marketing of seed and seed potatoes of conservation varieties, a derogation from official certification should be provided for.

(7) To ensure that the marketing of seed and seed potatoes of conservation varieties takes place in the context of the conservation of plant genetic resources, restrictions should be provided for, in particular regarding the region of origin. In order to contribute to the conservation in situ and to the sustainable use of those varieties, Member States should have the possibility to approve additional regions where seed exceeding the quantities necessary to ensure the conservation of the variety concerned in its region of origin may be marketed provided that those additional regions are comparable as regards natural and semi-natural habitats. To ensure that the link with the region of origin is preserved, this should not apply where a Member State has approved additional regions of production.

(8) Maximum quantities should be fixed for the marketing of each conservation variety within one species and a total quantity for all conservation varieties within one species together. To make sure that these quantities are respected, Member States should require producers to notify the quantities of conservation varieties they intend to produce and should allocate the quantities to producers.

(9) The traceability of seed and seed potatoes should be ensured through appropriate sealing and labelling requirements.

(10) To ensure that the rules provided for in this Directive are correctly applied, seed crops should be monitored, seed should be tested and official post control carried out. Amounts of seed of conservation varieties placed on the market should be reported by the suppliers to the Member States and by the Member States to the Commission.

(11) After three years the Commission should assess whether the measures provided for in this Directive, in particular the provisions concerning quantitative restrictions, are effective.

(12) The measures provided for in this Directive are in accordance with the opinion of the Standing Committee on Seeds and Propagating Material for Agriculture, Horticulture and Forestry,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

SUBJECT MATTER AND DEFINITIONS

Article 1

Subject matter

1. As regards the agricultural species covered by Directives 66/401/EEC, 66/402/EEC, 2002/54/EC, 2002/56/EC and 2002/57/EC, this Directive lays down certain derogations in relation to the conservation in situ and the sustainable use of plant genetic resources through growing and marketing:

(a) for acceptance for inclusion in the national catalogues of varieties of agricultural plant species, as provided for in Directive 2002/53/EC, of landraces and varieties which are naturally adapted to the local and regional conditions and threatened by genetic erosion;

(b) for the marketing of seed and seed potatoes of such landraces and varieties.

2. Unless otherwise provided in this Directive, Directives 66/401/EEC, 66/402/EEC, 2002/53/EC, 2002/54/EC, 2002/56/EC and 2002/57/EC shall apply.

Article 2

Definitions

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

- (a) "conservation in situ" means the conservation of genetic material in its natural surroundings and, in the case of cultivated plant species, in the farmed environment where they have developed their distinctive properties;
- (b) "genetic erosion" means loss of genetic diversity between and within populations or varieties of the same species over time, or reduction of the genetic basis of a species due to human intervention or environmental change;
- (c) "landrace" means a set of populations or clones of a plant species which are naturally adapted to the environmental conditions of their region;
- (d) "seed" means seed and seed potatoes, unless seed potatoes are expressly excluded.

CHAPTER II

ACCEPTANCE OF CONSERVATION VARIETIES

Article 3

Conservation variety

Member States may accept in the national catalogues of varieties of agricultural plant species the landraces and varieties referred to in Article 1(1)(a) subject to the requirements provided for in Articles 4 and 5. Such landraces or varieties shall be referred to in the common catalogue of varieties of agricultural plant species as "conservation varieties".

Article 4

Substantive requirements

1. In order to be accepted as a conservation variety, a landrace or variety referred to in Article 1(1)(a) shall present an interest for the conservation of plant genetic resources.
2. By way of derogation from Article 1(2) of Directive 2003/90/EC, Member States may adopt their own provisions as regards distinctness, stability and uniformity of conservation varieties.

In such cases Member States shall ensure that for distinctness and stability at least the characteristics shall apply which are referred to in:

- (a) the technical questionnaires associated with the test protocols of the Community Plant Variety Office (CPVO) listed in Annex I to Directive 2003/90/EC, which applies to those species, or
- (b) the technical questionnaires of the guidelines of the International Union for the Protection of New Varieties of Plants (UPOV) listed in Annex II to Directive 2003/90/EC, which applies to those species.

