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II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE 92/33/EEC

of 28 April 1992

on the marketing of vegetable propagating and planting material, other than seed

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 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 the production of vegetables occupies an important place in the agriculture of the Community;

Whereas satisfactory results in the cultivation of vegetables depend to a large extent on the quality and plant health not only of the seed already covered by Council Directive 70/458/EEC of 29 September 1970 on the marketing of vegetable seed (4) but also of the vegetable planting material used for their propagation; whereas certain Member States have in consequence introduced rules intended to guarantee the quality and plant health of the propagating and planting material of vegetable plants placed on the market;

Whereas the different treatment accorded to vegetable propagating and planting material in different Member States is likely to create barriers to trade and thus hinder the free movement of these products within the Community; whereas, with a view to achieving the internal market, these barriers should be removed by adopting Community provisions to replace those laid down by the Member States;

Whereas the establishment of harmonized conditions at Community level will ensure that purchasers throughout the Community receive vegetable propagating and planting material which is healthy and of good quality;

Whereas, in so far as they relate to plant health, such harmonized conditions must be consistent with Council Directive 77/93/EEC of 21 December 1976 on protective measures against the introduction into the Member States of organisms harmful to plants or plant products (5);

Whereas, without prejudice to the plant-health provisions of Directive 77/93/EEC, it is not appropriate to apply the Community rules on the marketing of vegetable propagating and planting material when it is shown that such products are intended for export to third countries, as the rules applicable there may be different from those contained in this Directive;

Whereas the determination of plant-health and quality standards for each genus and species of vegetable plant requires lengthy and detailed technical and scientific consideration; whereas a procedure should accordingly be established for that purpose;

Whereas in the first instance it is the responsibility of the suppliers of vegetable propagating and planting material to ensure that their products fulfil the conditions laid down in this Directive;

(1) OJ No C 46, 27. 2. 1990, p. 4; and OJ No C 296, 15. 11. 1991, p. 10.
(2) OJ No C 240, 16. 9. 1991, p. 193.
(3) OJ No C 182, 23. 7. 1990, p. 19.
(4) OJ No L 225, 12. 10. 1970, p. 7; Directive as last amended by Directive 90/654/EEC (OJ No L 353, 17. 12. 1990, p. 48).
(5) OJ No L 26, 31. 1. 1977, p. 20; Directive as last amended by Commission Directive 92/10/EEC (OJ No L 70, 17. 3. 1992, p. 27).

Whereas the competent authorities of the Member States must, when carrying out controls and inspections, ensure that suppliers fulfil those conditions;

Whereas Community control measures should be introduced to ensure the uniform application in all the Member States of the standards laid down in this Directive;

Whereas it is in the interests of the purchasers of vegetable propagating and planting materials that the name of varieties be known and their identity safeguarded;

Whereas, to this end, provision should be made as far as possible for the application of the rules on the varietal aspect as established with respect to the marketing of vegetable seed;

Whereas, in order to ensure the identity and orderly marketing of vegetable propagating and planting material, Community rules must be laid down concerning the separation of lots, and marking; whereas the labels used should give the particulars needed both for official control and for the information of the user;

Whereas rules should be established permitting, in cases of temporary supply difficulties, the marketing of vegetable propagating and planting material subject to requirements less stringent than those contained in this Directive;

Whereas, as a first step towards harmonized conditions, Member States should be prohibited in the case of the genera and species referred to in Annex II, for which fact-sheets will be drawn up, from imposing new conditions or restrictions on the marketing, other than those provided for in this Directive;

Whereas provisions should be made for authorizing the marketing within the Community of vegetable propagating and planting material produced in third countries, provided always that it affords the same assurances as vegetable propagating and planting material produced in the Community and complying with Community rules;

Whereas, in order to harmonize technical methods of examination used in the Member States and to compare propagating and planting material and vegetable plants produced in the Community with that produced in third countries, comparative trials should be carried out to check compliance of such products with the requirements of this Directive;

Whereas, in order to facilitate the effective operation of this Directive, the Commission should be entrusted with the task of adopting measures for its implementation and for the amendment of its Annex, and to provide a procedure to that end involving close cooperation between the Commission and the Member States within a Standing Committee on Seeds and Propagating Materials, Agriculture, Horticulture and Forestry,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. This Directive applies to the marketing of vegetable propagating and planting materials, other than seeds, within the Community.

2. Articles 2 to 20 and 24 shall apply to the genera and species, and their hybrids, listed in Annex II.

Rootstocks and other parts of plants of other genera or species or their hybrids shall also be subject to the abovementioned Articles if material of one of the said genera or species, or of their hybrids, is, or has to be, grafted on to them.

3. Amendments to the list of genera and species in Annex II shall be adopted in accordance with the procedure laid down in Article 22.

Article 2

This Directive shall not apply to propagating or planting material shown to be intended for export to third countries, if properly identified as such and kept sufficiently isolated, without prejudice to the health rules laid down in Directive 77/93/EEC.

