

## COUNCIL DIRECTIVE

of 29 September 1970

on the common catalogue of varieties of agricultural plant species

(70/457/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 43 and 100 thereof;

Having regard to the proposal from the Commission;

Having regard to the Opinion of the European Parliament<sup>1</sup>;

Having regard to the Opinion of the Economic and Social Committee;

Whereas the production of agricultural seed and young plants occupies an important place in the agriculture of the European Economic Community;

Whereas, for this reason, the Council has already adopted Directives on the marketing of beet seed<sup>2</sup>, fodder plant seed<sup>3</sup>, cereal seed<sup>4</sup>, seed potatoes<sup>5</sup> and seed of oil and fibre plants<sup>6</sup>;

Whereas those Directives allow Member States provisionally to restrict the marketing of the seed and propagating material of the varieties of plant concerned to the seed and propagating material of those varieties which are included in a national list and are of value for cultivation and use in their own territory; whereas, however, those Directives also provide that such restriction may be imposed only until such time as a common catalogue of varieties of agricultural plant species has been compiled;

Whereas a common catalogue of varieties can for the moment be compiled only on the basis of national catalogues;

Whereas all Member States should therefore compile one or more national catalogues of the varieties accepted for certification and marketing in their territory;

Whereas these catalogues must be drawn up in accordance with uniform rules so that the varieties accepted will be distinct, stable and sufficiently uniform and that they will be of satisfactory value for cultivation and use;

Whereas, in order to carry out the examinations for the acceptance of a variety, a large number of uniform criteria and minimum requirements must be laid down;

Whereas, furthermore, provisions relating to the length of time during which acceptance of a variety is to remain valid, to the grounds on which acceptance may be revoked and to practices for maintenance of the variety must be standardized and whereas the Member States should inform one another of the acceptance and withdrawal of varieties;

Whereas all seed or propagating material of varieties which have been accepted in accordance with the principles of the Directive since 1 July 1967 in one or more Member States should, after a certain time, be subject within the Community to no restrictions relating to variety; whereas all such seeds or propagating material should be added to the common catalogue of varieties;

Whereas, however, Member States should be given the right to express by means of a special procedure any objections which they may have to a variety and to its inclusion in the common catalogue of varieties as well as any objections on plant health grounds to a variety already entered in that catalogue;

Whereas special rules should be adopted to cover varieties which were accepted in a Member State before 1 July 1967 in accordance with the principles of this Directive; whereas it seems justifiable to make their inclusion in this catalogue conditional upon their being of importance for seed production;

Whereas the Commission should publish in the *Official Journal of the European Communities* the varieties which are being added to the common catalogue of varieties of agricultural plant species;

<sup>1</sup> OJ No C 108, 19.10.1968, p. 30.

<sup>2</sup> OJ No 125, 11.7.1966, p. 2290/66.

<sup>3</sup> OJ No 125, 11.7.1966, p. 2298/66.

<sup>4</sup> OJ No 125, 11.7.1966, p. 2309/66.

<sup>5</sup> OJ No 125, 11.7.1966, p. 2320/66.

<sup>6</sup> OJ No L 169, 10.7.1969, p. 3.

Whereas provision should be made for measures recognizing the equivalence of examinations and controls of varieties carried out in third countries;

Whereas, however, Community rules should not apply to varieties the seed or propagating material of which are shown to be intended for export to third countries;

Whereas the Commission should be entrusted with the task of adopting certain measures for the application of this Directive; whereas, in order to facilitate implementation of the proposed measures, a procedure should be provided for establishing close cooperation between Member States and the Commission within the Standing Committee on Seeds and Propagating Material for Agriculture, Horticulture and Forestry set up by the Council Decision of 14 June 1966<sup>1</sup>.

HAS ADOPTED THIS DIRECTIVE:

#### *Article 1*

1. This Directive concerns the acceptance for inclusion in a common catalogue of varieties of agricultural plant species of those varieties of beet, fodder plant, cereal, potato and oil and fibre plant the seed of which may be marketed under the provisions of the Council Directives of 14 June 1966 on the marketing of beet seed, fodder plant seed, cereal seed and seed potatoes and the Council Directive of 30 June 1969 on the marketing of seed of oil and fibre plants.

