

COMMISSION IMPLEMENTING DECISION

of 18 March 2014

on the organisation of a temporary experiment providing for certain derogations for the marketing of populations of the plant species wheat, barley, oats and maize pursuant to Council Directive 66/402/EEC*(notified under document C(2014) 1681)***(Text with EEA relevance)**

(2014/150/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Directive 66/402/EEC of 14 June 1966 on the marketing of cereal seed ⁽¹⁾, and in particular Article 13a thereof,

Whereas:

- (1) Directive 66/402/EEC sets out specific requirements for the production and marketing of cereal seed. Those provisions prevent the marketing of seed not belonging to a variety.
- (2) However, new research in the Union on plant reproductive material that does not fulfil the variety definition as regards uniformity, shows that there could be benefits of using this diverse material, in particular with regards to organic production or in low input agriculture for example to reduce the spread of diseases.
- (3) To allow seed from those populations to be marketed, it would be necessary to amend points E, F and G of Article 2(1) of Directive 66/402/EEC by adding the possibility to market seed which does not fulfil the requirements concerning varietal aspects. In order to decide about such amendment to Directive 66/402/EEC, it is necessary to gather information on the marketing of seed from populations. In particular, it needs to be verified whether the identification of populations of particular species can be ensured, with guarantees similar to those resulting from the requirements concerning varietal aspects, on the basis of information on their breeding and production methods. Moreover, it should be assessed under this experiment whether the identity of the seed marketed as belonging to those

populations and the information to the user can be ensured, with guarantees similar to those resulting from Article 3(1) and Article 10, based on traceability requirements and identification of the places of production.

- (4) Given the characteristics of populations, the certification of seed from populations might imply a disproportionate burden for authorities and for operators. It is therefore appropriate to gather information on the possibility to provide for a system of controls of the production and marketing of seed of populations not requiring certification.
- (5) In view of their significance for the market sector of cereals and available research results, the species subject to this experiment should be wheat, barley, oats and maize.
- (6) In order to clarify the nature of populations in comparison to varieties, it is necessary to lay down a requirement on the number of varieties used in the crossings to breed a population.
- (7) The responsible official bodies should monitor this experiment through official controls on the production and marketing of seed from populations and their quantities, the persons maintaining those populations and the performance of those populations in specific areas.
- (8) Conditions should be established for the submission of applications and authorisation of a population pursuant to this Decision, submission of a reference sample, denomination of the population, and registration of persons producing and marketing those populations. It is important that those conditions are assessed to ensure identity and traceability during the production and marketing of such population, effective controls by the responsible official bodies and avoidance of the creation of a market parallel to the one established pursuant to Directive 66/402/EEC.

⁽¹⁾ OJ L125, 11.7.1966, p. 2309/66.

- (9) Furthermore, it is appropriate to provide for specific requirements for the production and marketing in order to ensure that the seeds from populations fulfil the same requirements in all participating Member States. These requirements should be based on the conditions set out in this Decision. In order to ensure the health and quality of the seed those requirements should be similar to those set out for certified seed in Directive 66/402/EEC as to ensure the comparable level of quality.
- (10) Given the experimental nature of the measure provided for by this Decision, a maximum quantity for the marketing of populations should be fixed, taking into account the need to test different types of populations using existing facilities. That quantity should be such as to allow for reliable and representative results of the experiment. However it should not exceed a certain limit, in order to prevent the development of a market of seeds parallel to the one established pursuant to Directive 66/402/EEC.
- (11) In order to ensure transparency and informed choices for the users of those populations, and to prevent fraudulent practices, special labelling conditions should be adopted for the marketing of seed from those populations during that experiment. Due to the special nature of the populations, those conditions should derogate from the provisions of Annex V to Directive 66/402/EEC. It should be tested whether sufficient and appropriate information to the user of the material may be ensured by the requirements that the denomination of populations clearly indicates that they are populations and that the label indicates the region of production.
- (12) In order to determine the economic, agronomic and environmental value of the improved alternatives to the above provisions of Directive 66/402/EEC, it is important to ensure a comprehensive assessment of several elements and results of that experiment. To that purpose Member States should record the appropriate information, namely the species and denominations used for populations under the experiment, type of populations, modalities and costs of authorisation of populations, results of testing, performance results, sizes of involved operators, type of users and their experience.
- (13) To allow Member States to verify that the maximum quantity of seed from populations is not exceeded, operators intending to produce such populations should communicate to the Member States concerned the quantities they intend to produce.
- (14) In order to allow operators to produce and market a sufficient quantity of seed, and to permit the competent authorities to inspect that material and

collect sufficient and comparable information to be used for the preparation of the report, the experiment should take place over a period of at least three marketing seasons.