Implementing measures for the first subparagraph, with particular reference to identification and isolation, shall be adopted in accordance with the procedure laid down in Article 21.

Article 3

For the purposes of this Directive, the following definitions shall apply:

(a) *propagating material:* parts of plants and all plant material, including rootstocks intended for the propagation and production of vegetables;

(b) *planting material:* entire plants and parts of plants including, for grafted plants, the grafted components, intended for planting for the production of vegetables;

(c) supplier: any natural or legal person carrying out professionally at least one of the following activities with regard to vegetable propagating and planting material: reproducing, producing, preserving and/or treating and marketing;

(d) *marketing:* the holding available or in stock, displaying or offering for sale, selling and/or delivering to another person, in whatever form, of propagating or planting material;

(e) *responsible official body:*

(i) the sole and central authority, established or designated by the Member State under the supervision of the national government and responsible for questions concerning quality;

(ii) any State authority established:

— either at national level,

— or at regional level, under the supervison of the national authorities within the limits set by the national legislation of the Member State concerned.

The bodies referred to in (i) and (ii) may, in accordance with their national legislation, delegate the tasks provided for in this Directive to be accomplished under their authority and supervision to any legal person, whether governed by public or private law, which, under its officially approved constitution, is charged exclusively with specific public functions, provided that such person, and its members, have no personal interest in the outcome of the measures they take.

The Member States shall ensure that there is close cooperation between the bodies referred to in (ii) and those referred to in (i).

Moreover, in accordance with the procedure laid down in Article 21, another legal person established on behalf of any body referred to in (i) and (ii) and acting under the authority and supervision of such body may be approved, provided that such person has no personal interest in the outcome of the measures it takes.

The Member States shall notify the Commission of their responsible official bodies. The Commission shall forward that information to the other Member States;

(f) *official measures:* measures taken by the responsible official body;

(g) *official inspection:* inspection carried out by the responsible official body;

(h) *official statement:* statement issued by, or under the responsibility of, the responsible official body;

(i) *lot:* a number of units of a single commodity, identifiable by its homogeneity of composition and origin;

(j) *laboratory:* a public or private law entity carrying out analysis and proper diagnosis, enabling the producer to monitor production quality.

Article 4

In accordance with the procedure laid down in Article 22, a schedule shall be established in Annex I for each genus and species referred to in Annex II and for rootstocks of other genera and species if material of the genus or species is, or has to be, grafted on to them, with a reference to the plant-health conditions laid down in Directive 77/93/EEC applying to the genus and/or species concerned, and laying down:

(i) the conditions with which vegetable planting material must comply, in particular those relating to the quality and purity of the crop and, where appropriate varietal characteristics. These requirements shall be added to Annex I, Part A;

(ii) the conditions with which propagating material must comply, in particular those relating to the propagation system applied, the purity of the growing crop and, where appropriate, the varietal characteristics. These conditions will be set out in Annex I, Part B.

Article 5

1. Member States shall ensure that suppliers take all the necessary measures to guarantee compliance with the standards set by this Directive at all stages of the production and marketing of vegetable propagating and planting material.

2. For the purposes of paragraph 1, the said suppliers shall either carry out themselves, or have carried out by an accredited supplier or a responsible official body, checks based on the following principles:

— identification of critical points in their production process on the basis of the production methods used,

— establishment and implementation of methods for monitoring and checking the critical points referred to in the first indent,

— taking samples for analysis in a laboratory accredited by the responsible official body for the purpose of checking compliance with the standards established by this Directive,

— keeping a written record or a record registered in an indelible fashion of the data referred to in the first, second and third indents, as well as records on production and marketing of propagating and planting material, to be held at the disposal of the responsible official body. These documents and records shall be kept for a period of at least one year.

However, suppliers whose activity in this connection is confined merely to the distribution of vegetable propagating and planting material produced and packaged on premises other than their own shall be required only to keep a written record or a record registered in an indelible fashion of the buying and selling and/or delivery of such products.

This paragraph shall not apply to suppliers whose activity in this connection is confined to the supply of small quantities of vegetable propagating and planting material to non-professional final consumers.

3. If the result of their own checks or any information at the disposal of the suppliers referred to in paragraph 1 reveals the presence of one or more of the harmful organisms referred to in Directive 77/93/EEC or in quantities greater than those normally allowed for in order to meet the standards, or of those specified in the relevant schedules established pursuant to Article 4, the suppliers shall immediately report this to the responsible official body and shall take the measures indicated by that body or any other measure necessary to reduce the risk of such harmful organisms from spreading. The supplier shall keep records of all occurrences of harmful organisms on his premises and of all measures taken in relation to such occurrences.

4. Detailed rules for the application of the second subparagraph of paragraph 2 shall be established in accordance with the produce laid down in Article 21.

Article 6

1. The responsible official body shall accredit suppliers once it has verified that their production methods and establishments meet the requirements of this Directive with regard to the nature of the activities they carry out. Accreditation must be renewed if a supplier decides to carry out activities other than those for which he has received accreditation.

