

COUNCIL DIRECTIVE 98/56/EC

of 20 July 1998

on the marketing of propagating material of ornamental plants

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 43 thereof,

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

- (1) Whereas the production of ornamental plants occupies an important place in the agriculture of the Community;
- (2) Whereas satisfactory results in the cultivation of ornamental plants depend to a large extent on the quality and health of the material used for their propagation;
- (3) Whereas the establishment of harmonised conditions at Community level will ensure that purchasers throughout the Community receive propagating material which is healthy and of good quality;
- (4) Whereas, so far as they relate to plant health, such harmonised conditions must be consistent with Council Directive 77/93/EEC of 21 December 1976 on protective measures against the introduction into the Member States of organisms harmful to plants or plant products and against their spread in the Community ⁽⁴⁾;
- (5) Whereas it is appropriate to establish Community rules for all genera and species of ornamental plants in the Community, with the exception of those covered by Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein ⁽⁵⁾;
- (6) Whereas, without prejudice to the plant health provisions of Directive 77/93/EEC, it is not appropriate to apply the Community rules on the marketing of propagating material when it is shown that such material and plants are intended for export to third countries, as the rules applicable

there may be different from those contained in this Directive;

- (7) Whereas the determination of plant health and quality standards for particular genus and species of ornamental plant requires lengthy and detailed technical and scientific consideration; whereas a procedure should accordingly be established for the determination of these standards;
- (8) Whereas in the first instance it is the responsibility of the suppliers of propagating material to ensure that their products fulfil the conditions laid down in this Directive;
- (9) Whereas the competent authorities of the Member States, when carrying out controls and inspections, should ensure that suppliers fulfil those conditions;
- (10) Whereas Community control measures should be introduced to ensure uniform application in all the Member States of the standards laid down in this Directive;
- (11) Whereas it is in the interests of the purchasers of propagating material that the names of varieties or of groups of plants be known and that their identity be safeguarded;
- (12) Whereas the characteristics specific to the industry operating in the ornamental plant sector are a complicating factor; whereas, accordingly, the objective stated above can best be achieved either through common knowledge of the variety or, in the case of varieties or groups of plants, through the availability of a description drawn up and kept by the suppliers;
- (13) Whereas, in order to ensure the identity and orderly marketing of propagating material, Community rules must be laid down concerning the separation of lots and marking; whereas the labels should give the particulars needed both for official control and for the information of the grower;
- (14) Whereas rules should be established permitting, in the case of temporary supply difficulties, the marketing of propagating material subject to requirements less stringent than those contained in this Directive;

⁽¹⁾ OJ C 50, 17. 2. 1998, p. 8.

⁽²⁾ OJ C 104, 6. 4. 1998, p. 40.

⁽³⁾ OJ C 157, 25. 5. 1998, p. 3.

⁽⁴⁾ OJ L 26, 31. 1. 1977, p. 20. Directive as last amended by Commission Directive 98/2/EC (OJ L 15, 21. 1. 1998, p. 34).

⁽⁵⁾ OJ L 61, 3. 3. 1997, p. 1. Regulation as amended by Commission Regulation (EC) No 938/97 (OJ L 140, 30. 5. 1997, p. 1).

- (15) Whereas provisions should be made for authorising the marketing, within the Community, of propagating material produced in third countries, provided always it affords equivalent guarantees in all respects to propagating material produced in the Community and complying with Community rules;
- (16) Whereas, in order to harmonise technical methods of examination used in the Member States and to compare propagating material produced in the Community with those produced in third countries, comparative trials should be carried out to check compliance of propagating material with the requirements of this Directive;
- (17) Whereas, in order to facilitate the effective operation of this Directive, the Commission should be entrusted with the task of adopting measures for its implementation; whereas such measures should be adopted by a procedure involving close cooperation between the Commission and the Member States within a Standing Committee for Propagating Material of Ornamental Plants;
- (18) Whereas Council Directive 91/682/EEC of 19 December 1991 on the marketing of ornamental plant propagating material and ornamental plants⁽¹⁾ established harmonised conditions at Community level to ensure that purchasers throughout the Community receive propagating material and ornamental plants which are healthy and of good quality;
- (19) Whereas Member States have experienced difficulties in the interpretation and transposition of the said Directive;
- (20) Whereas the said Directive was considered to be suitable for inclusion in the SLIM Initiative (Simpler Legislation for the Internal Market) which was launched by the Commission in May 1996;
- (21) Whereas the Ornamental Plants SLIM team made various recommendations aimed at simplifying the said Directive; whereas those recommendations are contained in the Communication from the Commission to the Council and the European Parliament on the SLIM Initiative;
- (22) Whereas those recommendations related to the persons to be controlled by the said Directive, the species to be covered by that Directive, varietal authenticity, the interrelationship with Directive 77/93/EEC and third country equivalence;
- (23) Whereas, after consideration of those recommendations it is desirable to amend certain provisions of Directive 91/682/EEC; whereas given the number

of such amendments, the said Directive should be recast in the interests of clarity,

