

## COUNCIL DIRECTIVE 2002/89/EC

of 28 November 2002

**amending Directive 2000/29/EC on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 37 thereof,

Having regard to the proposal from the Commission <sup>(1)</sup>,Having regard to the opinion of the European Parliament <sup>(2)</sup>,Having regard to the opinion of the Economic and Social Committee <sup>(3)</sup>,

Whereas:

- (1) Council Directive 2000/29/EC of 8 May 2000 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community <sup>(4)</sup> sets out the Community plant health regime, specifying the phytosanitary conditions, procedures and formalities to which plants and plant products are subjected when introduced into, or moved within, the Community.
- (2) With respect to the procedures and formalities, to which plants and plant products are subjected when introduced in the Community, certain clarifications should be provided and further detailed provisions are required in certain areas.
- (3) The phytosanitary procedures and formalities should be completed before customs clearance takes place. Since consignments of plants or plant products do not necessarily undergo phytosanitary procedures and formalities in the same Member State as that in which customs clearance takes place, a system of cooperation in communication and information among the responsible official bodies and the customs offices should be established.
- (4) In order to improve the protection against the introduction into the Community of organisms harmful to plants or plant products, Member States should intensify the checks required. Those checks should be effective and carried out in a harmonised manner throughout the Community.
- (5) The fees charged for such checks should be based on a transparent cost calculation and aligned in all Member States as much as possible.
- (6) In the light of experience, several other provisions of Directive 2000/29/EC should be completed, clarified or amended in the light of developments.
- (7) Since the implementation of the conditions of the internal market, phytosanitary certificates as established in the International Plant Protection Convention (IPPC) of the Food and Agriculture Organisation (FAO) are no longer used for the marketing of plants or plant products within the Community. It is however important to keep standardised certificates issued by Member States under the IPPC.
- (8) Some of the functions of the 'single authority' of each Member State for coordination and contact in the practical operations of the Community plant health regime require specific scientific or technical knowledge. It must therefore be made possible, to delegate specific tasks to another service.
- (9) The current provisions on the procedure for the amendment of the Annexes of Directive 2000/29/EC by the Commission and for the adoption of derogation decisions include some procedural conditions which are no longer necessary or justified. It is also necessary to base amendments to the Annexes, more explicitly, on a technical justification consistent with the pest risk involved. The procedure for the adoption of emergency measures does not provide the possibility for a rapid adoption of interim measures consistent with the level of emergency in specific cases. The provisions on these three procedures should therefore be amended accordingly.
- (10) The list of tasks in respect of which the Commission may organise plant health checks under its authority, should be extended, to take into account the widening of the field of plant health activities through new practices and experiences.
- (11) It is appropriate to clarify certain aspects of the procedure for the refunding of the Community Phytosanitary contribution.

<sup>(1)</sup> OJ C 240 E, 28.8.2001, p. 88.

<sup>(2)</sup> OJ C 53 E, 28.2.2002, p. 179.

<sup>(3)</sup> OJ C 36, 8.2.2002, p. 46.

<sup>(4)</sup> OJ L 169, 10.7.2000, p. 1. Directive as last amended by Commission Directive 2002/36/EC (OJ L 116, 3.5.2002, p. 16).

- (12) Some provisions of Directive 2000/29/EC (first, second and fourth subparagraphs of Article 3(7)), as well as Articles 7, 8 and 9 have been superseded by other provisions since 1 June 1993, and have therefore become redundant since then. They should consequently be deleted.
- (13) Under Article 4 of the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement), the Community must recognise, under certain conditions, the equivalence of phytosanitary measures of other Parties to that Agreement. The procedures for such recognition in the field of plant health should be specified in Directive 2000/29/EC.
- (14) The measures necessary for the implementation of Directive 2000/29/EC should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>(1)</sup>,

HAS ADOPTED THIS DIRECTIVE:

*Article 1*

Directive 2000/29/EC is hereby amended as follows:

1. Article 1 shall be amended as follows:

- (a) in the second subparagraph of paragraph 1, the following point shall be added:

‘(d) the model of “Phytosanitary Certificates” and “phytosanitary certificates for Re-export” or their electronic equivalent issued by Member States under the International Plant Protection Convention (IPPC).’;

- (b) Paragraph 4 shall be replaced by the following:

‘(4) The Member States shall ensure a close, rapid, immediate and effective cooperation between themselves and the Commission in relation to matters covered by this Directive. To this end, each Member State shall establish or designate a single authority, which shall be responsible, at least, for the coordination and contact in relation to such matters. The official plant protection organisation set up under the 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.

In accordance with the procedure referred to in Article 18(2) the single authority may be authorised to assign or delegate tasks of coordination or contact, insofar as they relate to distinct plant health matters covered by this Directive, to another service.’;

2. Article 2(1) shall be amended as follows:

- (a) point (a) shall be amended as follows:

- (i) the first subparagraph shall be replaced by the following:

‘plants shall be considered to mean: living plants and specified living parts thereof, including seeds.’

- (ii) The second subparagraph shall be amended as follows:

— the following seventh indent shall be inserted after the sixth indent:

‘— leaves, foliage,’

— the existing seventh indent shall become the eight indent,

— the following ninth indent shall be added:

‘— live pollen’

— the following tenth indent shall be added:

‘— bud-wood, cuttings, scions’

— the following eleventh indent shall be added:

‘— any other part of plants, which may be specified in accordance with the procedure referred to in Article 18(2).’;

- (b) point (e) shall be replaced by the following:

‘(e) *harmful organisms* shall be considered to mean: any species, strain or biotype of plant, animal or pathogenic agent injurious to plants or plant products’;

- (c) in point (f), third subparagraph, the terms ‘Article 8’ shall be replaced by ‘Article 18(2)’;

<sup>(1)</sup> OJ L 184, 17.7.1999, p. 23.

(d) point (g), shall be amended as follows:

(i) In the first subparagraph, in point (i), the word 'services(s)' shall be replaced by the word 'organisation(s)'.