2. The common catalogue of varieties shall be compiled on the basis of the national catalogues of Member States.

#### *Article 2*

For the purposes of this Directive 'official measures' means measures taken:

- (a) by State authorities, or
- (b) by any legal person whether governed by public or by private law, acting under the responsibility of the State, or
- (c) in the case of ancillary activities which are also under State control, by any natural person duly sworn for that purpose,

provided that the persons mentioned under (b) and (c) derive no private gain from such measures.

#### *Article 3*

1. Each Member State shall establish one or more catalogues of the varieties officially accepted for certification and marketing in its territory. Any person may consult the catalogues.

2. Member States may provide that the acceptance of a variety for inclusion in the common catalogue or in the catalogue of another Member State is equivalent to acceptance for inclusion in their own catalogues. If such

provision is made, the Member State shall be released from the obligations provided in Article 7, 9(3) and 10(2) to (5).

3. The Member States shall take all measures necessary to ensure that official acceptances of varieties granted before 1 July 1970 in accordance with principles other than those of this Directive expire not later than 30 June 1980 if by that date the varieties in question have not been accepted in accordance with the principles of this Directive.

#### *Article 4*

1. The Member States shall ensure that a variety is accepted only if it is distinct, stable and sufficiently uniform. The variety must be of satisfactory value for cultivation and use.

2. Examination of the value for cultivation and use shall not be required:

- (a) for the acceptance of varieties of grasses if the breeder declares that the seed of his variety is not intended for the production of fodder plants;
- (b) for the acceptance of varieties whose seed is to be marketed in another Member State which has already accepted the varieties, having regard to their value for cultivation and use.

#### *Article 5*

1. A variety shall be regarded as distinct if, when acceptance is applied for, it is clearly distinguishable, in one or more important morphological or physiological characters, from all other varieties accepted or submitted for acceptance in the Member State in question or listed in the common catalogue of varieties.

2. A variety shall be regarded as stable if, after successive propagation or multiplications or at the end of each cycle (where the breeder has defined a particular cycle of propagation or multiplications) it remains true to the description of its essential characteristics.

3. A variety shall be regarded as sufficiently uniform if, apart from a very few aberrations, the plants of which it is composed are, account being taken of the distinctive features of the reproductive systems of the plants, similar or genetically identical as regards the characters, taken as a whole, which are considered for this purpose.

4. The value of a variety for cultivation or use shall be regarded as satisfactory if, compared to other varieties accepted in the catalogue of the Member State in question, its qualities, taken as a whole, offer, at least as far as production in any given region is concerned, a clear improvement either for cultivation or as regards the uses which can be made of the crops or the products derived therefrom. Where other, superior characteristics are present, individual inferior characteristics may be disregarded.

<sup>1</sup> OJ No 125, 11.7.1966, p.2289/66.

*Article 6*

The Member States shall ensure that varieties coming from other Member States are subject to the same requirements, in particular as regards the acceptance procedure, as those which apply to domestic varieties.

*Article 7*

1. The Member States shall provide that the acceptance of varieties be based on the results of official examinations, particularly growing trials, covering a sufficient number of characteristics for the variety to be described. The methods used for determining characters must be exact and reliable.

2. The following shall be fixed in accordance with the procedure laid down in Article 23, account being taken of current scientific and technical knowledge:

- (a) the characteristics to be covered as a minimum by the examinations of the various species;
- (b) the minimum requirements for carrying out the examinations.

3. Where examination of the genealogical components is necessary in order to study hybrids and synthetic varieties, the Member States shall ensure that the results of the examination and the description of the genealogical components are, if the breeder so requests, treated as confidential.

*Article 8*

The Member States shall require that when lodging an application for the acceptance of a variety, the applicant indicate whether acceptance has already been applied for in another Member State, which Member State was concerned and whether the application was granted.

*Article 9*

1. Each Member State shall arrange for official publication of the catalogue of varieties accepted in its territory and of the name of the person or persons responsible for maintenance of the variety in its country. When several persons are responsible for the maintenance of a variety, the names need not be published. If the names are not published, the catalogue shall indicate the authority holding the list of names of persons responsible for maintenance of the variety.

2. The Member States shall, as far as possible, ensure at the time of acceptance that the variety is known by the same name in all Member States.

If it is known that seed or propagating material of a given variety are marketed in another country under a different name, that name shall also be indicated in the catalogue.