For the assessment of uniformity, Directive 2003/90/EC shall apply.

However, if the uniformity level is established on the basis of off-types, a population standard of 10 % and an acceptance probability of at least 90 % shall be applied.

Article 5

Procedural requirements

By way of derogation from the first sentence of Article 7(1) of Directive 2002/53/EC, no official examination shall be required if the following information is sufficient for the decision on the acceptance of the conservation varieties:

- (a) the description of the conservation variety and its denomination;
- (b) the results of unofficial tests;
- (c) knowledge gained from practical experience during cultivation, reproduction and use, as notified by the applicant to the Member State concerned;

(d) other information, in particular from the plant genetic resource authorities or from organisations recognised for this purpose by the Member States.

Article 6

Exclusion of acceptance

A conservation variety shall not be accepted for inclusion in the national catalogues of varieties if:

- (a) it is already listed in the common catalogue of varieties of agricultural plant species as a variety other than a conservation variety, or it was deleted from the common catalogue within the last two years, or within the last two years from the expiry of the period granted under Article 15(2) of Directive 2002/53/EC, or
- (b) it is protected by a Community plant variety right as provided for in Council Regulation (EC) No 2100/94 [13], or by a national plant variety right, or an application for such a right is pending.

Article 7

Denomination

1. With respect to denominations of conservation varieties which were known before 25 May 2000, Member States may permit derogations from Regulation (EC) No 930/2000, except where such derogations would violate prior rights of a third party which is protected under Article 2 of that Regulation.
2. Notwithstanding Article 9(2) of Directive 2002/53/EC, Member States may accept more than one name for a variety if the names concerned are historically known.

Article 8

Region of origin

1. When a Member State accepts a conservation variety, it shall identify the region or regions in which the variety has historically been grown and to which it is naturally adapted, hereinafter "region of origin". It shall take into account information from plant genetic resource authorities or from organisations recognised for that purpose by the Member States.

Where the region of origin is located in more than one Member States, it shall be identified by all Member States concerned by common accord.

2. The Member State or Member States performing the identification of the region of origin shall notify the identified region to the Commission.

Article 9

Maintenance

Member States shall ensure that a conservation variety must be maintained in its region of origin.

CHAPTER III

SEED PRODUCTION AND MARKETING

Article 10

Certification

1. By way of derogation from the certification requirements provided for in Article 3(1) of Directive 66/401/EEC, Article 3(1) of Directive 66/402/EEC, Article 3(1) of Directive 2002/54/EC, Article 3(1) of Directive 2002/56/EC and Article 3(1) of Directive 2002/57/EC, Member States may provide that seed of a conservation variety may be placed on the market if it complies with paragraphs 2, 3 and 4 of this Article.

2. The seed shall descend from seed produced according to well defined practices for maintenance of the variety.

3. The seed, except seed of *Oryza sativa*, shall comply with the requirements for certification of certified seed provided for in Directives 66/401/EEC, 66/402/EEC, 2002/54/EC, 2002/56/EC and 2002/57/EC, with the exception of the requirements in respect of minimum varietal purity and the requirements concerning official examination or examination under official supervision.

Seed of *Oryza sativa* shall comply with the requirements for certification of "certified seed, second generation" provided for in Directive 66/402/EEC, with the exception of the requirements in respect of minimum varietal purity and the requirements concerning official examination or examination under official supervision.

The seed shall have sufficient varietal purity.

4. As regards seed potatoes, Member States may provide that Article 10 of Directive 2002/56/EC concerning the size shall not apply.

Article 11

Region of seed production

1. Member States shall ensure that seed of a conservation variety may only be produced in the region of origin.

If the conditions for certification provided for in Article 10(3) cannot be fulfilled in that region, due to a specific environmental problem, Member States may approve additional regions for seed production taking into account information from plant genetic resource authorities or from organisations recognised for this purpose by the Member States. However, seed produced in those additional regions may be used exclusively in the regions of origin.

2. Member States shall notify to the Commission and to the other Member States the additional regions which they intend to approve for seed production pursuant to paragraph 1.