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

HAS ADOPTED THIS DECISION:

Article 1

Subject matter

1. A temporary experiment is organised at Union level for the purpose of assessing whether the production, with a view to marketing, and marketing, under certain conditions, of seed from populations, as referred to in Article 2 and belonging to the species *Avena* spp., *Hordeum* spp., *Triticum* spp. and, *Zea mays* L., may constitute an improved alternative to the exclusion of the marketing of seed not complying with the requirements of Article 2(1)(E), (F) and (G) of Directive 66/402/EEC concerning varietal aspects of seeds of certain species, and to the requirements of Article 3(1) concerning the placing on the market with official certification as 'certified seed', 'certified seed, first generation' or 'certified seed, second generation'.

2. The following elements shall be assessed:

- (a) whether the identification of populations of those species can take place on the basis of information on their breeding and production methods, the varieties used in the crossing, and the main characteristics of those populations; and
- (b) whether the identity of seeds from those populations marketed can be based on traceability requirements and identification of the region of production.

Article 2

Scope

This Decision shall cover plant groupings which fulfil all of the following requirements:

- (a) they result from a given combination of genotypes;

(b) they are considered as units with regard to their suitability for being reproduced unchanged once established in a given region of production with specific agro- climatic conditions;

(c) they are generated by one of the following techniques:

- (i) crossing five or more varieties in all combinations followed by bulking of the progeny and exposing the stock to natural selection in successive generations;
- (ii) growing together at least five varieties of a predominantly cross-fertilising species, bulking the progeny, repeatedly re-sowing and exposing the stock to natural selection until plants of the original varieties are no longer present;
- (iii) inter-crossing varieties using crossing protocols different from those in (i) or (ii) to produce a similarly diverse population that does not contain varieties.

Hereinafter such plant groupings are referred to as 'populations'.

Article 3

Participation of Member States

1. Any Member State may participate in the experiment. The latest date at which they may start participating is January 2017.

2. Member States which decide to participate in the experiment (hereinafter: 'participating Member States') shall inform the Commission and the other Member States concerning their participation, indicating the species and regions covered by their participation, and measures applied under this Decision.

3. Participating Member States may terminate their participation at any time by informing the Commission accordingly.

Article 4

Release from obligations

Participating Member States are released from the obligations provided for in Article 2(1)(E), (F) and (G), in Article 3(1) and in

Article 10 of Directive 66/402/EEC, with regard to the production, with a view to marketing, and marketing of populations.

Article 5

Identification of populations

A population shall be identifiable on the basis of the following elements:

- (a) the varieties used in the crossing for the creation of the population;
- (b) the breeding schemes as defined by the respective protocols;
- (c) the region of production;
- (d) the degree of heterogeneity, in particular in self-pollinating species; and
- (e) its characteristics, as referred to in Article 7(2)(f).

Article 6

Conditions for production and marketing seed of the populations

For the purposes of this experiment, Member States shall ensure that the seed of the population may be produced, with a view to marketing, and marketed if the following conditions are satisfied:

- (a) the seed belongs to an authorised population;
- (b) the seed complies with Article 9;
- (c) the denomination of the population complies with Article 8;
- (d) the population is bred and the seed is produced by persons registered pursuant to Article 10.

Article 7

Authorisation of populations

1. Member States shall authorise populations in accordance with paragraphs 2, 3 and 4.

2. An application for authorisation shall be submitted to the seed certification authority. That application shall include the following elements:

- (a) name and address of the applicant;
- (b) species and denomination of the population;
- (c) a description of the type of technique used to generate the population, with reference, as applicable, to Article 2(c)(i), (ii) or (iii);
- (d) objectives of the breeding programme;
- (e) breeding and production method: breeding scheme as defined by the respective protocols, varieties used to breed and produce the population, and own production control programme used by the operator concerned;
- (f) a description of its characteristics:
 - (i) documentation of its characteristics which the applicant considers as important as regards yield, quality, performance, usability for low input systems, disease resistance, yield stability, taste or colour;
 - (ii) experimental trial results concerning the characteristics referred to in point (i);
- (g) region of production;
- (h) a declaration of the applicant concerning the trueness of the elements referred to in Article 5(1);
- (i) a representative sample of the population;
- (j) name and address of the person responsible for the breeding, production and maintenance.