HAS ADOPTED THIS DIRECTIVE:

TITLE I

SCOPE

Article 1

1. This Directive shall apply to the marketing of propagating material of ornamental plants within the Community. This shall be without prejudice to the rules on protection of wild flora laid down by Regulation (EC) No 338/97, the rules on packaging and packaging waste laid down by Directive 94/62/EC of the European Parliament and of the Council⁽²⁾, or, save where otherwise provided for in this Directive or on the basis thereof, the plant health rules laid down by Directive 77/93/EEC.

2. This Directive shall not apply to:

- material shown to be intended for export to third countries, which is identified as such and is kept sufficiently isolated,
- material the products of which are not intended for ornamental purposes, if it is covered by other Community legislation on the marketing of such material.

3. In accordance with the procedure laid down in Article 17, it may be decided that some or all of the requirements of this Directive shall not apply in respect of seed of particular species or groups of plants, where intended for the production of further propagating material and where there is no significant connection between the quality of such seed and the quality of the material grown from it.

TITLE II

DEFINITIONS

Article 2

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

1. 'Propagating material': plant material intended for:
- the propagation of ornamental plants, or
 - the production of ornamental plants; however, in the case of production from complete plants, this definition applies only to the extent that the resulting ornamental plant is intended for further marketing.
- 'Propagation': reproduction by vegetative or other means.

⁽¹⁾ OJ L 376, 31. 12. 1991, p. 21.

⁽²⁾ OJ L 365, 31. 12. 1994, p. 10.

2. 'Supplier': any natural or legal person engaged professionally in marketing or importing of propagating material.
3. 'Marketing': sale or delivery by a supplier to another person. 'Sale' includes holding available or in stock, display with a view to sale, offering for sale.
4. 'Responsible official body':
 - (a) an authority, established or designated by the Member State under the supervision of the national government and responsible for questions concerning quality;
 - (b) any State authority established:
 - either at national level, or
 - at regional level, under the supervision of national authorities, within the limits set by the constitution of the Member State concerned.

The bodies referred to above may, in accordance with their national legislation, delegate the tasks provided for in this Directive to be accomplished under their authority and supervision to any legal person, whether governed by public or by private law, which, under its officially approved constitution, is charged exclusively with specific public functions, provided that such person, and its members, has no personal interest in the outcome of the measures it takes.

Moreover, in accordance with the procedure laid down in Article 17, other legal persons established on behalf of the body referred to in point (a) and acting under the authority and supervision of such body may be approved, provided that such person has no personal interest in the outcome of the measures it takes.

Member States shall notify the Commission of their responsible official bodies. The Commission shall forward that information to the other Member States.

5. 'Lot': a number of units of a single commodity, identifiable by its homogeneity of composition and origin.

TITLE III

REQUIREMENTS TO BE MET BY PROPAGATING MATERIAL

Article 3

1. Suppliers may market propagating material only if it meets the requirements laid down in this Directive.
2. Paragraph 1 shall not apply to propagating material intended for:
 - (a) trials or scientific purposes,
 - (b) selection work, or
 - (c) the conservation of genetic diversity.

3. Detailed rules for the application of paragraph 2 may be adopted in accordance with the procedure laid down in Article 17.

Article 4

Propagating material shall, where applicable, comply with the relevant plant health conditions laid down in Directive 77/93/EEC.

Article 5

1. Without prejudice to the provisions of Article 1 and Article 4, propagating material when marketed:
 - shall at least on visual inspection, be substantially free from any harmful organisms impairing quality, or any signs or symptoms thereof, which reduce its usefulness,
 - shall be substantially free of any defects likely to impair its quality as propagating material,
 - shall have satisfactory vigour and dimensions in respect of its usefulness as propagating material,
 - in the case of seeds, shall have satisfactory germination capacity,
 - if marketed with reference to a variety pursuant to Article 9, shall have satisfactory varietal identity and purity.

