

COUNCIL DIRECTIVE 98/96/EC

of 14 December 1998

amending, *inter alia*, as regards unofficial field inspections under Directives 66/400/EEC, 66/401/EEC, 66/402/EEC, 66/403/EEC, 69/208/EEC, 70/457/EEC and 70/458/EEC on the marketing of beet seed, fodder plant seed, cereal seed, seed potatoes, seed of oil and fibre plants and vegetable seed and on the common catalogue of varieties of agricultural plant species

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⁾,

Whereas, for the reasons given below, the following Directives on the marketing of seed and propagating material should be amended:

- Council Directive 66/400/EEC of 14 June 1966 on the marketing of beet seed⁽⁴⁾,
- Council Directive 66/401/EEC of 14 June 1966 on the marketing of fodder plant seed⁽⁵⁾,
- Council Directive 66/402/EEC of 14 June 1966 on the marketing of cereal seed⁽⁶⁾,
- Council Directive 66/403/EEC of 14 June 1966 on the marketing of seed potatoes⁽⁷⁾,
- Council Directive 69/208/EEC of 30 June 1969 on the marketing of seed of oil and fibre plants⁽⁸⁾,
- Council Directive 70/457/EEC of 29 September 1970 on the common catalogue of varieties of agricultural plant species⁽⁹⁾, and

⁽¹⁾ OJ C 289, 24.9.1997, p. 6.

⁽²⁾ OJ C 167, 29.6.1998, p. 302.

⁽³⁾ OJ C 73, 9.3.1998, p. 45.

⁽⁴⁾ OJ 125, 11.7.1966, p. 2290/66. Directive as last amended by Directive 98/95/EC (See page 1 of this Official Journal).

⁽⁵⁾ OJ 125, 11.7.1966, p. 2298/66. Directive as last amended by Directive 98/95/EC.

⁽⁶⁾ OJ 125, 11.7.1966, p. 2309/66. Directive as last amended by Directive 98/95/EC.

⁽⁷⁾ OJ 125, 11.7.1966, p. 2320/66. Directive as last amended by Directive 98/95/EC.

⁽⁸⁾ OJ L 169, 10.7.1969, p. 3. Directive as last amended by Directive 98/95/EC.

⁽⁹⁾ OJ L 225, 12.10.1970, p. 1. Directive as last amended by Directive 98/95/EC.

- Council Directive 70/458/EEC of 29 September 1970 on the marketing of vegetable seed⁽¹⁰⁾;

Whereas Commission Decision 89/540/EEC of 22 September 1989 on the organisation of a temporary experiment on the marketing of seeds and propagating material⁽¹¹⁾, organised a temporary experiment under specified conditions, with the aim of assessing whether unofficial field inspections could ensure simplification of the procedures for official seed certification required under Directives 66/400/EEC, 66/401/EEC, 66/402/EEC and 69/208/EEC without a significant decrease in the quality of the seed;

Whereas the results of the experiment have shown that, for certain purposes, there could be a simplification of the procedures for official seed certification of 'certified seed' of all categories, if inspections were allowed to be carried out by inspectors other than those charged with official examination by the seed certification authority;

Whereas administrative developments have taken place in the Member States;

Whereas Directives 66/400/EEC, 66/401/EEC, 66/402/EEC and 69/208/EEC should be amended accordingly;

Whereas Directives 66/401/EEC, 66/402/EEC, 69/208/EEC and 70/458/EEC provide for amendments to be made to the lists of species referred to therein in the light of the development of scientific or technical knowledge concerning the names and hybrids resulting from the crossing of species covered by those Directives, in accordance with the Standing Committee procedure;

Whereas it is desirable to facilitate the addition of new species to the list of species in the said directives;

Whereas those directives should be amended accordingly;

Whereas Directives 66/400/EEC, 66/401/EEC, 66/402/EEC, 69/208/EEC and 70/458/EEC provide for

⁽¹⁰⁾ OJ L 225, 12.10.1970, p. 7. Directive as last amended by Directive 98/95/EC.

