

COMMISSION REGULATION (EC) No 1452/2003**of 14 August 2003****maintaining the derogation provided for in Article 6(3)(a) of Council Regulation (EEC) No 2092/91 with regard to certain species of seed and vegetative propagating material and laying down procedural rules and criteria relating to that derogation**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2092/91 of 24 June 1991 on organic production of agricultural products and indications referring thereto on agricultural products and foodstuffs ⁽¹⁾, as last amended by Commission Regulation (EC) No 599/2003 ⁽²⁾, and in particular the second and third indent of point (b) of Article 6(3) thereof,

Whereas:

- (1) Article 6(3) of Regulation (EEC) No 2092/91 provides for a derogation by which Member States may authorise, during a transitional period expiring on 31 December 2003, the use in organic production of seed and vegetative propagating material not produced by the organic production method, where the producers are unable to obtain propagating material from the organic production method.
- (2) Community legislation of relevance for seed and vegetative propagating material is also applicable according to Article 3 of Regulation (EEC) No 2092/91.
- (3) Maintaining biodiversity is an important principle of organic farming and it should therefore be ensured that farmers have a big range of cultivars and varieties to choose among, including local cultivars and varieties.
- (4) It is clear that for certain species grown within the Community, there will not be adequate amounts of organically produced seed and vegetative propagating material available after 31 December 2003.
- (5) It is therefore necessary to maintain the possibility to use seed and vegetative propagating material not obtained by the organic production method if it is not possible to obtain seed or vegetative propagating material produced by the organic production method.
- (6) For the species for which there will be adequate amounts of organically produced seed or vegetative propagating material of a significant number of varieties available it should not be possible to use seed or vegetative propagating material not obtained by the organic production method. Accordingly, a list of the species excluded from the scope of the derogation should be established.
- (7) The application of the derogation with regard to vegetative propagating material, other than seed potatoes, should fall under the discretion of the Member States, until appropriate criteria can be adopted at Community level.
- (8) It is important to make the supply and demand for seed and vegetative propagating material produced by the organic production method more transparent in order to stimulate increased production and use of seed and vegetative propagating material produced by this method.
- (9) Each Member State should therefore ensure that a database, in which seed and seed potatoes produced by the organic production method and respecting the general criteria for production of seed and vegetative propagating material can be registered, is established and is made available to the users. In this context, and in order to facilitate access to information, it is appropriate to develop a harmonised model for the registration form to be used by the supplier of seed for the registration of seed and seed potatoes in the databases.
- (10) Each Member State should ensure the publication of a report on their granting of authorisations, for the information of all stakeholders, Member States and the Commission.
- (11) The system should be re-examined thoroughly after the first two years of experience in order to assess to what extent organically produced seed and vegetative propagating material have been used by the farmers. In this context the Commission should consider the opportunity of developing a database at Community level.
- (12) The measures provided for in this Regulation are in accordance with the opinion of the Committee set up in accordance with Article 14 of Regulation (EEC) No 2092/91,

⁽¹⁾ OJ L 198, 22.7.1991, p. 1.⁽²⁾ OJ L 85, 2.4.2003, p. 15.

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL RULES

Article 1

Maintenance of the derogation

1. The derogation provided for in Article 6(3)(a) of Regulation (EEC) No 2092/91, according to which Member States may authorise the use of seed or vegetative propagating material not obtained by the organic production method, subject to the conditions set out in that Article, is maintained after 31 December 2003 as regards species not listed in the Annex to this Regulation.

For the application of the derogation concerning seed or seed potatoes referred to in the first subparagraph, procedural rules and criteria are set out in Articles 3 to 14.

2. Species for which it is established, in accordance with the procedure laid down in Article 14 of Regulation (EEC) No 2092/91, that organically produced seed or seed potatoes are available in sufficient quantities and for a significant number of varieties in all parts of the Community are set out in the Annex to this Regulation.

The species listed in the Annex are not entitled to authorisations pursuant to the derogation referred to in paragraph 1 unless it is justified by one of the purposes referred to in Article 5(1)(d).