2. Any propagating material which, on the basis of visible signs or symptoms, is not substantially free of harmful organisms, shall be properly treated or, where appropriate, shall be removed.
3. In the case of citrus material the following requirements shall also be met:
 - (a) it shall be derived from initial material which has been checked and found to show no symptoms of any viruses, virus-like organisms or diseases;
 - (b) it shall have been checked and found to be substantially free of such viruses, virus-like organisms or disease since the beginning of the last cycle of vegetation; and
 - (c) in the case of grafting, it shall have been grafted onto rootstocks other than those susceptible to viroids.

4. In the case of flower bulbs the following requirement shall also be met:
 - the propagating material shall be derived directly from material which, at the stage of the growing crop, has been checked and found to be substantially free from any harmful organisms and diseases, signs or symptoms thereof.

5. In the case of citrus material the following requirements shall also be met:
 - (a) it shall be derived from initial material which has been checked and found to show no symptoms of any viruses, virus-like organisms or diseases;
 - (b) it shall have been checked and found to be substantially free of such viruses, virus-like organisms or disease since the beginning of the last cycle of vegetation; and
 - (c) in the case of grafting, it shall have been grafted onto rootstocks other than those susceptible to viroids.

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- (b) it shall have been checked and found to be substantially free of such viruses, virus-like organisms or disease since the beginning of the last cycle of vegetation; and

- (c) in the case of grafting, it shall have been grafted onto rootstocks other than those susceptible to viroids.

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 - (a) it shall be derived from initial material which has been checked and found to show no symptoms of any viruses, virus-like organisms or diseases;
 - (b) it shall have been checked and found to be substantially free of such viruses, virus-like organisms or disease since the beginning of the last cycle of vegetation; and
 - (c) in the case of grafting, it shall have been grafted onto rootstocks other than those susceptible to viroids.

5. In accordance with the procedure laid down in Article 18, a schedule may be established for a particular genus or species, laying down additional conditions concerning the quality with which propagating material when marketed must comply. A genus or species shall only be included in the schedule if there is a demonstrated need for such additional rules. In determining such need the following criteria shall apply:

- the existence of problems with the quality of propagating material of the species or genus concerned, which can only be resolved satisfactorily through legislative means,
- the economic importance of propagating material of the species or genus concerned,
- consistency with any international standards on regulated non-quarantine pests.

TITLE IV

REQUIREMENTS TO BE MET BY SUPPLIERS OF PROPAGATING MATERIAL

Article 6

1. Without prejudice to paragraph 2, suppliers shall be officially registered in relation to the activities which they carry out under this Directive. The responsible official body may deem suppliers, who are already registered under Directive 77/93/EEC, to be registered for the purposes of the current Directive. Such suppliers shall nonetheless comply with the requirements of the current Directive.

2. Paragraph 1 shall not apply to suppliers marketing only to persons not professionally engaged in the production or sale of ornamental plants or propagating material. Such suppliers shall nonetheless comply with the requirements of the current Directive.

Article 7

1. Suppliers engaged in production of propagating material shall:

- identify and monitor critical points in their production process which influence the quality of the material,
- keep information, for examination when requested by the responsible official body on the monitoring laid down in the first indent,
- take samples where necessary for analysis in a laboratory with suitable facilities and expertise,
- ensure that, during production, lots of propagating material remain separately identifiable.

2. In the case of the appearance, on the premises of a supplier engaged in the production of propagating material, of a harmful organism listed in Directive 77/93/EEC or in any measures established pursuant to Article 5(5), the supplier shall report it to the responsible official body and shall carry out any measures laid down by that body.

3. When propagating material is marketed, registered suppliers shall keep records of their sales or purchases for at least 12 months.

4. Rules for the application of paragraph 1 above may be established in accordance with the procedure laid down in Article 17.

TITLE V

MARKETING AND LABELLING OF PROPAGATING MATERIAL

Article 8

1. Propagating material shall be marketed in lots. However, propagating material of different lots may be marketed in a single consignment, provided that the supplier keeps records of the composition and origin of the different lots.

2. Propagating material when marketed shall be accompanied by a label or other document made out by the supplier.

3. In accordance with the procedure laid down in Article 17, requirements as to the label or document referred to in paragraph 2 shall be established. In the case of marketing of propagating material for persons not professionally engaged in the production or sale of ornamental plants or propagating material, requirements on labelling may be confined to appropriate product information. Requirements as to packaging of propagating material may be adopted in accordance with the same procedure.