3. The seed certification authority shall check the following elements:

- (a) compliance of the application with paragraph 2; and
- (b) compliance of the population with the identification requirements of Article 5.

Compliance with the identification requirements of Article 5 shall be concluded on the basis of submitted documentation and inspections in the premises where the population is produced.

4. The authorisation of a population, and the elements set out in paragraph 2, shall be notified to the other Member States and the Commission.

Article 8

Denomination of populations

1. Populations shall have a denomination. The rules on the denomination of varieties, as laid down in Article 9(6) of Council Directive 2002/53/EC⁽¹⁾, shall apply accordingly for the denomination of populations.

2. The word 'population' shall be added at the end of each denomination.

Article 9

Requirements concerning the crop, the seed and the weights of lots and samples

1. Points 1 and 6 of Annex I to Directive 66/402/EEC shall apply.

2. During the production and marketing of seed belonging to populations, the seed shall comply with points 2 and 3 of Annex II to Directive 66/402/EEC concerning the second generation of certified seed in the case of populations of *Avena nuda* L., *Avena sativa* L., *Avena strigosa* Schreb., *Hordeum vulgare* L., *Triticum aestivum* L., *Triticum durum* L. and *Triticum spelta* L. and certified seed in case of populations of *Zea mays* L..

3. During the production and marketing of seed belonging to populations, the weights of lots and samples shall comply with Annex III to Directive 66/402/EEC, and, in the case of *Zea mays* L., with the provisions of that Annex concerning certified seed of that species.

Article 10

Registration of breeders, producers and persons responsible for the maintenance of populations

1. Each Member State shall register the persons who breed populations or produce or maintain seed of populations in its territory in a register, if they comply with the requirements of paragraph 2.

⁽¹⁾ Council Directive 2002/53/EC of 13 June 2002 on the common catalogue of varieties of agricultural plant species (OJ L 193, 20.7.2002, p. 1).

2. Breeders, producers and persons responsible for the maintenance of populations shall submit an application to the seed certification authority for inclusion in the register. That application shall include the following elements:

- (a) their name, address and contact details;
- (b) denomination of the population concerned.

3. The register shall contain the following elements:

- (a) name, address and contact details as set out in point (a) of paragraph 2;
- (b) denomination of the population referred to in paragraph 2(b) to be produced or maintained.

Article 11

Labelling

Packages or containers of seeds shall bear a label which is affixed by the producer. That label shall include the information set out in Annex I.

Article 12

Quantitative restrictions

1. The quantities of seed marketed of the authorised population of each species, for each participating Member State per year, shall not exceed 0,1 % of seed of the same species produced in that year in the participating Member State.

2. Each producer shall declare to the seed certification authority the quantity of each population it intends to produce for each year.

3. A participating Member State may prohibit the marketing of seed of a population if it considers that, in view of the purpose of the experiment, it is not appropriate that additional quantities of seed of the population concerned are placed on the market. It shall immediately inform the producer or producers concerned.

Article 13

Traceability

1. Any person marketing seeds of populations shall ensure traceability of those seeds.

2. A person marketing seeds of populations shall keep information allowing it to identify the persons which have supplied them with, and to whom they have supplied, seeds of a population.

3. The information shall be made available on request to the seed certification authority.

Article 14

Official controls

The seed certification authorities of the participating Member States shall officially control the production and marketing of seeds of populations. Official controls shall include at least:

- (a) field inspection, sampling and checks of populations, as laid down in point (1) of Annex II;
- (b) supervision of organisation of comparative field trials for this purpose, as laid down in point (2) of Annex II;
- (c) quantities produced and quantities marketed;
- (d) compliance of the producer and any person marketing seed pursuant to this Decision.

The control referred to in point (d) shall take place at least once per year. It shall include inspections of the premises of the persons concerned and the fields used for the production of the populations.

Article 15

Maintenance of populations

1. The person responsible for the maintenance of the population shall maintain the population for the duration of this experiment.