The Commission and the other Member States may, within 20 working days from receipt of those notifications, request the matter to be referred to the Standing Committee on Seeds and Propagating Material for Agriculture, Horticulture and Forestry. A decision shall be taken in accordance with Article 22a(1)(b) of Directive 66/401/EEC, Article 22a(1)(b) of Directive 66/402/EEC, Article 4(6), Article 20(2) and Article 21 of Directive 2002/53/EC, Article 30(1)(b) of Directive 2002/54/EC, Article 10(1) and Article 27(1)(b) of Directive 2002/56/EC and Article 27(1)(b) of Directive 2002/57/EC, as appropriate, to lay down, if necessary, restrictions or conditions for the designation of such regions.

If neither the Commission nor other Member States make a request under the second subparagraph, the Member State in question may approve the additional regions for seed production as notified.

Article 12

Seed testing

1. Member States shall ensure that tests are carried out to check that seed of conservation varieties complies with the certification requirements provided for in Article 10(3).

Such tests shall be carried out in accordance with current international methods, or, where such methods do not exist, in accordance with any appropriate methods.

2. For the tests referred to in paragraph 1, Member States shall ensure that samples are drawn from homogeneous lots. They shall ensure that the rules on lot weight and sample weight provided for in Article 7(2) of Directive 66/401/EEC, Article 7(2) of Directive 66/402/EEC, Article 9(2) of Directive 2002/54/EC and Article 9(2) of Directive 2002/57/EC are applied.

Article 13

Marketing conditions

1. Member States shall ensure that seed of a conservation variety may only be marketed subject to the following conditions:

- (a) it has been produced in its region of origin or in a region referred to in Article 11;
- (b) marketing takes place in its region of origin.

2. By way of derogation from paragraph 1(b), a Member State may approve additional regions in its own territory for the marketing of seed of a conservation variety provided that those regions are comparable to the region of origin as regards the natural and semi-natural habitats of that variety.

Where Member States approve such additional regions, they shall ensure that the amount of seed necessary for the production of at least the quantity of seed referred to in Article 14 is reserved to conserve the variety in its region of origin.

The Member States shall inform the Commission and the other Member States of the approval of such additional regions.

3. Where a Member State approves additional regions for seed production in accordance with Article 11, it shall not use the derogation provided for in paragraph 2 of this Article.

Article 14

Quantitative restrictions

Each Member State shall ensure that, for each conservation variety, the quantity of seed marketed does not exceed 0,5 % of the seed of the same species used in that Member State in one growing season, or a quantity necessary to sow 100 ha, whichever is the greater quantity. For the species *Pisum sativum*, *Triticum* spp., *Hordeum vulgare*, *Zea mays*, *Solanum tuberosum*, *Brassica napus* and *Helianthus annuus*, that percentage shall not exceed 0,3 %, or a quantity necessary to sow 100 ha, whichever is the greater quantity.

However, the total quantity of seed of conservation varieties marketed in each Member State shall not exceed 10 % of the seed of the species concerned used yearly in the Member State. In cases where this leads to a quantity lower than necessary to sow 100 ha, the maximum amount of seed of the species concerned used yearly in the Member State may be increased so that to reach the quantity necessary to sow 100 ha.

Article 15

Application of quantitative restrictions

1. Member States shall ensure that producers notify them before the beginning of each production season of the size and the location of the area for the seed production.
2. If, based on the notifications referred to in paragraph 1, the quantities laid down in Article 14 are likely to be exceeded, Member States shall allocate to each producer concerned the quantity it may market in the respective production season.

Article 16

Monitoring of seed crops

Member States shall ensure by official monitoring that the seed crops of a conservation variety comply with the provisions of this Directive, paying particular attention to the variety, locations of the seed production and quantities.

Article 17

Sealing of packages and containers

1. Member States shall ensure that seed of conservation varieties may be marketed only in closed packages or containers bearing a sealing device.
2. Seed packages and containers shall be sealed by the supplier in such a manner that they cannot be opened without damaging the sealing system or leaving evidence of tampering on the supplier's label, or on the package or container.
3. In order to ensure sealing in accordance with paragraph 2, the sealing system shall comprise at least the label or the affixing of a seal.

