COUNCIL DIRECTIVE

of 26 March 1990

amending Directive 77/93/EEC on protective measures against the introduction into the Member States of organisms harmful to plants or plant products

(90/168/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal the Commission (1),

Having regard to the opinion of the European Parliament (2),

Whereas, by Directive 77/93/EEC (3), as last amended by Directive 89/439/EEC (4), the Council laid down protective measures against the introduction into the Member States of organisms harmful to plants or plant products; whereas the protection of plants against such organisms is absolutely necessary to increase agricultural productivity, which is one of the objectives of the common agricultural policy;

Whereas, at present, in addition to providing for checks by consignor Member States, Directive 77/93/EEC allows checks by Member States of destination; whereas, in the interest of the free movement of plants and plant products within the Community, which is an element essential to agricultural productivity and contributes to the proper functioning of the common agricultural policy, these latter checks should be progressively reduced and a better balance established, in the matter of checks, between the consignor Member State and the Member State of destination, with greater responsibility being placed on the former; whereas Article 11 of Directive 77/93/EEC should be amended accordingly;

Whereas it has become necessary to improve the functioning of the safeguard clause provided for in Article 15 of Directive 77/93/EEC; whereas safeguard measures should normally be adopted by the Member State where the problem originates and the Commission should be informed of all events which require the adoption of safeguard measures,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 77/93/EEC is hereby amended as follows:

1. In Article 11 (3), second subparagraph, 'one-third' is replaced by 'a certain percentage'.

2. After Article 11 (3), second subparagraph, the following subparagraph is added:

'This percentage may be determined on the basis of the plant or plant product categories, in accordance with the procedure laid down in Article 16a. It shall be lower than 33 % and shall be gradually reduced to reach zero by the time that Member States have brought into effect the new checking arrangements in compliance with the provisions intended for the completion of the internal market.'

3. The following paragraph is inserted in Article 11:

'3a. The documentary checks referred to in paragraph 1 (a) and the identity checks referred to in paragraph 1 (e) shall be carried out only at the time and place at which customs or other administrative formalities in connection with the movement of goods are completed. In accordance with the procedure laid down in Article 16a, it shall be decided what percentage of consignments should be subject to occasional documentary and identity checks by sampling, according to plant or plant product categories. This percentage shall be gradually reduced to reach zero by the time that Member States have brought into effect the new checking arrangements in compliance with the provisions intended for the completion of the internal market.'

4. Article 15 (1) is replaced by the following:

'1. (a) Each Member State shall immediately notify the Commission and the other Member States of the actual or suspected occurence of harmful organisms not known hitherto to be present in its territory. It shall also inform the Commission and the other Member States of the protective measures which it has taken or intends to take. These measures must, *inter alia*, be such as to prevent risk of the spread of the harmful organism concerned in the territory of the other Member States.

(b) In respect of consignments of plants, plant products or other objects from third countries considered to involve an imminent danger of the introduction or spread of the harmful organisms referred to in (a), the Member State concerned shall immediately take the measures necessary to protect the territory of the Community from that danger and shall inform the Commission and the other Member States thereof.

(1) OJ No C 117, 4. 5. 1988, p. 11.
(2) OJ No C 187, 18. 7. 1988, p. 213.
(3) OJ No L 26, 31. 1. 1977, p. 20.
(4) OJ No L 212, 22. 7. 1989, p. 106.

(c) Where a Member State considers that there is an imminent danger other than that referred to in (b), it shall immediately notify the Commission and the other Member States of the measures which it would like to see taken. If it considers that these measures are not being taken in sufficient time to prevent the introduction or spread of a harmful organism in its territory, it may temporarily take any additional measures which it deems necessary, as long as the Commission has not adopted measures pursuant to paragraph 2.

The Commission will present a report to the Council on the operation of this provision, together with any proposals, by 31 December 1992.'

5. The following paragraph is added to Article 15:

'3. The detailed rules for applying paragraph 1 shall be adopted, as necessary, in accordance with the procedure laid down in Article 16a.'

Article 2

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 1 January 1991.

Article 3

This Directive is addressed to the Member States.

Done at Luxembourg, 26 March 1990.

For the Council

The President

M. O'KENNEDY