Article 2

Definitions

For the purpose of this Regulation:

- (a) the definitions in Regulation (EEC) No 2092/91 shall apply;
- (b) 'supplier' means an operator who markets seed or seed potatoes to other operators.

CHAPTER II

APPLICATION OF THE DEROGATION

Article 3

Use of seed or seed potatoes not obtained by the organic production method

Member States may, pursuant to the procedure set out in Article 5, authorise the use of seed or seed potatoes not obtained by the organic production method, provided that the seed or seed potatoes are:

- (a) not treated with plant protection products, other than those accepted for treatment of seed in part B of Annex II, to Regulation (EEC) No 2092/91, unless chemical treatment is

prescribed in accordance with Council Directive 2000/29/EC⁽¹⁾ for phytosanitary purposes by the competent authority of the Member State for all varieties of a given species in the area where the seed or seed potatoes are to be used, and

- (b) produced without the use of genetically modified organisms and/or any products derived from such organisms.

Article 4

Authorities or bodies responsible for granting authorisations

Inspection authorities or bodies referred to in Article 9 of Regulation (EEC) No 2092/91 are responsible for granting the authorisation referred to in Article 5 of the present Regulation, unless the Member State designates other authorities or bodies supervised by the Member State concerned.

Article 5

Conditions for granting authorisations

1. Authorisation to use seed or seed potatoes not obtained by the organic production method may only be granted in the following cases:

- (a) if no variety of the species which the user wants to obtain is registered in the database provided for in Article 6;
- (b) if no supplier is able to deliver the seed or seed potatoes before sowing or planting in situations where the user has ordered the seed or seed potatoes in reasonable time;
- (c) if the variety which the user wants to obtain is not registered in the database, and the user is able to demonstrate that none of the registered alternatives of the same species are appropriate and that the authorisation therefore is significant for his production;
- (d) if it is justified for use in research, test in small-scale field trials or for variety conservation purposes agreed by the competent authority of the Member State.

2. The authorisation shall be granted before the sowing of the crop.

3. The authorisation shall be granted only to individual users for one season at a time and the authority or body responsible for the authorisations shall register the quantities of seed or seed potatoes authorised.

⁽¹⁾ OJ L 169, 10.7.2000, p. 1.

4. By way of derogation from paragraph 3, the competent authority of the Member State may grant to all users a general authorisation for a given

- species when and in so far as the condition laid down in paragraph 1(a) is fulfilled, or
- variety when and in so far as the conditions laid down in paragraph 1(c) are fulfilled.

Such authorisations shall be clearly indicated in the database.

5. Authorisation may only be granted during periods for which the database is updated in accordance with Article 7(3).

CHAPTER III

RULES ON REGISTRATION OF SEED OR SEED POTATOES OBTAINED BY THE ORGANIC PRODUCTION METHOD

Article 6

Database

1. Each Member State shall ensure that a computerised database is established for the listing of the varieties for which seed or seed potatoes obtained by the organic production method prescribed in Article 6(2) of Regulation (EEC) No 2092/91 are available on its territory.

2. The database shall be managed either by the competent authority of the Member State or by an authority or body designated for this purpose by the Member State, hereinafter referred to as 'manager of the database'. Member States may also designate an authority or a private body in another country.

3. Each Member State shall inform the Commission and the other Member States of the authority or private body designated to manage the database.

Article 7

Registration

1. Varieties for which seed or seed potatoes produced by the organic production method are available shall be registered in the database at the request of the supplier.

2. Any variety which has not been registered in the database shall be considered as unavailable with regard to the application of Article 5 of the present Regulation.

3. Each Member State shall decide in which period of the year the database has to be regularly updated for each species or group of species cultivated on its territory. The database shall hold information on this.