⁽¹¹⁾ OJ L 286, 4.10.1989, p. 24. Decision as last amended by Commission Decision 96/336/EC (OJ L 128, 29.5.1996, p. 23).

the organisation of temporary experiments for the purpose of seeking improved alternatives to certain elements of the certification schemes adopted thereunder;

Whereas, in the light of experience, it is desirable to extend the scope of the organization of such experiments for the purpose of seeking improved alternatives to certain provisions set out in the said directives;

Whereas it is desirable to provide a legal base in Directive 66/403/EEC for the organization of temporary experiments for the purpose of seeking improved alternatives to certain provisions set out in that directive;

Whereas it is desirable to provide in Directives 70/457/EEC and 70/458/EEC for rules in relation to the suitability of varietal denominations,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 66/400/EEC is hereby amended as follows:

1. Article 2(1)(C)(d) shall be replaced by the following:

- ‘(d) (i) which has been found by official examination to satisfy the above mentioned conditions, or
- (ii) in the case of the conditions laid down in Annex I(A), has been found to satisfy those conditions either by official examination or by examination carried out under official supervision.’;

2. in Article 2 the following paragraphs shall be added:

‘3. When the examination under official supervision referred to in paragraph 1(C)(d)(ii) above is carried out, the following requirements shall be complied with:

- (i) the inspectors, shall:
- (a) have the necessary technical qualifications;
- (b) derive no private gain in connection with the carrying out of the inspections;
- (c) have been officially licensed by the seed certification authority of the Member State concerned and this licensing shall include either the swearing-in of inspectors or the signature by inspectors of a written statement of commitment to the rules governing official examinations;

(d) carry out inspections under official supervision in accordance with the rules applicable to official inspections;

(ii) the seed crop to be inspected shall be grown from seed which has undergone official post-control, the results of which have been satisfactory;

(iii) a proportion of the seed crops shall be checked by official inspectors. That proportion shall be 10 % for self-pollinated crops and 20 % for cross-pollinated crops or, for those species for which Member States provide for official laboratory seed-testing using morphological, physiological or, where appropriate, biochemical procedures to identify the variety and establish purity, 5 % and 15 % respectively;

(iv) a proportion of samples from the seed lots harvested from the seed crops shall be drawn for official post-control and, where appropriate, for official laboratory seed testing in respect of varietal identity and purity;

(v) the Member States shall determine the penalties applicable to infringements of the rules governing examination under official supervision. The penalties they provide for must be effective, proportionate and dissuasive. Penalties may include the withdrawal of the recognition referred to in paragraph (3)(i)(c) from officially licensed inspectors who are found guilty of deliberately or negligently contravening the rules governing official examinations. Any certification of the seed examined shall be annulled in the event of such contravention unless it can be shown that such seed still meets all relevant requirements.

4. Further measures applicable to the carrying out of examinations under official supervision may be adopted in accordance with the procedure laid down in Article 21.

Until such measures are adopted, the conditions set out in Article 2 of Commission Decision 89/540/EEC shall be adhered to.’;

3. the first paragraph of Article 13a shall be replaced by the following:

‘For the purpose of seeking improved alternatives to certain provisions set out in this Directive, it may be decided to organise temporary experiments under specified conditions at Community level in accordance with the provisions laid down in Article 21.’;

4. point 3 of Annex I(A) shall be replaced by the following:

'3. In the case of certified seed of all categories there shall be at least one field inspection, either official or under official supervision, and in the case of basic seed at least two official field inspections, one of seedlings and one of the seed-producing plants.'

Article 2

Directive 66/401/EEC is hereby amended as follows:

1. Article 2(1)(C)(d) shall be replaced by the following:

'(d) (i) which has been found by official examination to satisfy the abovementioned conditions, or
(ii) in the case of the conditions laid down in Annex I, has been found to satisfy those conditions either by official examination or by examination carried out under official supervision';

2. Article 2(1a) shall be replaced by the following:

'1a. Amendments to be made to the list of species referred to in paragraph 1(A) shall be adopted in accordance with the procedure laid down in Article 21.';

3. in Article 2 the following paragraphs shall be added:

'3. When the examination under official supervision referred to in paragraph 1(C)(d)(ii) above is carried out, the following requirements shall be complied with:

- (i) the inspectors shall:
 - (a) have the necessary technical qualifications;
 - (b) derive no private gain in connection with the carrying out of the inspections;
 - (c) have been officially licensed by the seed certification authority of the Member State concerned and this licensing shall include either the swearing-in of inspectors or the signature by inspectors of a written statement of commitment to the rules governing official examinations;
 - (d) carry out inspections under official supervision in accordance with the rules applicable to official inspections;
- (ii) the seed crop to be inspected shall be grown from seed which has undergone official post-control, the results of which have been satisfactory;

(iii) a proportion of the seed shall be checked by official inspectors. That proportion shall be 10% for self-pollinated crops and 20% for cross-pollinated crops or, for those species for which Member States provide for official laboratory seed-testing using morphological, physiological or, where appropriate, biochemical procedures to identify the variety and establish purity, 5% and 15% respectively;

(iv) a proportion of samples from the seed lots harvested from the seed crops shall be drawn for official post-control and, where appropriate, for official laboratory seed testing in respect of varietal identity and purity;

(v) the Member States shall determine the penalties applicable to infringements of the rules governing examination under official supervision. The penalties they provide for must be effective, proportionate and dissuasive. Penalties may include the withdrawal of the recognition referred to in paragraph (3)(i)(c) from officially licensed inspectors who are found guilty of deliberately or negligently contravening the rules governing official examinations. Any certification of the seed examined shall be annulled in the event of such contravention unless it can be shown that such seed still meets all relevant requirements.

4. Further measures applicable to the carrying out of examinations under official supervision may be adopted in accordance with the procedure laid down in Article 21.

Until such measures are adopted, the conditions set out in Article 2 of Commission Decision 89/540/EEC shall be adhered to.';

4. the first paragraph of Article 13a shall be replaced by the following:

'For the purpose of seeking improved alternatives to certain provisions set out in this directive, it may be decided to organise temporary experiments under specified conditions at Community level in accordance with the provisions laid down in Article 21.';

5. the first sentence of point 6 of Annex I shall be replaced by the following:

'6. The satisfaction of the abovementioned standards or other conditions shall, in the case of basic seed, be examined in official field inspections and, in the case of certified seed, be examined either in official field inspections or in inspections carried out under official supervision.'

Article 3

Directive 66/402/EEC is hereby amended as follows:

1. Article 2(1)(E)(d) shall be replaced by the following:

- ‘(d) (i) which has been found by official examination to satisfy the abovementioned conditions, or
- (ii) in the case of the conditions laid down in Annex I, has been found to satisfy those conditions either by official examination or by examination carried out under official supervision.’;

2. Article 2(1)(F)(d) shall be replaced by the following:

- ‘(d) (i) which has been found by official examination to satisfy the abovementioned conditions, or
- (ii) in the case of the conditions laid down in Annex I, has been found to satisfy those conditions either by official examination or by examination carried out under official supervision.’;

3. Article 2(1)(G)(d) shall be replaced by the following:

- ‘(d) (i) which has been found by official examination to satisfy the abovementioned conditions, or
- (ii) in the case of the conditions laid down in Annex I, has been found to satisfy those conditions either by official examination or by examination carried out under official supervision.’;

4. Article 2(1a) shall be replaced by the following:

‘1a. Amendments to be made to the list of species referred to in paragraph 1(A) shall be adopted in accordance with the procedure laid down in Article 21.’;

5. in Article 2 the following paragraphs shall be added:

‘3. When the examination under official supervision referred to in paragraphs 1(E)(d)(ii), 1(F)(d)(ii) and 1(G)(d)(ii) above is carried out, the following requirements shall be complied with:

- (i) the inspectors shall:
- (a) have the necessary technical qualifications;
- (b) derive no private gain in connection with the carrying out of the inspections;
- (c) have been officially licensed by the seed certification authority of the Member State concerned and this licensing shall include

either the swearing-in of inspectors or the signature by inspectors of a written statement of commitment to the rules governing official examinations;

(d) carry out inspections under official supervision in accordance with the rules applicable to official inspections;

(ii) the seed crop to be inspected shall be grown from seed which has undergone official post-control, the results of which have been satisfactory;