4. Paragraph 1 shall not apply to propagating material which is marketed for persons not professionally engaged in the production or sale of ornamental plants or propagating material.

Article 9

1. Propagating material may be marketed with a reference to a variety, only if the variety concerned is:

- legally protected by a plant variety right in accordance with provisions on the protection of new varieties, or
- officially registered, or
- commonly known, or

— entered on a list kept by a supplier with its detailed description and denomination. Such lists shall be drawn up in accordance with accepted international guidelines, where these are applicable. The lists shall be available, on request, to the responsible official body of the Member State concerned.

2. As far as possible, each variety shall bear the same denomination in all the Member States, in accordance with implementing measures which may be adopted in accordance with the provisions of Article 17 or, in their absence, in accordance with accepted international guidelines.

3. Where propagating material is marketed with a reference to a group of plants rather than a variety referred to in paragraph 1, the supplier shall indicate the group of plants in such a way as to avoid confusion with any varietal denomination.

4. Additional implementing provisions for the fourth indent of paragraph 1 may be adopted in accordance with the procedure laid down in Article 17.

TITLE VI

PROPAGATING MATERIAL MEETING LESS STRINGENT REQUIREMENTS

Article 10

In the event of temporary difficulties in the supply of propagating material satisfying the requirements of this Directive which cannot be overcome within the Community, rules may be adopted, in accordance with the procedure laid down in Article 17, concerning the marketing of propagating material meeting less stringent requirements.

TITLE VII

PROPAGATING MATERIAL PRODUCED IN THIRD COUNTRIES

Article 11

1. In accordance with the procedure laid down in Article 17, it shall be decided whether propagating material produced in a third country affords equivalent guarantees in all respects to material produced in the Community in accordance with this Directive.

2. Pending the decision referred to in paragraph 1, propagating material may not be imported from third countries unless the importing supplier ensures prior to import that the material to be imported affords equivalent guarantees in all respects to propagating material produced in the Community in accordance with this Directive, in particular in relation to quality, identification and plant health.

3. The importer shall notify the responsible official bodies of material imported under paragraph 2 and shall keep documentary evidence of his contract with the supplier in the third country.

4. Implementing measures relating to the procedure to be followed and further requirements to be met by importers may be established in accordance with the procedure laid down in Article 17.

TITLE VIII

CONTROL MEASURES AND GENERAL PROVISIONS

Article 12

1. Member States shall require that suppliers take all necessary measures to guarantee compliance with the requirements of this Directive. To this end Member States shall ensure that propagating material is officially inspected:

- at least by random checks, and
- at least in respect of marketing to persons professionally engaged in production or sale of ornamental plants or propagating material,

to verify compliance with the requirements. Member States may also take samples in order to verify compliance. In carrying out supervision and monitoring, the responsible official bodies shall have free access to all parts of suppliers' establishments at all reasonable times.

The Commission shall, by 31 December 2002, submit a report to the Council, on the operation of the control arrangements foreseen in this Article, together with any appropriate proposals which may, if appropriate, include proposals for removing requirements of this Directive from retail sales.

2. Detailed implementing procedures for official inspections under this Directive may be established in accordance with the procedure laid down in Article 17.

Article 13

1. If, during official inspections referred to in Article 12, or the trials referred to in Article 14, it is found that propagating material does not meet the requirements of this Directive, the responsible official body shall ensure that the supplier takes appropriate corrective action or, if that is not possible, shall prohibit the marketing of that propagating material in the Community.

2. If it is found that propagating material marketed by a particular supplier does not comply with the requirements of this Directive, the Member State concerned shall ensure that appropriate measures are taken in relation to that supplier.

3. Any measures taken under paragraph 2 shall be withdrawn as soon as it has been established with sufficient certainty that the propagating material intended for marketing by the supplier will, in future, comply with the requirements and conditions of this Directive.

Article 14

1. Where appropriate, trials or tests shall be carried out in the Member States on samples to check that propagating material complies with the requirements and conditions of this Directive. The Commission may organise inspections of trials by representatives of the Member States and of the Commission.

2. It may be decided in accordance with the procedure laid down in Article 17 that it is necessary to carry out Community trials or tests for the same purpose as mentioned in paragraph 1. The Commission may organise inspections of Community trials by representatives of the Member States and of the Commission.