Article 8

Conditions for registration

1. For registration, the supplier must be able to:

- (a) demonstrate that he or the last operator, in cases where the supplier is only dealing with prepackaged seed or seed potatoes, has been subject to the inspection system referred to in Article 9 of Regulation (EEC) No 2092/91;
- (b) demonstrate that the seed or seed potatoes to be placed on the market comply with the general requirements applicable to seed and vegetative propagating material;
- (c) make available all the information required under article 9 of this Regulation, and undertake to update this information at the request of the manager of the database or whenever such updating is necessary to ensure that the information remains reliable.

2. The manager of the database may, with the approval by the competent authority of the Member State, refuse a supplier's application for registration or delete an already accepted registration if the supplier does not comply with the requirements set out in paragraph 1.

Article 9

Registered information

1. For each registered variety and for each supplier, the database shall contain at least the following information:

- (a) the scientific name of the species and the variety denomination;
- (b) the name and contact details of the supplier or his representative;
- (c) the area where the supplier can deliver the seed or seed potatoes to the user in the usual time needed for the delivery;
- (d) the country or region in which the variety is tested and approved for the purpose of the common catalogue of varieties of agricultural plant species and vegetable species;
- (e) the date from which the seed or seed potatoes will be available;
- (f) the name and/or code number of the inspection authority or body in charge of the inspection of the operator as referred to in Article 9 of Regulation (EEC) No 2092/91.

2. The supplier shall immediately inform the manager of the database if any of the registered varieties are no longer available. The amendments shall be recorded in the database.

3. Besides the information specified in paragraph 1, the database shall contain a list of the species listed in the Annex.

*Article 10***Access to information**

1. The information in the database shall be available through the Internet, free of cost, to the users of seed or seed potatoes and to the public. Member States may decide that users who are registered according to Article 8(1)(a) of Regulation (EEC) No 2092/91 shall obtain, at request, an extract of data concerning one or several groups of species from the database manager.

2. The Member States shall ensure that all users who are registered according to Article 8(1)(a) of Regulation (EEC) No 2092/91 are informed, at least once a year, about the system and how to obtain the information in the database.

*Article 11***Registration fee**

Each registration may be subject to the levying of a fee, which shall represent the cost of introducing and maintaining the information in the database. The competent authority of the Member State shall approve the level of the fee practised by the manager of the database.

CHAPTER IV

REPORT AND FINAL PROVISIONS*Article 12***Annual report**

1. The authorities or bodies designated to grant authorisations in accordance with Article 4 shall register all authorisations, and shall make this information available in a report to the competent authority of the Member State and to the manager of the database.

The report shall contain, for each species concerned by an authorisation according to Article 5(1), the following information:

- (a) the scientific name of the species and the variety denomination;
- (b) the justification for the authorisation indicated by a reference to Article 5(1)(a), (b), (c) or (d);
- (c) the total number of authorisations;

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 14 August 2003.

(d) the total quantity of seed or seed potatoes involved;

(e) the chemical treatment for phytosanitary purposes, as referred to in Article 3(a).

2. For authorisations according to Article 5(4) the report shall contain the information referred to in paragraph 1(a) and the period for which the authorisations were in force.

*Article 13***Summary report**

The competent authority of the Member State shall, before 31 March each year, collect the reports and send a summary report covering all authorisations of the Member State from the previous calendar year to the Commission and to the other Member States. The report shall cover the information specified in Article 12. The information shall be published in the database. The competent authority may delegate the task of collecting the reports to the manager of the database.

*Article 14***Information upon request**

Upon request from a Member State or the Commission, detailed information on authorisations granted in individual cases shall be made available to other Member States or to the Commission.

*Article 15***Revision**

Before 31 July 2006 the Commission will examine the availability and use of seed or vegetative propagating material obtained by the organic production method and the effective implementation of the present regulation and will, if necessary, make the appropriate amendments.

*Article 16***Entry into force and application**

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

It shall apply from 1 January 2004.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX

The Commission is currently investigating this issue with the Member States in order to establish a list of species to be included in the Annex, in accordance with the opinion of the Committee set up in accordance with Article 14 of Regulation (EEC) No 2092/91.