2. The responsible official body shall accredit laboratories once it has verified that these laboratories, their methods and their establishments meet the requirements of this Directive to be specified according to the procedure laid down in Article 21, with regard to the testing activities they carry out. Accreditation must be renewed if a laboratory decides to carry out activities other than those for which it has received accreditation.

3. The responsible official body shall take the necessary measures if the requirements referred to in paragraphs 1 and 2 cease to be met. To this end, it shall take particular account of the conclusions of any check carried out in accordance with Article 7.

4. The supervision and monitoring of suppliers, establishments and laboratories shall be carried out regularly by or under the responsibility of the responsible official body, which shall at all times have free access to all parts of establishments, in order to ensure compliance with the requirements of this Directive. Implementing measures concerning supervision and monitoring shall be adopted, as necessary, in accordance with the procedure laid down in Article 21.

If such supervision and monitoring reveal that the requirements of this Directive are not being met, the responsible official body shall take appropriate action.

Article 7

1. Commission experts may in cooperation with the responsible official bodies of the Member States, make on-the-spot checks in so far as this is necessary to ensure uniform application of this Directive and in particular to verify whether suppliers are in effect complying with the requirements of this Directive. A Member State in whose territory a check is being carried out shall give all necessary assistance to the experts in carrying out their duties. The Commission shall inform the Member States of the result of the investigations.

2. Detailed rules for the application of paragraph 1 shall be adopted in accordance with the procedure laid down in Article 21.

Article 8

1. Vegetable propagating and planting material may be marketed only by accredited suppliers and provided they meet the requirements laid down in the schedule referred to in Article 4.

2. Without prejudice to the provisions of Directive 77/93/EEC, paragraph 1 shall not apply to vegetable propagating and planting material intended for:

(a) trials or scientific purposes; or

(b) selection work; or

(c) measures aimed at preserving genetic diversity.

Detailed rules for the application of points (a) and (b) shall be adopted as necessary in accordance with the procedure laid down in Article 21. Detailed rules for the application of point (c) shall be adopted preferably before 1 January 1993, in accordance with the same procedure.

Article 9

1. Without prejudice to Article 2, vegetable propagating and planting material which belongs to genera or species listed in Annex II and is also covered by Directive 70/458/EEC shall not be marketed within the Community unless it belongs to a variety accepted in accordance with Directive 70/458/EEC.

2. Without prejudice to Article 2 and paragraphs 3 and 4 of this Article, vegetable propagating and planting material which belongs to genera or species listed in Annex II but which is not covered by Directive 70/458/EEC shall not be marketed within the Community unless it belongs to a variety officially accepted in at least one Member State.

The provisions laid down in Articles 4, 5 and 10 (3) of Directive 70/458/EEC shall apply to the conditions for acceptance.

Articles 3 (2) and (4), 6, 7, 8, 10 (1), (2) and (4) and 11 to 15 of the said Directive shall apply *mutatis mutandis* to the procedures and formalities for acceptance and maintenance production.

The results of unofficial tests and practical information gathered in the course of growing may be taken into consideration in each instance.

3. Member States shall take all necessary steps to ensure that the official acceptance of varieties belonging to the genera or species referred to in paragraph 2 which was granted prior to 1 January 1993 in accordance with principles other than those laid down in Directive 70/458/EEC or on the basis of the fact that their material was marketed in their territory before that date expires on 30 June 1998 at the latest, unless the varieties in question have been accepted in accordance with paragraph 1 on the date.

4. Varieties officially accepted in accordance with paragraphs 2 and 3 shall be entered in the Common Catalogue of Varieties of Vegetable Species referred to in Article 17 of Directive 70/458/EEC. Articles 16 (2) and (3), 17, 18 and 19 shall apply *mutatis mutandis*.

The publication in question shall designate the varieties accepted pursuant to paragraph 3 with a specific reference.

Article 10

1. While growing and during lifting or removal from the parent material, vegetable propagating and planting material shall be kept in separate lots.

2. If vegetable propagating and planting material of different origins is put together or mixed during packaging, storage, transport or at delivery, the supplier shall keep records including the following data: composition of the lot and origin of the individual components.

3. Member States shall ensure compliance with the requirements of paragraphs 1 and 2 by carrying out official inspections.

Article 11

1. Without prejudice to Article 10 (2), vegetable propagating and planting material shall be marketed only in sufficiently homogeneous lots and if they are recognized as complying with this Directive and are accompanied by a document made out by the supplier in accordance with the conditions laid down in the schedule established pursuant to Article 4. If an official statement appears on this document, it shall be clearly separated from all other contents of the document.

Requirements on vegetable propagating and planting material for labelling and/or sealing and packaging shall be set out in the schedule referred to in Article 4.

2. In the case of supply by the retailer of vegetable propagating and planting material to a non-professional final consumer, requirements on labelling may be confined to appropriate product information.

Article 12

Member States may exempt:

— from the application of Article 11, small producers all of whose production and sales of vegetable propagating and planting material is intended for final use by persons on the local market who are not professionally involved in plant production ('local circulation').