(ii) The fifth subparagraph shall be replaced by the following:

'The single authority referred to in Article 1(4) 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.';

(e) in point (h), third subparagraph, in the second sentence and in the fifth subparagraph, the words 'in writing' shall be inserted between the words 'notified' and 'to the Commission';

(f) in point (i), first subparagraph, the first indent shall be replaced by the following:

'— by representatives of the official national plant protection organisation of a third country or, under their responsibility, by other public officers who are technically qualified and duly authorised by that official national plant protection organisation, in the case of statements or measures related to the issuing of the phytosanitary certificates and phytosanitary certificates for re-exports, or their electronic equivalent';

(g) the following points shall be added:

(j) *point of entry* shall be considered to mean: the place where plants, plant products or other objects are brought for the first time into the customs territory of the Community: the airport in the case of air transport, the port in the case of maritime or fluvial transport, the station in the case of railway transport, and the place of the customs office responsible for the area where the Community inland frontier is crossed, in the case of any other transport;

(k) *official body of point of entry* shall be considered to mean: the responsible official body in a Member State in charge of the point of entry;

(l) *official body of destination* shall be considered to mean: the responsible official body in a Member State in charge of the area where the "customs office of destination" is situated;

(m) *customs office of point of entry* shall be considered to mean: the office of the point of entry as defined in (j) above;

(n) *customs office of destination* shall be considered to mean: the office of destination within the meaning of Article 340b(3) of Commission Regulation (EEC) No 2454/93 (\*);

(o) *lot* shall be considered to mean: a number of units of a single commodity, identifiable by its homogeneity of composition and origin, and forming part of a consignment;

(p) *consignment* shall be considered to mean: A quantity of goods being covered by a single document required for customs formalities or for other formalities, such as a single phytosanitary certificate or a single alternative document or mark; a consignment may be composed of one or more lots;

(q) *customs-approved treatment or use* shall be considered to mean: the customs-approved treatments or uses referred to in point 15 of Article 4 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (\*\*) (hereafter referred to as the Community Customs Code);

(r) *transit* shall be considered to mean: the movement of goods which are subject to customs supervision from one point to another within the customs territory of the Community as referred to in Article 91 of Regulation (EEC) No 2913/92.

(\*) OJ L 253, 11.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 2787/2000 (OJ L 330, 27.12.2000, p. 1).

(\*\*) OJ L 302, 19.10.1992, p. 1. Regulation as last amended by Regulation (EC) No 2700/2000 of the European Parliament and of the Council (OJ L 311, 12.12.2000, p. 17).;

3. Article 3 shall be amended as follows:

(a) paragraph 3 shall be replaced by the following:

'3. Paragraphs 1 and 2 shall not apply in accordance with conditions which may be determined in accordance with the procedure referred to in Article 18(2), in the case of slight contamination of plants other than those intended for planting by harmful organisms listed in Annex I, Part A, or in Annex II, Part A, or in the case of appropriate tolerances established for harmful organisms listed in Annex II, Part A, Section II as regards plants intended for planting which have previously been selected in agreement with the authorities representing the Member States in the field of plant health, and based on a relevant pest risk analysis.';

(b) paragraph 7 shall be replaced by the following paragraphs 7, 8 and 9:

'7. In accordance with the procedure referred to in Article 18(2), implementing provisions may be adopted to lay down conditions for the introduction into the Member States and the spread within the Member States of:

- (a) organisms which are suspected of being harmful to plants or plant products but are not listed in Annexes I and II;
- (b) organisms, which are listed in Annex II, but which occur on plants or plant products other than those listed in that Annex, and which are suspected of being harmful to plants or plant products;
- (c) organisms, which are listed in Annexes I and II, which are in an isolated state and which are considered to be harmful in that state to plants or plant products.
8. Paragraphs 1 and 5(a) and paragraph 2 and 5(b) and paragraph 4 shall not apply, in accordance with the conditions which shall be determined pursuant to the procedure referred to in Article 18(2), for trial or scientific purposes and for work on varietal selections.
9. After the measures provided for in paragraph 7 have been adopted, that paragraph shall not apply, in accordance with the conditions which shall be determined pursuant to the procedure referred to in Article 18(2), for trial or scientific purposes and for work on varietal selections.;
4. Articles 7, 8 and 9 shall be deleted;
5. Article 10 shall be amended as follows:
- (a) paragraph 1 shall be amended as follows:
- (i) in the first subparagraph, the words 'instead of the phytosanitary certificates referred to in Articles 7 or 8' shall be deleted;
- (ii) the following subparagraph shall be inserted after the first subparagraph:
- 'However, in the case of seeds mentioned in Article 6(4), a plant passport need not be issued, where it is ensured in accordance with the procedure referred to in Article 18(2) that the documents issued in accordance with the Community provisions applicable to the marketing of officially certified seed provide evidence for the compliance with the requirements referred to in Article 6(4). In such case, the documents shall be considered for all purposes to be plant passports within the meaning of Article 2(1)(f).';
- (b) in paragraph 2, in the first subparagraph, before the words 'may not be moved' and in the second subparagraph, before the words 'may not be introduced' the words 'and seeds mentioned in Article 6(4)' shall be inserted;
6. In Article 11(2), the following shall be added at the end of the paragraph:
- 'and a plant passport may be used.'
7. Article 12 shall be replaced by the following:
- 'Article 12
1. Member States shall organise official checks to ensure compliance with the provisions of this Directive, in particular with Article 10(2), which shall be carried out at random and without any discrimination in respect of the origin of the plants, plant products or other objects, and in accordance with the following provisions:
- occasional checks, at any time and at any place where plants, plant products or other objects are moved,
  - occasional checks on premises where plants, plant products or other objects are grown, produced, stored or offered for sale, as well as on the premises of purchasers,
  - occasional checks at the same time as any other documentary check, which is carried out for reasons other than plant health.
- The checks must be regular in premises listed in an official register in accordance with Article 10(3) and Article 13c(1b), and may be regular in premises listed in an official register in accordance with Article 6(6).
- The checks must be targeted if facts have come to light to suggest that one or more provisions of this Directive have not been complied with.
2. Commercial purchasers of plants, plant products or other objects shall, as final users professionally engaged in plant production, retain the related plant passports for at least one year and enter the references in their records.
- Inspectors shall have access to the plants, plant products or other objects at all stages in the production and marketing chain. They shall be entitled to make any investigation necessary for the official checks concerned, including those related to the plant passports and the records.
3. The Member States may be assisted in the official checks by the experts referred to in Article 21.