3. The Member States shall compile a file on each variety accepted, containing a description of the variety and a clear summary of all the facts on which the acceptance was based. The description of the varieties shall relate to plants produced directly from seed and young plants of the category 'certified seed and propagating material'.

*Article 10*

1. The catalogue of varieties and any amendments made to it shall be sent forthwith to the other Member States and the Commission.

2. The Member States shall, for each new variety accepted, send the other Member States and the Commission a brief description of its most important characteristics for use.

3. Each Member State shall make available to the other Member States and the Commission the files referred to in Article 9(3) on the varieties which are accepted or which have ceased to be accepted. Information exchanged concerning these files shall be treated as confidential.

4. The Member States shall ensure that the acceptance files are made available for the personal and exclusive use of any person able to show a legitimate interest. These provisions shall not apply where the information must under Article 7(3) be treated as confidential.

5. Where acceptance of a variety is refused or revoked, the results of the examinations shall be made available to persons affected by such decision.

*Article 11*

1. The Member States shall provide that the varieties accepted must be maintained according to accepted practices for the maintenance of the variety.

2. It must at all times be possible to check maintenance from the records kept by the person or persons responsible for the variety. These records shall also cover the production of all generations prior to basic seed or propagating material.

3. Samples may be requested from the person responsible for the variety. Such samples may if necessary be taken officially.

4. Where maintenance takes place in a Member State other than the one in which the variety was accepted, the Member States concerned shall assist each other administratively as regards control.

*Article 12*

1. Acceptance shall be valid until the end of the tenth calendar year following acceptance.

2. Acceptance of a variety may be renewed at given intervals if it is still cultivated on such a scale as to justify this and provided that the requirements as to distinctness, uniformity and stability are still satisfied. Applications for renewal shall be submitted not later than two years before expiry of acceptance.

3. The period of validity of acceptance shall be extended provisionally until a decision is taken on the application for renewal.

*Article 13*

1. The Member States shall ensure that acceptance of a variety is revoked:
  - (a) if it is proved, on examination, that the variety is no longer distinct, stable or sufficiently uniform,
  - (b) if the person or persons responsible for the variety so request, unless there is maintenance of the variety.
2. Member States may revoke the acceptance of a variety:
  - (a) if the laws, regulations and administrative provisions adopted in pursuance of this Directive are not complied with,
  - (b) if, at the time of the application for acceptance or during examination, false or fraudulent particulars were supplied concerning the factors on the basis of which acceptance was granted.

*Article 14*

1. The Member States shall ensure that a variety is deleted from their catalogues if acceptance of the variety has been revoked or if the period of validity of the acceptance has expired.
2. Member States may, in respect of their own territory, allow a period of not more than three years after expiry of the acceptance for the disposal of seed or propagating material.

*Article 15*

1. The Member States shall ensure that after expiry of a period ending on 31 December of the second year following that in which a variety was accepted seed and propagating material of varieties accepted after 1 July 1972 in one or more Member States in accordance with the provisions of this Directive are subject to no marketing restrictions relating to variety.
2. By way of derogation from paragraph 1, a Member State may be authorized, upon application lodged before the expiry of the period specified above, which will be dealt with as provided in Article 23, to prohibit the marketing in all or part of its territory of seed and propagating material of the variety in question.
3. The authorization provided for in paragraph 2 shall be granted only in the following cases:
  - (a) where the variety is not distinct, stable or sufficiently uniform, or
  - (b) where it is established that the cultivation of the variety could be harmful from the point of view of plant health to the cultivation of other varieties or species, or
  - (c) where official growing trials carried out in the applicant Member State, Article 5(4) being applied correspondingly, show that the variety does not, in any part of its territory, produce results corresponding to those obtained from a comparable variety accepted in the territory of that Member State.

4. If, in respect of any given variety, a Member State does not intend to lodge an application under the procedure laid down in paragraph 2, it shall so notify the Commission or make a statement to the standing Committee on Seeds and Propagating Material to that effect.

5. Where all the Member States make the notification or the statement provided for in paragraph 4, the period provided for in paragraph 1 shall no longer apply and Article 18 shall be put into effect.

6. If at the time of its acceptance in one Member State a variety is also already being examined in another Member State with a view to acceptance, the period provided for in paragraph 1 shall for the latter Member State be shortened by the period of the examinations.