— from the controls and offical inspection provided for in Article 18, the local circulation of vegetable propagating and planting materials produced by such exempt persons.

In accordance with the procedure laid down in Article 21, implementing measures relating to other requirements concerning the exemptions referred to in the first and second indents above, in particular as regards the concepts of 'small producers' and 'local market', and to the relevant procedures, shall be adopted.

Article 13

In the event of temporary difficulties in the supply of vegetable propagating and planting material satisfying the requirements of this Directive, measures may be adopted, in accordance with the procedure laid down in Article 21, concerning the marketing of vegetable propagating and planting material meeting less stringent requirements, without prejudice to the plant-health rules laid down in Directive 77/93/EEC.

Article 14

1. The marketing of vegetable propagating and planting material which complies with the requirements and conditions of this Directive shall be subject to no restrictions as regards supplier, plant health, growing medium and inspection arrangements other than those laid down in this Directive.

2. The marketing of vegetable propagating and planting material whose variety is entered in the Common Catalogue of Varieties of Vegetable Species shall not be subject to any restriction as regards variety other than those laid down or referred to in this Directive.

Article 15

As regards the products referred to in Annex II, Member States shall refrain from imposing more stringent conditions or marketing restrictions other than the conditions laid down in the schedules referred to in Article 4 or, failing that, those existing on the date of adoption of this Directive.

Article 16

1. In accordance with the procedure laid down in Article 21, it shall be decided whether vegetable propagating

and planting material produced in a third country and affording the same guarantees as regards obligations on the supplier, identity, characteristics, plant health, growing medium, packaging, inspection arrangements, marking and sealing, is equivalent in all these respects to vegetable propagating and planting material produced in the Community and complying with the requirements and conditions of this Directive.

2. Pending the decision referred to in paragraph 1, Member States may, until 1 January 1993, and without prejudice to the provisions of Directive 77/93/EEC, apply to the import of vegetable propagating and planting material from third countries conditions at least equivalent to those laid down temporarily or permanently in the schedules referred to in Article 4. Where no such conditions are laid down in the said schedules, the import conditions must be at least equivalent to those applicable to production in the Member State concerned.

In accordance with the procedure laid down in Article 21, the date referred to in the first subparagraph may, for the various third countries, be deferred pending the decision referred to in paragraph 1.

Vegetable propagating and planting material imported by a Member State in accordance with a decision taken by that Member State pursuant to the first subparagraph shall be subject to no marketing restrictions in the other Member States as regards the matters referred to in paragraph 1.

Article 17

Member States shall ensure that official inspection by sampling checks on propagating and planting material is carried out during production and marketing, with the aim of verifying compliance with the requirements and conditions of this Directive.

Article 18

Detailed implementing procedures for the controls provided for in Article 5 and for the official inspection provided for in Articles 10 and 17, including sampling methods, shall be adopted, as necessary, in accordance with the procedure provided for in Article 21.

Article 19

1. If, during the supervision and monitoring provided for in Article 6 (4), the official inspection provided for in Article 17, or the trials provided for in Article 20, it is found that vegetable propagating and planting material does not meet the requirements of this Directive, the responsible official body of the Member State shall take appropriate action to ensure that it does comply with the provisions of this Directive or, if that is not possible, to ban the marketing of that vegetable propagating and planting material in the Community.

2. If it is found that vegetable propagating and planting material marketed by a particular supplier does not comply with the requirements and conditions of this Directive, the Member State concerned shall ensure that appropriate measures are taken against that supplier. If the supplier is forbidden to market vegetable propagating and planting material, the Member State shall notify the Commission and the competent national authorities in the Member States.

3. Any measures taken under paragraph 2 shall be withdrawn as soon as it has been established with adequate certainty that the vegetable propagating and planting material intended for marketing by the supplier will, in future, comply with the requirements and conditions of this Directive.

Article 20

1. Trials, or, where appropriate, tests shall be carried out in the Member States on samples to check that vegetable propagating and planting material complies with the requirements and conditions of this Directive, including those relating to plant health. The Commission may organize inspections of the trials by representatives of the Member States and of the Commission.

2. It may be decided in accordance with the procedure laid down in Article 21 that it is necessary to carry out Community trials for the same purpose as mentioned in paragraph 1. The Commission may organize inspections of Community trials by representatives of the Member States and of the Commission.

3. The trials or tests referred to in paragraphs 1 and 2 shall be used to harmonize technical methods of examination of vegetable propagating and planting material. Progress reports shall be made on the trials or tests and sent in confidence to the Member States and to the Commission.

4. The Commission shall ensure that, in appropriate cases, arrangements for coordinating, carrying out and inspecting the trials referred to in paragraphs 1 and 2, and assessing their results, are made within the Commitee set up by Article 21. When plant-health problems occur, the Commission shall notify the Standing Committee on Plant Health. If necessary, specific arrangements shall be adopted. Vegetable propagating and planting material produced in third countries shall be included in the trials.