4. Where it is established, through the official checks carried out in accordance with paragraphs 1 and 2, that plants, plant products or other objects present a risk of spreading harmful organisms, they shall be the subject of official measures in accordance with Article 11(3).

Without prejudice to the notifications and information required under Article 16, Member States shall ensure, where the plants, plant products or other objects concerned come from another Member State, that the single authority of the receiving Member State informs immediately the single authority of that Member State and the Commission of the findings and of the official measures which it intends to take or has taken. In accordance with the procedure referred to in Article 18(2), a standardised information system may be set up.;

8. Article 13 shall be replaced by the following Articles 13, 13a, 13b, 13c, 13d and 13e:

*'Article 13*

1. Member States shall ensure, without prejudice to:

— the provisions of Article 3(3), 13b(1), (2), (3), (4) and (5),

— the specific requirements and conditions laid down in derogations adopted pursuant to Article 15(1), in equivalency measures adopted pursuant to Article 15(2), or in emergency measures adopted pursuant to Article 16, and

— specific agreements concluded on matters dealt with in this Article between the Community and one or more third countries,

that plants, plant products or other objects, listed in Annex V, Part B, which come from a third country and are brought into the customs territory of the Community, shall, from the time of their entry, be subject to customs supervision pursuant to Article 37(1) of the Community Customs Code and also to supervision by the responsible official bodies. They may only be placed under one of the customs procedures as specified in Article 4(16)(a), (d), (e), (f), (g) of the Community Customs Code, if the formalities as specified in Article 13a have been completed in accordance with the provisions of Article 13c(2), such as to conclude, as a result of these formalities and as far as can be determined:

(i) — that the plants, plant products or other objects are not contaminated by harmful organisms listed in Annex I, Part A, and

— in the case of plants or plant products listed in Annex II, Part A, that they are not contaminated

by the relevant harmful organisms listed in that Annex, and

— in the case of plants, plant products or other objects listed in Annex IV, Part A, that they comply with the relevant special requirements indicated in that Annex, or, where applicable, with the option declared in the certificate pursuant to Article 13a(4)(b), and

(ii) that the plants, plant products or other objects are accompanied by the respective original of the required official "phytosanitary certificate" or "phytosanitary certificate for re-export" issued in accordance with the provisions laid down in Article 13a(3) and (4), or, where relevant, that the original of alternative documents or marks as specified and permitted in implementing provisions accompany, or are attached to, or otherwise put on, the object concerned.

Electronic certification may be recognised, provided that the respective conditions specified in implementing provisions are met.

Officially certified copies may also be recognised in exceptional cases which shall be specified in implementing provisions.

The implementing provisions referred to in (ii) above may be adopted in accordance with the procedure referred to in Article 18(2).

2. Paragraph 1 shall apply, in cases of plants, plant products or other objects intended for a protected zone, in respect of harmful organisms and of special requirements listed in Annex I, Part B, Annex II, Part B and Annex IV, Part B respectively, for that protected zone.

3. Member States shall provide that plants, plant products or objects other than those referred to in paragraph 1 or 2, which come from a third country and are brought into the customs territory of the Community, may, from the time of their entry, be subject to supervision by the responsible official bodies, in respect of the first, second or third indent of paragraph 1(i). These plants, plant products or objects include wood in the form of dunnage, spacers, pallets or packing material, which are actually in use in the transport of objects of all kinds.

Where the responsible official body makes use of that faculty, the plants, plant products or objects concerned shall remain under the supervision referred to in paragraph 1, until the relevant formalities have been completed such as to conclude, as a result for these formalities and as far as can be determined, that they comply with the relevant requirements laid down in or under this Directive.

Implementing provisions as regards type of information and the means of transmission thereof to be supplied by importers, or their customs representatives, to the responsible official bodies, as regards the plants, plant products or objects including the different types of wood, as referred to in the first subparagraph, shall be adopted in accordance with the procedure referred to in Article 18(2).

4. Without prejudice to Article 13c(2)(a) Member States shall, if there is a risk of spread of harmful organisms, also apply paragraphs 1, 2 and 3 to plants, plant products or other objects being placed under one of the customs-approved treatments or uses as specified in Article 4(15)(b), (c), (d), (e) of the Community Customs Code or under the Customs procedures as specified in Article 4(16)(b), (c) of that Code.

#### Article 13a

1. (a) The formalities referred to in Article 13(1) shall consist of meticulous inspections by the responsible official bodies on at least:

- (i) each consignment declared, under the customs formalities, to consist of or to contain plants, plant products or other objects, referred to in Article 13(1), (2) or (3) under the respective conditions, or
- (ii) in the case of a consignment which is composed of different lots, each lot declared, under the customs formalities, to consist of, or to contain, such plants, plant products or other objects.

(b) The inspections shall determine whether:

- (i) the consignment or lot is accompanied by the required certificates, alternative documents or marks, as specified in Article 13(1)(ii) (documentary checks),
- (ii) in its entirety or on one or more representative samples, the consignment or lot consists of, or contains the plants, plant products or other objects, as declared on the required documents (identity checks), and
- (iii) in its entirety or on one or more representative samples, including the packaging and, where appropriate, the transport vehicles, the consignment or lot or their wood packing

material comply with the requirements laid down in this Directive, as specified in Article 13(1)(i) (plant health checks), and whether Article 16(2) applies.