3. The trials or tests referred to in paragraphs 1 and 2 shall be used to harmonise technical methods of examination of propagating material. Progress reports on the trials or tests shall be sent to the Commission and submitted to the Committee referred to in Article 17.

4. The Commission shall ensure that, in appropriate cases, arrangements for coordinating, carrying out and inspecting the trials referred to in paragraphs 1 and 2, and assessing their results, are made within the Committee referred to in Article 17. When problems occur in relation to organisms covered by Directive 77/93/EEC, the Commission shall notify the Standing Committee on Plant Health, which shall also be consulted on protocols for Community trials where these concern organisms covered by Directive 77/93/EEC. Propagating material produced in third countries may be included in the trials.

Article 15

The marketing of propagating material which complies with the requirements of this Directive shall be subject to no restrictions as regards supplier, quality, plant health, labelling and packaging, other than those laid down in this Directive.

Article 16

In accordance with the procedure laid down in Article 17, a Member State may at its request and under certain conditions be wholly or partially released from certain obligations under this Directive in respect of types of propagating material of certain genera or species the production of which is of minimal economic importance in its territory, save where this would run counter to Article 15.

TITLE IX

COMMITTEE PROCEDURES

Article 17

1. Where reference is made to the procedure laid down in this Article, the Commission shall be assisted by a Committee, referred to as the Standing Committee for Propagating Material of Ornamental Plants, chaired by a representative of the Commission.

2. The representative of the Commission shall submit to the Standing Committee a draft of the measures to be taken. The Standing Committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148(2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the Committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

3. (a) The Commission shall adopt measures which shall apply immediately.

(b) However, if these measures are not in accordance with the opinion of the Committee, they shall be communicated by the Commission to the Council forthwith.

In that event:

— the Commission may defer application of the measures which it has decided for a period of not more than one month from the date of such communication;

— the Council, acting by a qualified majority, may take a different decision within the time referred to in the first indent.

4. The Committee, at the request of the chairman or one of the Member States, may examine any questions relevant to the subject matter of this Directive.

Article 18

1. Where reference is made to the procedure laid down in this Article, the Commission shall be assisted by the Standing Committee for Propagating Materials and Ornamental Plants, chaired by the representative of the Commission.

2. The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion will be delivered by the majority laid down in Article 148(2) of the

Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the Committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

3. (a) The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the Committee.
- (b) If the measures envisaged are not in accordance with the opinion of the Committee, or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority.

If, on the expiry of a period of three months from the date of referral to the Council, the Council has not acted, the proposed measures shall be adopted by the Commission.

TITLE X FINAL PROVISIONS

Article 19

1. Member States shall bring into force the laws, regulations or administrative provisions necessary to comply with this Directive on 1 July 1999. They shall forthwith inform the Commission thereof.
2. When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their

official publication. The methods for making such reference shall be adopted by the Member States.

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

Article 20

1. Directive 91/682/EEC shall be repealed with effect from 1 July 1999 without prejudice to Member States' obligations in relation to the period of transposition and implementation referred to in Part A of the Annex hereto.
2. References to the repealed Directive 91/682/EEC shall be understood as references to this Directive and shall be read in accordance with the correlation table in Part B of the Annex hereto.
3. Implementing provisions adopted under Directive 91/682/EEC shall continue to have effect unless amended or repealed by new implementing provisions.

Article 21

This Directive is addressed to the Member States.

Done at Brussels, 20 July 1998.

For the Council
The President
W. MOLTERER

ANNEX

PART A

Time-limits for transposition into national law and implementation

Directive	Time limit for transposition	Time limit for implementation
91/682/EEC (OJ L 376, 31.12.1991, p. 21.)	31 December 1992	Articles 5-11, 14, 15, 17, 19 and 24 (for all genera and species) 31 December 1993

PART B

Correlation table

This Directive	Directive 91/682/EEC
Article 1	Articles 1 and 2
Article 2	Article 3
Article 3	Article 8
Article 4	—
Article 5	Article 4
Article 6	Article 6
Article 7	Article 5
Article 8	Articles 10 and 11
Article 9	Article 9
Article 10	Article 13
Article 11	Article 16
Article 12	Articles 17 and 18
Article 13	Article 19
Article 14	Article 20
Article 15	Article 14
Article 16	—
Article 17	Article 21
Article 18	Article 22
Article 19	—
Article 20	—
Article 21	—