Article 21

1. The Commission shall be assisted by a committee, referred to as the 'Standing Committee on Agricultural, Horticultural and Forestry Seeds and Plants', chaired by the representative of the Commission.

2. The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the

urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

3. 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 be communicated by the Commission to the Council forthwith. In that event, the Commission may defer application of the measures which it had decided for a period of not more than one month from the date of such communication.

The Council, acting by a qualified majority, may take a different decision within the time limit referred to in the previous paragraph.

Article 22

1. The Commission shall be assisted by the Standing Committee on Seeds and Propagating Materials for Agriculture, Horticulture and Forestry, chaired by the representative of the Commission.

2. The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

3. The Commission shall adopt measures envisaged in accordance with the opinion of the committee.

If the measures envisaged are not in accordance with the opinion of the committee, or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority.

If, on the expiry of a period of three months from the date of referral to the Council, the Council has not acted, the proposed measures shall be adopted by the Commission.

Article 23

Amendments to the schedules referred to in Article 4 and to the conditions and detailed rules adopted for the implementation of this Directive shall be adopted in accordance with the procedure laid down in Article 21.

Article 24

1. Member States shall ensure that vegetable propagating and planting material produced in their territory and intended for marketing complies with the requirements of this Directive.

2. If it is found, during an official inspection, that vegetable propagating and planting material cannot, by reason of non-compliance with a condition relating to plant health, be marketed, the Member State concerned shall take appropriate official measures to eliminate any consequent plant-health risk.

Article 25

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive no later than 31 December 1992. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. The methods for making such reference shall be laid down by the Member States.

2. As far as Articles 5 to 11, 14, 15, 17, 19 and 24 are concerned, the date of application for each of the genera or species referred to in Annex II shall be fixed in accordance with the procedure laid down in Article 21, when the schedule referred to Article 4 is drawn up.

Article 26

This Directive is addressed to the Member States.

Done at Luxembourg, 28 April 1992.

For the Council

The President

Arlindo MARQUES CUNHA

ANNEX I

Conditions to be laid down in accordance with Article 4

Point A

Conditions with which planting material must comply.

Point B

Schedules for genera and species not listed in Directive 70/458/EEC containing conditions with which propagating material must comply.

ANNEX II

List of the genera and species referred to in article 1 (2)

— Allium ascalonicum	shallots
— Allium cepa L.	onion
— Allium fistulosum L.	chives
— Allium porrum L.	leek
— Allium sativum	garlic
— Anthriscus cerefolium (L.) Hoffm.	chervil
— Apium graveolens L.	celery
— Asparagus officinalis L.	asparagus
— Beta vulgaris L. var. vulgaris	mangold
— Beta vulgaris L. var. conditiva Alef.	red beet
— Brassica oleracea L. convar. acephala (DC) Alef. var. sabellica L.	curly kale
— Brassica oleracea L. convar. botrytis (L.) Alef. var. botrytis L.	cauliflower
— Brassica oleracea L. convar. botrytis (L.) Alef. var. cymosa Duch.	broccoli
— Brassica oleracea L. convar. var. gammifera DC	Brussels sprouts
— Brassica oleracea L. convar. capitata (L.) Alef. var. sabauda L.	Savoy cabbage
— Brassica oleracea L. convar. capitata (L.) Alef. var. alba DC	cabbage
— Brassica oleracea L. convar. capitata (L.) Alef. var. rubra DC	red cabbage
— Brassica oleracea L. convar. acephala (DC) Alef. var. gongylodes	kohlrabi
— Brassica pekinensis L.	Chinese cabbage
— Brassica rapa L. var. rapa	turnip
— Capsicum annuum L.	pepper
— Chicorium endivia L.	endive
— Chicorium intybus L. (partim)	Witloof chicory
— Citrullus lanatus (Thunb.) Matsum. et Nakai	watermelon
— Cucumis melo L.	melon
— Cucumis sativus L.	gherkin
— Cucurbita maxima Duchesne	gourd
— Cucurbita pepo L.	courgette
— Cynara cardunculus	cardoon
— Cynara scolymus	artichoke
— Daucus carota L.	carrot
— Foeniculum vulgare P. Mill.	fennel
— Lactuca sativa L.	lettuce
— Lycopersicon lycopersicum (L.) Karsten ex Farw.	tomato
— Petroselinum crispum (Mill.) Nyman ex A. W. Hill	parsley
— Phaseolus coccineus L.	runner bean
— Phaseolus vulgaris L.	French bean
— Pisum sativum L. (partim)	peas excepting fodder peas
— Raphanus sativus L.	radishes
— Rheum	rhubarb
— Scorzonera hispanica L.	scorzonera
— Solanum melongena L.	eggplant
— Spinacia oleracea L.	spinach
— Valerianelle locusta (L.) Laterr.	corn salad
— Vicia faba L. (partim)	broad bean

COUNCIL DIRECTIVE 92/34/EEC

of 28 April 1992

on the marketing of fruit plant propagating material and fruit plants intended for fruit production

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 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 fruit production occupies an important place in the agriculture of the Community;