2. The identity checks and plant health checks shall be carried out at reduced frequency, if:

- activities of inspection on plants, plant products or other objects in the consignment or lot were already carried out in the consignor third country under technical arrangements referred to in Article 13b(6), or
- the plants, plant products or other objects in the consignment or lot are listed in the implementing provisions adopted for this purpose pursuant to paragraph 5(b), or
- the plants, plant products or other objects in the consignment or lot came from a third country for which in or under comprehensive international phytosanitary agreements based on the principle of reciprocal treatment between the Community and a third country, provision for a reduced frequency of identity and plant health checks is mentioned,

unless there is a serious reason to believe that the requirements laid down in this Directive are not complied with.

The plant health checks may also be carried out at reduced frequency, if there is evidence, collated by the Commission and based on experience gained from earlier introduction of such material of the same origin into the Community as confirmed by all Member States concerned, and after consultation within the Committee referred to in Article 18, to believe that the plants, plant products or other objects in the consignment or lot comply with the requirements laid down in this Directive, provided that the detailed conditions specified in implementing provisions pursuant to paragraph 5(c) are met.

3. The official "phytosanitary certificate" or "phytosanitary certificate for re-export" referred to in Article 13(1)(ii) shall have been issued in at least one of the official languages of the Community and in accordance with the laws or regulations of the third country of export or re-export which have been adopted, whether a contracting party or not, in compliance with the provisions of the IPPC. It shall be addressed to the "Plant Protection Organisations of the Member States of the European Community" as referred to in Article 1(4), first subparagraph, last sentence.

The certificate shall not have been made out more than 14 days before the date on which the plants, plant products or other objects covered by it have left the third country in which it was issued.

It shall contain information in accordance with the models specified in the Annex to the IPPC, irrespective of its format.

It shall be in one of the models determined by the Commission pursuant to paragraph 4. The certificate shall have been issued by authorities empowered to this effect on the basis of laws or regulations of the third country concerned, as submitted, in accordance with the provisions of the IPPC, to the Director General of FAO, or, in the case of third countries non-party to the IPPC, to the Commission. The Commission shall inform the Member States of the submissions received.

4. (a) In accordance with the procedure referred to in Article 18(2), the acceptable models as specified in the different versions of the Annex to the IPPC shall be determined. In accordance with the same procedure, alternative specifications for the "phytosanitary certificates" or "phytosanitary certificates for re-export" may be laid down for third countries non-party to the IPPC.

(b) Without prejudice to Article 15(4), the certificates, in the case of plants, plant products or other objects listed in Annex IV Part A section I or Part B, shall specify, under the heading "Additional Declaration" and where relevant, which special requirement out of those listed as alternatives in the relevant position in the different parts of Annex IV have been complied with. This specification shall be given through reference to the relevant position in Annex IV.

(c) In the case of plants, plant products or other objects, to which special requirements laid down in Annex IV, Part A, or Part B apply, the official "phytosanitary certificate" referred to in Article 13(1)(ii) shall have been issued in the third country in which the plants, plant products or other objects originate (country of origin).

(d) However, in the case where the relevant special requirements can be fulfilled also at places other than that of origin, or where no special requirement applies, the "phytosanitary certificate" may have been issued in the third country where the plants, plant products or other objects come from (consignor country).

5. In accordance with the procedure referred to in Article 18(2), implementing provisions may be adopted to:

(a) lay down procedures for the carrying out of plant health checks referred to in paragraph 1(b), point (iii), including minimum numbers and minimum sizes of samples,

(b) establish lists of plants, plant products or other objects on which plant health checks shall be carried out at reduced frequency pursuant to paragraph 2, first subparagraph, second indent,

(c) specify the detailed conditions for the evidence referred to in paragraph 2, second subparagraph, and the criteria for the type and level of reduction of the plant health checks.

The Commission may include guidelines in respect of paragraph 2 in the recommendations referred to in Article 21(6).

#### Article 13b

1. Member States shall ensure that consignments or lots which come from a third country, but are not declared, under the customs formalities, to consist of, or to contain plants, plant products or other objects listed in Annex V, Part B are also inspected by the responsible official bodies, where there is serious reason to believe that such plants, plant products or other objects are present.

Member States shall ensure that whenever a customs inspection reveals that a consignment or lot coming from a third country consists of or contains non-declared plants, plant products or other objects listed in Annex V, Part B, the inspecting customs office shall immediately inform the official body of its Member State, under the cooperation referred to in Article 13c(4).

If, at the outcome of the inspection by the responsible official bodies, doubts remain in respect of the identity of the commodity, in particular concerning the genus or species of plants or plant products or their origin, the consignment shall be considered to contain plants, plant products or other objects as listed in Annex V, Part B.

2. Provided that there is no risk of harmful organisms spreading in the Community:

(a) Article 13(1) shall not apply to the entry, into the Community, of plants, plant products or other objects which are moved from one point to another within the Community passing through the territory of a third country without any change in their customs status (internal transit),

(b) Article 13(1) and Article 4(1) shall not apply to the entry, into the Community, of plants, plant products or other objects which are moved from one point to another within one or two third countries passing through the territory of the Community under appropriate customs procedures without any change in their customs status.

3. Without prejudice to the provisions of Article 4 in respect of Annex III, and provided that there is no risk of harmful organisms spreading in the Community, Article 13(1) need not apply to the entry, into the Community, of small quantities of plants, plant products, foodstuffs or animal feedingstuffs as far as they relate to plants or plant products, where they are intended for use by the owner or recipient for non-industrial and non-commercial purposes, or for consumption during transport.

In accordance with the procedure referred to in Article 18(2) detailed rules may be adopted specifying the conditions for the implementation of this provision, including the determination of "small quantities".

4. Article 13(1) shall not apply, under specified conditions, to the entry, into the Community, of plants, plant products or other objects for use in trials, for scientific purposes or for work on varietal selections. The specified conditions shall be determined in accordance with the procedure referred to in Article 18(2).