Article 18

Labelling

Member States shall ensure that packages or containers of seed of conservation varieties bear a supplier's label or a printed or stamped notice including the following information:

- (a) the words "EC rules and standards";
- (b) the name and address of the person responsible for affixing the labels or his identification mark;

- (c) the year of sealing expressed as: "sealed..." (year), or, except for seed potatoes, the year of the last sampling for the purposes of the last testing of germination expressed as: "sampled..." (year);
- (d) the species;
- (e) the denomination of the conservation variety;
- (f) the words "conservation variety";
- (g) the region of origin;
- (h) where the region of seed production is different from the region of origin, the indication of the region of seed production;
- (i) the reference number of the lot given by the person responsible for affixing the labels;
- (j) the declared net or gross weight, or, except for seed potato, declared number of seeds;
- (k) where weight is indicated and granulated pesticides, pelleting substances or other solid additives are used, the nature of the chemical treatment or additive and the approximate ratio between the weight of clusters of pure seeds and the total weight, except for seed potatoes.

Article 19

Official post control

The Member States shall ensure that seed is subject to official post control by random inspections to verify its varietal identity and varietal purity.

CHAPTER IV

GENERAL AND FINAL PROVISIONS

Article 20

Reporting

The Member States shall ensure that suppliers operating in their territory report for each production season the amount of seed of each conservation variety placed on the market.

The Member States shall report on request to the Commission and to the other Member States the amount of seed of each conservation variety placed on the market in their territory.

Article 21

Notification of the recognised organisations of plant genetic resources

Member States shall notify to the Commission the recognised organisations referred to in Articles 5(d), 8(1) and 11(1).

Article 22

Evaluation

By 31 December 2011 the Commission shall evaluate the implementation of Articles 4, 13(2), 14 and 15.

Article 23

Transposition

1. Member States shall bring into force, by 30 June 2009 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 24

Entry into force

This Directive shall enter into force on the 20th day following that of its publication in the Official Journal of the European Union.

Article 25

Addressees

This Directive is addressed to the Member States.

Done at Brussels, 20 June 2008.

For the Commission

Androulla Vassiliou

Member of the Commission

[1] OJ L 125, 11.7.1966, p. 2298/66. Directive as last amended by Commission Directive 2007/72/EC (OJ L 329, 14.12.2007, p. 37).

[2] OJ L 125, 11.7.1966, p. 2309/66. Directive as last amended by Commission Directive 2006/55/EC (OJ L 159, 13.6.2006, p. 13).

[3] OJ L 193, 20.7.2002, p. 1. Directive as last amended by Regulation (EC) No 1829/2003 of the European Parliament and of the Council (OJ L 268, 18.10.2003, p. 1).

[4] OJ L 193, 20.7.2002, p. 12. Directive as last amended by Directive 2004/117/EC (OJ L 14, 18.1.2005, p. 18).

[5] OJ L 193, 20.7.2002, p. 60. Directive as last amended by Commission Decision 2005/908/EC (OJ L 329, 16.12.2005, p. 37).

[6] OJ L 193, 20.7.2002, p. 74. Directive as last amended by Directive 2004/117/EC.

[7] OJ L 309, 13.12.1993, p. 1.

[8] OJ L 378, 23.12.2004, p. 1.

[9] OJ L 162, 30.4.2004, p. 18.

[10] OJ L 277, 21.10.2005, p. 1. Regulation as last amended by Regulation (EC) No 146/2008 (OJ L 46, 21.2.2008, p. 1).

[11] OJ L 254, 8.10.2003, p. 7. Directive as last amended by Directive 2007/48/EC (OJ L 195, 27.7.2007, p. 29).

[12] OJ L 108, 5.5.2000, p. 3. Regulation as last amended by Regulation (EC) No 920/2007 (OJ L 201, 2.8.2007, p. 3).

[13] OJ L 227, 1.9.1994, p. 1.