Whereas satisfactory results in the cultivation of fruit depend to a large extent on the quality and plant health of the material used for their propagation and of the fruit plants intended for fruit production; whereas certain Member States have in consequence introduced rules intended to guarantee the quality and plant health of the fruit plant propagating material and fruit plants placed on the market;

Whereas the different treatment accorded to propagating material and fruit plants in different Member States is likely to create barriers to trade and thus hinder the free movement of these goods within the Community; whereas, with a view to achieving the internal market, these barriers should be removed, by adopting Community provisions to replace those laid down by the Member States;

Whereas the establishment of harmonized conditions at Community level will ensure that purchasers throughout the Community receive propagating material and fruit plants which are healthy and of good quality;

Whereas, so far as they relate to plant health, such harmonized conditions must be consistent with Council Directive 77/93/EEC of 21 December 1976 on protective measures against the introduction into the Member States of organisms harmful to plant or plant products (4);

Whereas it is appropriate initially to establish Community rules for those genera and species of fruit plant which are of major economic importance in the Community, with a Community procedure for adding further genera and species later;

Whereas, without prejudice to the plant health provisions of Directive 77/93/EEC, it is not appropriate to apply the Community rules on the marketing of propagating material and fruit plants when it is shown that such products are intended for export to third countries, as the rules applicable there may be different from those contained in this Directive;

Whereas the determination of plant health and quality standards for each genus and species of fruit plant requires lengthy and detailed technical and scientific consideration; whereas a procedure should accordingly be established for that end;

Whereas in the first instance it is the responsibility of the suppliers of propagating material and/or fruit plants to ensure that their products fulfil the conditions laid down in this Directive;

Whereas the competent authorities of the Member States must, when carrying out controls and inspections, ensure that suppliers fulfil those conditions with regard to propagating material or fruit plants belonging to the CAC *(Conformitas Agraria Communitatis)* category;

Whereas it is indispensable to provide for other categories of propagating material and fruit plants for which the said material and plants must be the subject of official certification;

Whereas Community control measures should be introduced to ensure uniform application in all the Member States of the standards laid down in this Directive;

Whereas it is consistent with current agricultural practice to require that certain propagating material and fruit plants are either officially examined, or are declared virus-free, meaning found free of all known viruses and virus-like pathogens, or again virus-tested, meaning found free of specific viruses and virus-like pathogens reducing the usefulness of the propagating material and fruit plants;

Whereas it is in the interests of the purchasers of propagating materials and fruit plants that the names of varieties be known and that their identity be safeguarded;

Whereas the objective stated above can best be achieved either through common knowledge of the variety or through

(1) OJ No C 52, 3. 3. 1990, p. 16 and OJ No C 307, 27. 11. 1991, p. 15.
(2) OJ No C 240, 16. 9. 1991, p. 197.
(3) OJ No C 182, 23. 7. 1990, p. 21.
(4) OJ No L 26, 31. 1. 1977, p. 20; Directive as last amended by Directive 92/10/EEC (OJ No L 70, 17. 3. 1992, p. 27).

the availability of a description drawn up and kept by the supplier; whereas in the latter case, however, the propagating material or fruit plants may not obtain access to the categories which are the subject of official certification;

Whereas, in order to ensure the identity and orderly marketing of propagating material and fruit plants, Community rules must be laid down concerning the separation of lots and marking; whereas the labels should give the particulars needed both for official control and for the information of the user;

Whereas rules should be established permitting, in the case of temporary supply difficulties, the marketing of propagating material and fruit plants subject to requirements less stringent than those contained in this Directive;

Whereas, as a first step towards harmonized conditions, Member States should be prohibited in the case of the genera and species referred to in Annex II, for which schedules will be drawn up, from imposing new conditions or restrictions on the marketing, other than those provided for in this Directive;

Whereas provisions should be made for authorizing the marketing, within the Community, of propagating material and fruit plants produced in third countries, provided always that they afford the same guarantees as propagating material and fruit plants produced in the Community and complying with Community rules;

Whereas, in order to harmonize the technical methods of examination used in the Member States and to compare propagating material and fruit plants produced in the Community with those produced in third countries, comparative trials should be carried out to check compliance of such products with the requirements of this Directive;

Whereas, in order to facilitate the effective operation of this Directive, the Commission should be entrusted with the task of adopting measures for its implementation and for the amendment of its Annex; and to provide a procedure to that end involving close cooperation between the Commission and the Member States within a Standing Committee on Propagating Material and Plants of Fruit Genera and Species,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. This Directive applies to the marketing of fruit plant propagating material and fruit plants intended for fruit production within the Community.

2. Articles 2 to 20 and Article 24 shall apply to the genera and species listed in Annex II as well as to their hybrids.

Rootstocks and other parts of plants of other genera or species or their hybrids shall also be subject to the abovementioned Articles if material of one of the said genera or species or their hybrids is grafted or is to be grafted onto them.

3. Amendments to the list of genera and species in Annex II shall be adopted in accordance with the procedure laid down in Article 22.