5. Provided that there is no risk of harmful organisms spreading in the Community, a Member State may adopt a derogation that Article 13(1) shall not apply in specified individual cases to plants, plant products or other objects which are grown, produced or used in its immediate frontier zone with a third country and introduced into that Member State in order to be worked in nearby locations in the frontier zone of its territory.

When granting such a derogation, the Member State shall specify the location and the name of the person working it. Such details, which shall be updated regularly, shall be made available to the Commission

Plants, plant products and other objects which form the subject of a derogation under the first subparagraph shall be accompanied by documentary evidence of the location in the relevant third country from which the said plants, plant products and other objects originate.

6. 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 referred to in Article 18(2), that activities referred to in Article 13(1)(i) may also be carried out under the authority of the Commission and in accordance with the relevant provisions of Article 21 in the consignor third country, in cooperation with the official plant protection organisation of that country.

#### Article 13c

1. (a) The formalities as specified in Article 13a(1), the inspections as provided for in Article 13b(1) and the checks for compliance with the provisions of Article 4 in respect of Annex III shall be carried out in connection with, as specified in paragraph 2, the formalities required for the placing under a customs procedure as referred to in Article 13(1) or Article 13(4).

They shall be carried out in compliance with the provisions of the International Convention on the Harmonisation of Frontier Controls of Goods, in particular Annex 4 thereof, as approved by Council Regulation (EEC) No 1262/84 (\*).

(b) Member States shall provide that importers, whether or not producers, of plants, plant products or other objects, listed in Annex V, Part B, must be included in an official register of a Member State under an official registration number. The provisions of Article 6(5), third and fourth subparagraphs, shall apply accordingly to such importers.

(c) Member States shall also provide that:

(i) importers, or their customs representatives, of consignments consisting of, or containing, plants, plant products or other objects, listed in Annex V, Part B, shall make reference, on at least one of the documents required for the placing under a customs procedure as referred to in Article 13(1) or Article 13(4) to such composition of the consignment by means of the following information:

— reference to the type of plants, plant products or other objects, in using the code of the "Integrated tariff of the European Communities (Taric)",



- statement “This consignment contains produce of phytosanitary relevance”, or any equivalent alternative mark as agreed between the customs office of point of entry and the official body of point of entry,
- reference number(s) of the required phytosanitary documentation,
- official registration number of the importer, as referred to in (b) above;

(ii) airport authorities, harbour authorities or either importers or operators, as arranged between them, give, as soon as they are aware of the imminent arrival of such consignments, advance notice thereof to the customs office of point of entry and to the official body of point of entry.

Member States may apply this provision, *mutatis mutandis*, to cases of land transport, in particular where the arrival is expected outside normal working hours of the relevant official body or other office as specified in paragraph 2.

2. (a) “Documentary checks” and also the inspections as provided for in Article 13b(1) and the checks for compliance with the provisions of Article 4 in respect of Annex III must be made by the official body of point of entry or, in agreement between the responsible official body and the customs authorities of that Member State, by the customs office of point of entry.
- (b) “Identity checks” and “plant health checks” must be made, without prejudice to (c) and (d) below, by the official body of point of entry in connection with the customs formalities required for placing under a customs procedure as referred to in Article 13(1) or Article 13(4), and either at the same place as these formalities, on the premises of the official body of point of entry or at any other place close by and designated or approved by the customs authorities and by the responsible official body, other than the place of destination as specified under (d).
- (c) However, in case of transit of non-Community goods, the official body of point of entry may decide, in agreement with the official body or bodies of destination, that all or part of the “identity checks” or “plant health checks” shall be made by the official body of destination, either on

its premises or at any other place close by and designated or approved by the customs authorities and by the responsible official body, other than the place of destination as specified under (d). If no such agreement is made, the entire “identity check” or “plant health check” shall be made by the official body of the point of entry at either of the places specified in (b).

(d) In accordance with the procedure referred to in Article 18(2), certain cases or circumstances may be specified in which “identity checks” and “plant health checks” may be carried out at the place of destination, such as a place of production, approved by the official body and customs authorities responsible for the area where that place of destination is located, instead of the aforesaid other places, provided that specific guarantees and documents as regards the transport of plants, plant products and other objects are complied with.

(e) In accordance with the procedure referred to in Article 18(2), implementing provisions shall be laid down concerning:

- the minimum conditions for the carrying out of the “plant health checks” under (b), (c) and (d),
- the specific guarantees and documents as regards the transport of the plants, plant products or other objects to the places specified in (c) and (d), to ensure that there is no risk of harmful organisms spreading during transport,
- together with the specification of cases under (d), specific guarantees and minimum conditions concerning the qualification of the place of destination for storage and concerning the storage conditions.

(f) In all cases, the plant “health checks” shall be considered to be an integral part of the formalities referred to in Article 13(1).

3. Member States shall lay down that the respective original, or the electronic form of the certificates or of the alternative documents other than marks, as specified in Article 13(1)(ii), which is produced to the responsible official body for “documentary checks” in accordance with the provisions of Article 13a(1)(b)(i), upon inspection shall be marked with a “visa” of that body, together with its denomination and the date of presentation of the document.

In accordance with the procedure referred to in Article 18(2), a standardised system may be set up to ensure that information included in the certificate, in case of specified plants intended for planting, shall be forwarded to the official body in charge of each Member State or area where plants from the consignment are to be destined or planted.

4. The Member States shall forward to the Commission and the other Member States in writing the list of places designated as points of entry. Any changes to this list shall also be forwarded in writing without delay.

The Member States shall establish a list of the places as specified under 2(b) and 2(c) and places of destinations as identified under 2(d) under their respective responsibility. These lists shall be accessible to the Commission.

Each official body of point of entry, and each official body of destination carrying out identity or plant health checks, must satisfy certain minimum conditions in respect of infrastructure, staffing and equipment.