(iii) a proportion of the seed shall be checked by official inspectors. That proportion shall be 10 % for self-pollinated crops and 20 % for cross-pollinated crops or, for those species for which Member States provide for official laboratory seed-testing using morphological, physiological or, where appropriate, biochemical procedures to identify the variety and establish purity, 5 % and 15 % respectively;

(iv) a proportion of samples from the seed lots harvested from the seed crops shall be drawn for official post-control and, where appropriate, for official laboratory seed testing in respect of varietal identity and purity;

(v) the Member States shall determine the penalties applicable to infringements of the rules governing examination under official supervision. The penalties they provide for must be effective, proportionate and dissuasive. Penalties may include the withdrawal of the recognition referred to in paragraph (3)(i)(c) from officially licensed inspectors who are found guilty of deliberately or negligently contravening the rules governing official examinations. Any certification of the seed examined shall be annulled in the event of such contravention unless it can be shown that such seed still meets all relevant requirements.

4. Further measures applicable to the carrying out of examinations under official supervision may be adopted in accordance with the procedure laid down in Article 21.

Until such measures are adopted, the conditions set out in Article 2 of Commission Decision 89/540/EEC shall be adhered to.’;

6. in Article 13a the first paragraph shall be replaced by the following:

‘For the purpose of seeking improved alternatives to certain provisions set out in this directive, it may be decided to organise temporary experiments under specified conditions at Community level in accordance with the provisions laid down in Article 21.’;

7. the first sentence of point 5 of Annex I shall be replaced by the following:

'5. The satisfaction of the abovementioned standards or other conditions shall, in the case of basic seed, be examined in official field inspections and, in the case of certified seed, be examined either in official field inspections or in inspections carried out under official supervision.'

Article 4

Directive 66/403/EEC is hereby amended as follows:

The following Article shall be added after Article 13:

'Article 13a

For the purpose of seeking improved alternatives to certain provisions set out in this Directive, other than those relating to plant health, it may be decided to organise temporary experiments under specified conditions at Community level in accordance with the provisions laid down in Article 19.

In the framework of such experiments, Member States may be released from certain obligations laid down in this Directive. The extent of that release shall be defined with reference to the provisions to which it applies. The duration of an experiment shall not exceed seven years.'

Article 5

Directive 69/208/EEC is hereby amended as follows:

1. Article 2(1)(C)(d) shall be replaced by the following:

'(d) (i) which has been found by official examination to satisfy the abovementioned conditions, or
(ii) in the case of the conditions laid down in Annex I, has been found to satisfy those conditions either by official examination or by examination carried out under official supervision.'

2. Article 2(1)(D)(d) shall be replaced by the following:

'(d) (i) which has been found by official examination to satisfy the abovementioned conditions, or
(iii) in the case of the conditions laid down in Annex I, has been found to satisfy those conditions either by official examination or by examination carried out under official supervision.'

3. Article 2(1)(E)(d) shall be replaced by the following:

'(d) (i) which has been found by official examination to satisfy the abovementioned conditions, or
(ii) in the case of the conditions laid down in Annex I, has been found to satisfy those conditions either by official examination or by examination carried out under official supervision.'

4. Article 2(1)(Ea)(d) shall be replaced by the following:

'(d) (i) which has been found by official examination to satisfy the abovementioned conditions, or
(ii) in the case of the conditions laid down in Annex I, has been found to satisfy those conditions either by official examination or by examination carried out under official supervision.'

5. Article 2(1)(F)(d) shall be replaced by the following:

'(d) (i) which has been found by official examination to satisfy the abovementioned conditions, or
(ii) in the case of the conditions laid down in Annex I, has been found to satisfy those conditions either by official examination or by examination carried out under official supervision.'

6. Article 2(1a) shall be replaced by the following:

'1a. Amendments to be made to the list of species referred to in paragraph 1(A) shall be adopted in accordance with the procedure laid down in Article 20.'