Article 2

This Directive shall not apply to propagating material or fruit plants shown to be intended for export to third countries, if properly identified as such and kept sufficiently isolated, without prejudice to the health rules laid down by Directive 77/93/EEC.

Implementing measures for the first paragraph, with particular reference to identification and isolation, shall be adopted in accordance with the procedure laid down in Article 21.

Article 3

For the purposes of this Directive, the following definitions shall apply:

(a) *propagating material:* seeds, parts of plants and all plant material, including rootstocks, intended for the propagation and production of fruit plants;

(b) *fruit plants:* plants intended to be planted or replanted, after marketing:

(c) *pre-basic material:* propagating material:

(i) which has been produced according to generally accepted methods with a view to maintaining the identity of the variety, including the relevant characteristics of its pomological value, which can be established according to the procedure laid down in Article 21, and to preventing diseases;

(ii) which is intended for the production of basic material;

(iii) which satisfies the conditions for pre-basic material laid down in the schedule for the species concerned, established pursuant to Article 4, and

(iv) which, following an official inspection, has been recognized as satisfying the abovementioned conditions;

(d) *basic material:* propagating material:

(i) which has been produced either directly or in a known number of stages in a vegetative way from pre-basic material, according to generally accepted methods, with a view to maintaining the identity of the variety, including the relevant characteristics of its pomological value, which can be established in accordance with the procedure laid down in Article 21, and to preventing disease;

(ii) which is intended for the production of certified material;

(iii) which satisfies the conditions for basic material laid down in the schedule for the species concerned, established pursuant to Article 4, and

(iv) which, following an official inspection, has been recognized as satisfying the abovementioned conditions;

(e) *certified materials:* propagating material and fruit plants:

(i) which have been produced either directly or in a known number of stages in a vegetative way from basic material;

(ii) which satisfy the conditions for certified material laid down in the schedule for the species concerned, established pursuant to Article 4.

(iii) which, following an official inspection, has been recognized as satisfying the abovementioned conditions.

(f) *CAC (Conformitas Agraria Communitatis) material:* propagating material and fruit plants satisfying the minimum conditions laid down for that category relative to the species concerned in the schedule established pursuant to Article 4;

(g) *virus-free (v.f.) material:* material which has been tested and found free from infection according to internationally recognized scientific methods, has been found free from symptoms of any virus or virus-like pathogen by growing-season inspection, has been maintained under conditions ensuring freedom from infection, and is considered to be free from all viruses and virus-like pathogens known in the species concerned occurring in the Community. Material descended vegetatively in direct line in a specific number of stages from such material, found free from symptoms of any virus or virus-like pathogen by growing-season inspection, and produced and maintained under conditions ensuring freedom from infection, shall also be considered to be virus-free. The specific number of stages shall be indicated in the schedule for the species concerned, established pursuant to Article 4;

(h) *virus-tested (v.t.) material:* material which has been tested and found free from infection according to internationally recognized scientific methods, found free from symptoms of any virus or virus-like pathogen by growing-season inspection, has been maintained under conditions ensuring freedom from infection, and considered to be free from certain serious viruses and virus-like pathogens known in the species concerned occurring in the Community and capable of reducing the usefulness of the material. Material descended vegetatively in direct line in a specific number of stages from such material, found free from symptoms of any virus or virus-like pathogen by growing-season inspection, and produced and maintained under conditions ensuring freedom from infection, shall also be considered to be virus-tested. The specific number of stages shall be indicated in the schedule for the species concerned, established pursuant to Article 4;

(i) *supplier:* any natural or legal person carrying out professionally at least one of the following activities with regard to propagating material or fruit plants: reproducing, producing, preserving and/or treating, and marketing;

(j) *marketing:* the holding available or in stock, displaying or offering for sale, selling and/or delivering to another person, in whatever form, of propagating material or fruit plants;

(k) *responsible official body*

(i) the sole and central authority, established or designated by the Member State under the supervison of the national government and responsible for questions concerning quality;

(ii) any State authority established:

— either at national level,

— or at regional level, under the supervision of the national authorities, within the limits set by the national legislation of the Member State concerned.

The bodies referred to in (i) and (ii) may, in accordance with their national legislation, delegate the tasks provided for in this Directive to be accomplished under their authority and supervision to any legal person, whether governed by public or private law, which, under its officially approved statute, is charged exclusively with specific public functions, provided that such person, and its members, has no personal interest in the outcome of the measures it takes.

The Member States shall ensure that there is close cooperation between the bodies referred to in (ii) and those referred to in (i).

Moreover, in accordance with the procedure laid down in Article 21, any other legal person established on behalf of a body referred to in (i) and (ii) and acting under the supervision and the control of such body, may be approved, provided that such person has no personal interest in the outcome of the measures it takes.

The Member States shall notify the Commission of their responsible official bodies. The Commission shall forward that information to the other Member States;

(l) *official measures:* measures taken by the responsible official body;

(m) *official inspection:* inspection carried out by the responsible official body;

(n) *official statement:* statement issued by or under the responsibility of the responsible official body;

(o) *lot:* a number of units of a single commodity, identifiable by its homogeneity of composition and origin;

(p) *laboratory:* a body under public or private law carrying out analysis and proper diagnosis, enabling the producer to monitor production quality.