In accordance with the procedure referred to in Article 18(2), the aforesaid minimum conditions shall be laid down in implementing provisions.

In accordance with the same procedure, detailed rules shall be laid down concerning:

- (a) the type of documents required for the placing under a customs procedure, on which the information specified in paragraph 1(c)(i) shall be made,
- (b) the cooperation between:
  - (i) the official body of point of entry and the official body of destination,
  - (ii) the official body of point of entry and the customs office of point of entry,
  - (iii) the official body of destination and the customs office of destination, and
  - (iv) the official body of point of entry and the customs office of destination.

Those rules shall include model forms of documents to be used in that cooperation, the means of transmission of these documents, the procedures for exchange of information between the official bodies and offices above, as well as the measures which must be taken to maintain the identity of the lots and consignments and to safeguard against the risk of spreading harmful

organisms, in particular during transport, until the completion of the required customs formalities.

5. There shall be a Community financial contribution to Member States in order to strengthen inspection infrastructures in so far as they relate to plant health checks carried out in accordance with paragraph 2(b) or (c).

The purpose of this contribution shall be to improve the provision, at inspection posts other than those at the place of destination, of the equipment and the facilities required to carry out inspection and examination and, where necessary, to carry out the measures provided for in paragraph 7, beyond the level already achieved by complying with the minimum conditions stipulated in the implementing provisions pursuant to paragraph 2(e).

The Commission shall propose the entry of suitable appropriations for that purpose in the general budget of the European Union.

Within the limits set by the appropriations available for these purposes, the Community contribution shall cover up to 50 % of expenditure relating directly to improving equipment and facilities.

Detailed rules concerning the Community financial contribution shall be laid down in an implementing Regulation adopted in accordance with the procedure referred to in Article 18(2).

The allocation and the amount of the Community financial contribution shall be decided in accordance with the procedure referred to in Article 18(2), in the light of the information and documents submitted by the Member State concerned and, where appropriate, of the results of investigations carried out under the Commission's authority by the experts referred to in Article 21, and depending on the appropriations available for the purposes concerned.

6. Article 10(1) and (3) shall apply *mutatis mutandis* to plants, plant products or other objects referred to in Article 13 insofar as they are listed in Annex V, Part A, and where it is considered, on the basis of the formalities referred to in Article 13(1), that the conditions laid down therein are fulfilled.

7. Where it is not considered on the basis of the formalities referred to in Article 13(1), that the conditions laid down therein are fulfilled, one or more of the following official measures shall be taken immediately:

- (a) refusal of entry into the Community of all or part of the consignment,

- (b) movement, under official supervision, in accordance with the appropriate customs procedure, during their movement within the Community, to a destination outside the Community,
- (c) removal of infected/infested produce from the consignment,
- (d) destruction,
- (e) imposition of a quarantine period until the results of the examinations or official tests are available,
- (f) exceptionally and only in specific circumstances, appropriate treatment where it is considered by the responsible official body of the Member State that, as a result of the treatment, the conditions will be fulfilled and the risk of spreading harmful organisms is obviated; the measure of appropriate treatment may also be taken in respect of harmful organisms not listed in Annex I or Annex II.

Article 11(3), second subparagraph, shall apply *mutatis mutandis*.

In the case of a refusal referred to in (a) or movement to a destination outside the Community referred to in (b) or of a removal referred to in (c), the Member States shall lay down that the phytosanitary certificates or the phytosanitary certificates for re-export, and any other document which have been produced when the plants, plant products or other objects were submitted for introduction into their territory, be cancelled by the responsible official body. Upon cancellation, the said certificates or documents shall bear on their face and in a prominent position a triangular stamp in red, marked "certificate cancelled" or "document cancelled" from the said official body, together with its denomination and the date of refusal, of the start of the movement to a destination outside the Community or of removal. It shall be in capital letters, and in at least one of the official languages, of the Community.

8. Without prejudice to the notifications and information required under Article 16, Member States shall ensure that the responsible official bodies inform the plant protection organisation of the third country of origin or consignor third country and the Commission of all cases where plants, plant products or other objects coming from the relevant third country have been intercepted as not complying with the plant health requirements, and the reasons of the interception, without prejudice to the action which the Member State may take or has taken in respect of the intercepted consignment. The information shall be given as soon as possible so that the plant protection organisations concerned and, where appropriate, also the Commission, may study the case with a view, in particular, to taking the steps necessary to prevent further occurrences similar to

the intercepted one. In accordance with the procedure referred to in Article 18(2), a standardised information system may be set up.

(\*) OJ L 126, 12.5.1984, p. 1.

#### Article 13d

1. Member States shall ensure the collection of fees (Phytosanitary fee) to cover the costs occasioned by the documentary checks, identity checks and plant health checks provided for in Article 13a(1), which are carried out pursuant to Article 13. The level of the fee shall reflect:

- (a) the salaries, including social security, of the inspectors involved in the above checks;
- (b) the office, other facilities, tools and equipment for these inspectors;
- (c) the sampling for visual inspection or for laboratory testing;
- (d) laboratory testing;
- (e) the administrative activities (including operational overheads) required for carrying out the checks concerned effectively, which may include the expenditure required for pre- and in-service training of inspectors.

2. Member States may either set the level of the Phytosanitary fee on the basis of a detailed cost calculation carried out in accordance with paragraph 1, or apply the standard fee as specified in Annex VIIIa.

When, pursuant to Article 13a(2), for a certain group of plants, plant products or other objects originating in certain third countries, identity checks and plant health checks are being carried out at reduced frequency, Member States shall collect a proportionally reduced Phytosanitary fee from all consignments and lots of that group, whether subjected to inspection or not.

In accordance with the procedure referred to in Article 18(2), implementing measures may be adopted to specify the level of this reduced Phytosanitary fee.

3. When the Phytosanitary fee is set by a Member State on the basis of the costs borne by the responsible official body of that Member State, the Member States concerned shall communicate to the Commission reports specifying the method for calculating the fees in relation to the elements listed in paragraph 1.