That maintenance shall be in accordance with accepted practices for the species concerned.

2. The person responsible for the maintenance of the population shall keep records concerning the maintenance of the populations and make those records available for inspection by the responsible official body at any time.

3. The responsible official body shall carry out controls on the manner in which the populations are maintained and may, to this purpose, take samples of the seed of the populations concerned.

Article 16

Notification obligations of producers

Producers shall notify annually the seed certification authorities of the information set out in points (a), (b), (c), (f), (g), (h) and (i) of Annex III.

Article 17

Recording of information

Participating Member States shall record the information, as indicated in Annex III, concerning the production and marketing of populations. On request, they shall assist each other in recording that information.

Article 18

Reporting obligations

1. Participating Member States shall, for each year, present to the Commission and the other Member States, by 31 March of the following year, an annual report, including the following elements:

- (a) information on types and number of populations authorised per species, produced and marketed under the experiment; and
- (b) the quantities produced and marketed per population and species, and, where applicable, the Member State for which the seed was intended.

The participating Member States may decide to include in the report any other relevant information.

2. The participating Member States shall present to the Commission and the other Member States, by 31 March 2018, a report setting out the information referred to in Annex III. That report shall include an assessment of the conditions of the experiment and of the interest of extending its duration, if appropriate, by reference to each species. That report may include other information they consider relevant in view of the purpose of the experiment.

3. A Member State ending its participation before 31 December 2017 shall submit its report by 31 March of the year following the end of its participation.

Article 19

Time period

The experiment shall start on 1 March 2014 and end on 31 December 2018.

Article 20

Addressees

This Decision is addressed to the Member States.

Done at Brussels, 18 March 2014.

For the Commission
Tonio BORG
Member of the Commission

ANNEX I

INFORMATION TO BE SET OUT ON THE LABEL PROVIDED FOR IN ARTICLE 11

The label of the packages or containers containing the seeds shall include the following:

- (1) the words 'Temporary experiment under EU rules and standards';
 - (2) seed certification authority and the Member State, or their initials;
 - (3) the name and address of the producer responsible for affixing the label, or its registration code;
 - (4) region of production;
 - (5) the reference number of the lot;
 - (6) month and year of sealing expressed thus: 'sealed ...' (month and year) or month and year of the last official sampling for the purposes of control expressed thus: 'sampled ...' (month and year);
 - (7) species, indicated at least under its botanical name, which may be given in abridged form and without the authors names, in roman characters;
 - (8) denomination of the population;
 - (9) Member State of production, if different to point 2;
 - (10) declared net or gross weight, or declared number of seeds;
 - (11) where weight is indicated and granulated pesticides, pelleting substances, or other solid additives are used, the nature of the additive and also the approximate ratio between the weight of pure seeds and the total weight;
 - (12) where at least germination has been retested, declaration of the germination level on the label. Such information may be given on a sticker attached to the label.
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*ANNEX II***SAMPLING AND CHECKS REFERRED TO IN ARTICLE 14**

The following sampling and examination shall be carried out:

- (1) Production fields shall be inspected and seed samples shall be taken, at random every year, of at least of 5 % of all the lots of seeds of populations and production fields under the experiment by official seed samplers.

Each production field shall be officially checked during the temporary experiment at least twice.

These samples shall be used for controlling compliance with Article 5, as regards the identity, and with Article 9, as regards the quality of the seed.

- (2) Comparative field trials shall be carried out on each of the authorised populations marketed under the experiment.

The field trials shall be carried out by competent authorities, research institutions or by breeders or producers. In case of breeders and producers, the Member States shall supervise the trials.

*ANNEX III***INFORMATION TO BE RECORDED AS REFERRED TO IN ARTICLE 17**

The following information shall be recorded:

- (a) name of the species and denomination used for each authorised population under the experiment;
- (b) type of populations as referred to in Article 2(c);
- (c) the quantities produced and marketed per population and species and the Member State for which the seed was intended;
- (d) modalities of authorisation of populations by the Member States and related costs for the applicant;
- (e) description and results of the tests carried out in accordance with Annex II point (1);
- (f) comparative field trial results as referred to in Annex II point (2);
- (g) size of the participating breeders and producers: micro-enterprise, small enterprise, medium enterprise or large enterprise;
- (h) valuation of the populations by users as regards characteristics pursuant to Article 7(2)(f).
-