7. The period provided for in paragraph 1 may be extended before expiry in accordance with the procedure laid down in Article 23, where there is good reason.

*Article 16*

Article 15 shall also apply to varieties accepted by the individual Member States before 1 July 1972 in accordance with principles corresponding to those of this Directive, where:

- (a) the variety was accepted after 30 June 1967, or
- (b) the variety was accepted before the date referred to in (a) in two or more Member States, or
- (c) the variety was accepted before the date referred to in (a) in one Member State, provided that in that Member State the proportion of the area used for multiplication of the variety which was presented for field inspection with a view to certification represented, after the date referred to under (a) and in each of three growing seasons, at least 3% of the total area used for multiplication of the species.

*Article 17*

The period provided for in Article 15 (1) shall, for the cases referred to in Article 16 (a) and (b), run from 1 July 1972 and for the case referred to in Article 16 (c) from the date on which the Member State informs the Commission that that requirement is satisfied.

*Article 18*

The Commission shall, on the basis of the information supplied by the Member States and as this is received, publish in the *Official Journal of the European Communities* under the title 'Common Catalogue of Varieties of Agricultural Plant Species' a list of all varieties of which the seed and propagating material, under Articles 15 and 16, are not subject to any marketing restrictions as regards variety, and also the information required under Article 9(1) concerning the person or persons responsible for maintenance of the variety. The published notice shall indicate the Member States which have received an authorization under Article 15(2) or Article 19.

*Article 19*

If it is established that the cultivation of a variety included in the common catalogue of varieties could in any Member State be harmful from the point of view of plant health to the cultivation of other varieties or species, that Member State may upon application, which will be dealt with as provided in Article 23, be authorized to prohibit the marketing of the seed or propagating material of that variety in all or part of its territory. Where there is imminent danger of the spread of harmful organisms, and until such time as a final decision has been taken in accordance with the procedure laid down in Article 23, this prohibition may be imposed by the Member State concerned as soon as its application has been lodged.

*Article 20*

Where a variety ceases to be accepted in the Member State which initially accepted it, one or more other Member States may continue to accept that variety provided that the requirements for acceptance continue to be met in their territory and that maintenance remains assured.

*Article 21*

1. The Council, acting by a qualified majority on a proposal from the Commission, shall determine whether:

- (a) the official examinations of varieties carried out in the third country afford the same assurances as those provided for in Article 7 and carried out in the Member States;
- (b) the checks on practices for the maintenance of varieties carried out in the third country afford the same assurances as those carried out by the Member States.

2. Until such time as the Council has taken a decision under paragraph 1, the Member States shall be free to take such decisions themselves. This right shall expire on 1 July 1977.

*Article 22*

This Directive shall not apply to varieties the seed or propagating material of which are shown to be intended for export to third countries.

*Article 23*

1. Where the procedure laid down in this Article is to be followed, matters shall be referred by the Chairman,

either on his own initiative or at the request of the representative of a Member State, to the Standing Committee on Seeds and Propagating Material for Agriculture, Horticulture and Forestry (hereinafter called the 'Committee').

2. Within the Committee, the votes of the Member States shall be weighted as provided in Article 148 (2) of the Treaty. The Chairman shall not vote.

3. The representative of the Commission shall submit a draft of the measures to be adopted. The Committee shall deliver its opinion on such measures within a time limit set by the Chairman according to the urgency of the matter. Opinions shall be delivered by a majority of twelve votes.

4. The Commission shall adopt measures which shall apply immediately. However, if these measures are not in accordance with the opinion of the Committee, they shall forthwith be communicated by the Commission to the Council. In that event the Commission may defer application of the measures which it has adopted for not more than one month from the date of such communication.

The Council, acting by a qualified majority, may take a different decision within one month.

*Article 24*

Save as otherwise provided in Articles 15, 16 and 19, this Directive shall be without prejudice to the provisions of national laws justified on grounds of the protection of health and life of humans, animals or plants or the protection of industrial or commercial property.

*Article 25*

The Member States shall, not later than 1 July 1972, bring into force the laws, regulations or administrative provisions necessary to comply with this Directive. They shall forthwith inform the Commission thereof.

*Article 26*

This Directive is addressed to the Member States.

Done at Brussels, 29 September 1970.

*For the Council*

*The President*

J. ERTL