Any fee imposed in accordance with the first subparagraph shall be no higher than the actual cost borne by the responsible official body of the Member State.

4. No direct or indirect refund of the fees provided for in this Directive shall be permitted. However the possible application by a Member State of the standard fee as specified in Annex VIIIa shall not be considered an indirect refund.

5. The standard fee as specified in Annex VIIIa is without prejudice to extra charges to cover additional costs incurred in special activities relating to the checks, such as exceptional travelling by inspectors or waiting periods of inspectors due to delays in the arrival of consignments out of schedule, checks carried out outside normal working hours, supplementary checks or laboratory testing required in addition to those provided for in Article 13 for confirmation of conclusions drawn from the checks, special phytosanitary measures as required under Community acts based on Articles 15 or 16, measures taken pursuant to Article 13c(7), or the translation of required documents.

6. Member States shall designate the authorities empowered to charge the Phytosanitary fee. The fee shall be payable by the importer, or his customs representatives.

7. The Phytosanitary fee shall replace all other charges or fees levied in the Member States at national, regional or local level for the checks referred to in paragraph 1, and the attestation thereof.

#### Article 13e

“Phytosanitary certificates” and “phytosanitary certificates for re-export”, which Member States issue under the IPPC shall be in the format of the standardised model given in Annex VII.

9. In Article 14, the second subparagraph shall be amended as follows:

- (a) the terms ‘Article 17’ shall be replaced by the terms ‘Article 18(2)’;
- (b) in point (c), the words ‘in agreement with the Member State concerned’ shall be replaced by ‘in consultation with the Member State concerned’;
- (c) point (d) shall be replaced by the following: ‘(d) any amendment to the Annexes to be made in the light of developments in scientific or technical knowledge, or when technically justified, consistent with the pest risk involved’;

(d) the following point (e) shall be added:

‘(e) “amendments to Annex VIIIa”.’.

10. Article 15 shall be amended as follows:

(a) in paragraph 1, the introduction to, and the first two indents of the first subparagraph shall be replaced by the following:

‘1. In accordance with the procedure referred to in Article 18(2), derogations may be provided for:

— from Article 4(1) and (2) with regard to Annex III, Part A and Part B, without prejudice to the provisions of Article 4(5), and from Article 5(1) and (2) and the third indent of Article 13(1)(i) with regard to requirements referred to in Annex IV, Part A, Section I and Annex IV, Part B,

— from Article 13(1)(ii) in the case of wood, if equivalent safeguards are ensured by means of alternative documentation or marking,’

(b) paragraphs 2 and 3 shall be replaced by the following paragraphs 2, 3 and 4:

‘2. In accordance with the procedures referred to in the first subparagraph of paragraph 1, phytosanitary measures adopted by a third country for export into the Community shall be recognised as equivalent to the phytosanitary measures laid down in this Directive, in particular to those specified in Annex IV, if that third country objectively demonstrates to the Community that its measures achieve the Community’s appropriate level of phytosanitary protection and if this is confirmed by the conclusions resulting from findings made on the occasion of reasonable access of the experts referred to in Article 21 for inspection, testing and other relevant procedures in the relevant third country.

Upon request by a third country, the Commission will enter into consultations with the aim of achieving bilateral or multilateral agreements on recognition of the equivalence of specified phytosanitary measures.

3. Decisions providing for derogations pursuant to the first subparagraph of paragraph 1 or recognition of equivalence pursuant to paragraph 2, shall require that compliance with the conditions laid down therein has been officially established in writing by the exporting country for each individual case of use, and shall set out the details of the official statement confirming compliance.

4. Decisions referred to in paragraph 3 shall specify whether or in what manner Member States shall inform the other Member States and the Commission of each individual case of use or groups of cases of use.;

11. Article 16 shall be amended as follows:

(a) in paragraph 1, in the first sentence of the first subparagraph, the words 'in writing' shall be inserted between the words 'notify and' the 'Commission';

(b) in paragraph 2, in the first sentence of the first and third subparagraphs, the words 'in writing' shall be inserted between the words 'notify' and 'the Commission';

(c) in paragraph 3, in the third sentence, the words 'based on a pest risk analysis or a preliminary pest risk analysis in cases referred to in paragraph 2' shall be inserted between 'measures' and 'may be adopted', and the terms 'Article 19' shall be replaced by 'Article 18(2)';

(d) the following paragraph 5 shall be added:

'5. If the Commission has not been informed of measures taken under paragraphs 1 or 2, or if it considers the measures taken to be inadequate, it may, pending the meeting of the Standing Committee on Plant Health, take interim protective measures based on a preliminary pest risk analysis to eradicate, or if that is not possible, inhibit the spread of the harmful organism concerned. These measures shall be submitted to the Standing Committee on Plant Health as soon as possible to be confirmed, amended or cancelled in accordance with the procedure referred to in Article 18(2).';

12. Article 17 shall be deleted;

13. Article 18 shall be replaced by the following:

'Article 18

1. The Commission shall be assisted by the Standing Committee on Plant Health instituted by Council Decision 76/894/EEC (\*) hereafter referred to as "the Committee".