7. In Article 2 the following paragraphs shall be added:

'3. When the examination under official supervision referred to in paragraphs 1(C)(d)(ii), 1(D)(d)(ii), 1(E)(d)(ii), 1(Ea)(d)(ii) and 1(F)(d)(ii) above is carried out, the following requirements shall be complied with:

- (i) the inspectors shall:
 - (a) have the necessary technical qualifications;
 - (b) derive no private gain in connection with the carrying out of the inspections;
 - (c) have been officially licensed by the seed certification authority of the Member State concerned and this licensing shall include

either the swearing-in of inspectors or the signature by inspectors of a written statement of commitment to the rules governing official examinations;

(d) carry out inspections under official supervision in accordance with the rules applicable to official inspections;

(ii) the seed crop to be inspected shall be grown from seed which has undergone official post-control, the results of which have been satisfactory;

(iii) a proportion of the seed shall be checked by official inspectors. That proportion shall be 10 % for self-pollinated crops and 20 % for cross-pollinated crops or, for those species for which Member States provide for official laboratory seed-testing using morphological, physiological or, where appropriate, biochemical procedures to identify the variety and establish purity, 5 % and 15 % respectively;

(iv) a proportion of samples from the seed lots harvested from the seed crops shall be drawn for official post-control and, where appropriate, for official laboratory seed testing in respect of varietal identity and purity;

(v) the Member States shall determine the penalties applicable to infringements of the rules governing examination under official supervision. The penalties they provide for must be effective, proportionate and dissuasive. Penalties may include the withdrawal of the recognition referred to in paragraph (3)(i)(c) from officially licensed inspectors who are found guilty of deliberately or negligently contravening the rules governing official examinations. Any certification of the seed examined shall be annulled in the event of such contravention unless it can be shown that such seed still meets all relevant requirements.

4. Further measures applicable to the carrying out of examinations under official supervision may be adopted in accordance with the procedure laid down in Article 21.

Until such measures are adopted, the conditions set out in Article 2 of Commission Decision 89/540/EEC shall be adhered to.;

8. in Article 12a the first paragraph shall be replaced by the following:

'For the purpose of seeking improved alternatives to certain provisions set out in this Directive, it may be decided to organise temporary experiments under specified conditions at Community level in accordance with the provisions laid down in Article 21.;

9. in Annex I the first sentence of point 5 shall be replaced by the following:

'5. The satisfaction of the abovementioned standards or other conditions shall, in the case of basic seed, be examined in official field inspections and, in the case of certified seed, be examined either in official field inspections or in inspections carried out under official supervision.'

Article 6

Directive 70/457/EEC is hereby amended as follows:

In Article 9 the following paragraph shall be added:

'5. So far as the suitability of the denomination of a variety is concerned, Article 63 of Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights(*) shall apply.

Detailed implementing rules as to the suitability of denominations of varieties may be adopted in accordance with the procedure provided for in Article 23.

(*) OJ L 227, 1.9.1994, p. 1. Regulation as amended by Regulation (EC) No 2506/95 (OJ L 258, 28.10.1995, p. 3).'

Article 7

Directive 70/458/EEC is hereby amended as follows:

1. Article 2(1a) shall be replaced by the following:

'1a. Amendments to be made to the lists of species referred to in paragraph 1(A) shall be adopted in accordance with the procedure laid down in Article 40.;

2. the first paragraph of Article 29a shall be replaced by the following:

'For the purpose of seeking improved alternatives to certain provisions set out in this directive, it may be decided to organise temporary experiments under specified conditions at Community level in accordance with the provisions laid down in Article 40.;

3. in Article 10 the following paragraph shall be added:

'5. So far as the suitability of the denomination of a variety is concerned, Article 63 of Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights(*) shall apply.

Detailed implementing rules as to the suitability of denominations of varieties may be adopted in accordance with the procedure provided for in Article 40.

(*) OJ L 227, 1.9.1994, p. 1. Regulation as amended by Regulation (EC) No 2506/95 (OJ L 258, 28.10.1995, p. 3).'

Article 8

1. Member States shall bring into force the laws, regulations or administrative provisions necessary to comply with this Directive before 1 February 2000. They shall forthwith inform the Commission thereof.

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 procedure for such reference shall be adopted by the Member States.

2. 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 9

No later than five years after the date of the entry into force of this Directive, the Commission shall submit a

detailed evaluation of the simplifications of the certification procedures introduced thereby. This evaluation shall focus in particular on the possible effects on the quality of the seed.

Article 10

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

Article 11

This Directive is addressed to the Member States.

Done at Brussels, 14 December 1998.

For the Council
The President
W. MOLTERER