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

3. The Committee shall adopt its rules of procedure.

(\*) OJ L 340, 9.12.1976, p. 25.;

14. Article 19 shall be deleted;

15. Article 21 shall be amended as follows:

(a) paragraph 3 shall be replaced by the following:

'3. The checks referred to in paragraph 1 may be carried out in respect of the following tasks:

— monitoring examinations pursuant to Article 6,

— carrying out the official checks pursuant to Article 12(3),

— monitoring or, within the framework of the provisions laid down in the fifth subparagraph of paragraph 5, carrying out in cooperation with the Member States inspections pursuant to Article 13(1),

— carrying out or monitoring the activities specified in the technical arrangements referred to in Article 13b(6),

— making the investigations referred to in Article 15(1), 15(2) and Article 16(3),

— monitoring activities required under the provisions establishing the conditions under which certain harmful organisms, plants, plant products or other objects may be introduced into, or moved within, the Community or certain protected zones thereof, for trial or scientific purposes or for work on varietal selection referred to in Articles 3(9), 4(5), 5(5) and 13b(4),

— monitoring activities required under authorisations granted pursuant to Article 15, under measures taken by Member States pursuant to Article 16(1) or (2), or under measures adopted pursuant to Article 16(3) or (5),

— assisting the Commission in the matters referred to in paragraph 6,

— carrying out any other duty assigned to the experts in the detailed rules referred to in paragraph 7;;

(b) in paragraph 5, in the second subparagraph, the following sentence shall be added after the third sentence:

'This provision shall not apply to expenses resulting from the following types of requests made on the occasion of the participation of the said experts in the Member States' import inspections: laboratory testing and sampling for visual inspection or for laboratory testing, and already covered by the fees referred to in Article 13d.;

16. In Article 24(3), the following subparagraph shall be added:

'The amounts to be refunded under paragraph 3 shall be fixed in accordance with the procedure referred to in Article 18(2).;

17. In Articles 25 and 26, the respective references to 'Article 13(9)' shall be replaced by 'Article 13c(5).;

18. In Annex VII, Part B shall be amended as follows:

(a) The title shall be replaced by the following:

'B. Model phytosanitary certificate for re-export'.

(b) In box 2 of the model certificate, the words 'REFORWARDING PHYTOSANITARY CERTIFICATE' shall be replaced by 'PHYTOSANITARY CERTIFICATE FOR RE-EXPORT'.

19. The following Annex VIIIa shall be inserted in the Directive after Annex VIII:

*'ANNEX VIIIa*

The standard fee referred to in Article 13d(2) shall be set at the following levels:

<i>(in EUR)</i>			
Item	Quantity	Price	
(a) for documentary checks	Per consignment	7	
(b) for identity checks	Per consignment		
	— up to a size of a truck load, a railway wagon load or the load of a container of comparable size	7	
	— bigger than the above size	14	
(c) for plant health checks, in accordance with the following specifications:			
	— cuttings, seedlings (except forestry reproductive material), young plants of strawberries or of vegetables	Per consignment	
		— up to 10 000 in number	17,5
		— for each additional 1 000 units	0,7
		— maximum price	140
	— shrubs, trees (other than cut Christmas trees), other woody nursery plants including forest reproductive material (other than seed)	Per consignment	
		— up to 1 000 in number	17,5
		— for each additional 100 units	0,44
		— maximum price	140
	— bulbs, corms, rhizomes, tubers, intended for planting (other than tubers of potatoes)	Per consignment	
		— up to 200 kg of weight	17,5
		— for each additional 10 kg	0,16
	— maximum price	140	
— seeds, tissue cultures	Per consignment		
	— up to 100 kg of weight	7,5	
	— for each additional 10 kg	0,175	
	— maximum price	140	

Item	Quantity	Price
— other plants intended for planting, not specified elsewhere in this table	Per consignment	
	— up to 5 000 in number	17,5
	— for each additional 100 units	0,18
— cut flowers	— maximum price	140
	Per consignment	
	— up to 20 000 in number	17,5
— branches with foliage, parts of conifers (other than cut Christmas trees)	— for each additional 1 000 units	0,14
	— maximum price	140
	Per consignment	
— cut Christmas trees	— up to 100 kg of weight	17,5
	— for each additional 100 kg	1,75
	— maximum price	140
— leaves of plants, such as herbs, spices and leafy vegetables	Per consignment	
	— up to 1 000 in number	17,5
	— for each additional 100 units	1,75
— fruits, vegetables (other than leafy vegetables)	— maximum price	140
	Per consignment	
	— up to 100 kg of weight	17,5
— tubers of potatoes	— for each additional 10 kg	1,75
	— maximum price	140
	Per consignment	
— wood (other than bark)	— up to 25 000 kg of weight	17,5
	— for each additional 1 000 kg	0,7
	Per lot	
— soil and growing medium, bark	— up to 25 000 kg of weight	52,5
	— for each additional 25 000 kg	52,5
	Per consignment	
— grain	— up to 100 m <sup>3</sup> of volume	17,5
	— for each additional m <sup>3</sup>	0,175
	Per consignment	
— other plants or plant products not specified elsewhere in this table	— up to 25 000 kg of weight	17,5
	— for each additional 1 000 kg	0,7
	— maximum price	140
— other plants intended for planting, not specified elsewhere in this table	Per consignment	
	— up to 25 000 kg of weight	17,5
	— for each additional 1 000 kg	0,7
— other plants intended for planting, not specified elsewhere in this table	— maximum price	700
	Per consignment	
	— up to 25 000 kg of weight	17,5
— other plants intended for planting, not specified elsewhere in this table	— for each additional 1 000 kg	0,7
	— maximum price	700
	Per consignment	
— other plants intended for planting, not specified elsewhere in this table	— up to 25 000 kg of weight	17,5
	— for each additional 1 000 kg	0,7
	— maximum price	700

Where a consignment does not consist exclusively of products coming under the description of the relevant indent, those parts thereof consisting of products coming under the description of the relevant indent (lot or lots) shall be treated as separate consignment.'

20. When in any provision other than those amended in paragraph 1 to 18 reference is made to 'in accordance with the procedure laid down in Article 17' or to 'in accordance with the procedure laid down in Article 18', these words shall be replaced by the words 'in accordance with the procedure referred to in Article 18(2).'

#### *Article 2*

Member States shall adopt and publish before 1 January 2005, the provisions necessary to comply with this Directive. They shall forthwith inform the Commission thereof.

They shall apply those provisions from 1 January 2005.

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. The methods of making such a reference shall be laid down by the Member States.

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

#### *Article 3*

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

#### *Article 4*

This Directive is addressed to the Member States.

Done at Brussels, 28 November 2002.

*For the Council*

*The President*

M. FISCHER BOEL

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