Article 4

1. In accordance with the procedure laid down in Article 22, a schedule shall be established in Annex I for each genus or species referred to in Annex II, with a reference to the plant health conditions laid down in Directive 77/93/EEC applying to the genus and/or species concerned and laying down:

(i) the quality and plant health conditions with which CAC material must comply, in particular those relating to the propagation system applied, to the purity of the growing crop, and, except in the case of rootstocks, where the material does not belong to a variety, to varietal aspects.

(ii) the conditions with which pre-basic, basic and certified material must comply, relating to quality, plant health, the testing methods and procedures applied, the propagation system(s) applied and, except in the case of rootstocks where the material does not belong to a variety, to varietal aspects;

(iii) the conditions with which rootstocks and other parts of plants of other genera or species must comply if propagating material of the genus or species concerned is grafted onto them.

2. If in the schedule a reference is made to the qualification 'virus-free (v.f.)' or 'virus-tested (v.t.)', the viruses and virus-like pathogens concerned shall be mentioned in that schedule.

This provision shall apply *mutatis mutandis* where reference is made to a qualification concerning freedom from or testing to detect harmful organisms other than viruses or virus-like pathogens.

No reference shall be made to v.f. or v.t. in respect of the material referred to in subparagraph 1 (i).

In respect of the material referred to in subparagraph 1 (ii), a reference to the aforementioned qualifications shall be made where such reference is relevant for the genus or species concerned.

Article 5

1. Member States shall ensure that suppliers take all necessary measures to guarantee compliance with the standards laid down by this Directive at all stages of the production and marketing of propagating material and fruit plants.

2. For the purposes of paragraph 1, suppliers shall either carry out themselves, or have carried out by an accredited supplier or a responsible official body, checks based on the following principles:

— identification of critical points in their production process on the basis of the production methods used,

— establishment and implementation of methods for monitoring and checking the critical points referred to in the first indent,

— taking samples for analysis in a laboratory accredited by the responsible official body for the purpose of checking compliance with the standards established by this Directive,

— keeping a written record or a record registered in an indelible fashion, of the data referred to in the first, second and third indents, as well as records on production and marketing of propagating material and fruit plants, to be held at the disposal of the responsible official body. These documents shall be kept for a period of at least three years.

However, suppliers whose activity in this connection is confined merely to the distribution of propagating material and fruit plants produced and packaged on premises other than their own shall be required only to keep a written record or a record registered in an indelible fashion of the buying and selling and/or delivery of propagating material and fruit plants.

This paragraph shall not apply to suppliers whose activity in this connection is confined to the supply of small quantities of propagating material and fruit plants to non-professional final consumers.

3. If the result of their own checks or any information at the disposal of the suppliers referred to in paragraph 1 reveals the presence of one or more of the harmful organisms referred to in Directive 77/93/EEC or, in a quantity greater than that normaly allowed for in order to meet the standards, of those specified in the relevant schedules established pursuant to Article 4, the suppliers shall immediately report this to the responsible official body and shall carry out the measures indicated by that body or any other measure necessary to reduce the risk of such harmful organisms from spreading. The supplier shall keep records of all outbreaks of harmful organisms on his premises and of all measures taken in relation to such occurrences.

4. Detailed rules for the application of the second subparagraph of paragraph 2 shall be adopted in accordance with the procedure laid down in Article 21.

Article 6

1. The responsible official body shall accredit suppliers once it has verified that their production methods and establishments meet the requirements of this Directive with regard to the nature of the activities they carry out. The accreditation must be renewed if a supplier decides to carry out activities other than those for which he has received accreditation.

2. The responsible official body shall accredit laboratories once it has verified that those laboratories, their methods, their establishments and their staff, meet the requirements of this Directive, to be specified according to the procedure laid down in Article 21, with regard to the testing activities they carry out. The accreditation must be renewed if a laboratory decides to carry out activities other than those for which it has received accreditation.

3. The responsible official body shall take the necessary measures if the requirements referred to in paragraphs 1 and 2 cease to be met. To this end, it shall take particular account of the conclusions of any check carried out in accordance with Article 7.

4. The supervision and monitoring of suppliers, establishments and laboratories shall be carried out regularly by or under the responsibility of the responsible official body, which shall at all times have free access to all parts of establishments, in order to ensure compliance with the requirements of this Directive. Implementing measures concerning supervision and monitoring shall be adopted, as necessary, in accordance with the procedure laid down in Article 21.

If such supervision and monitoring reveal that the requirements of this Directive are not being met, the responsible official body shall take appropriate action.

Article 7

1. Commission experts may, in cooperation with the responsible official bodies of the Member States, make on-the-spot checks in so far as this is necessary to ensure the uniform application of this Directive, and in particular to verify whether suppliers are in effect complying with the requirements of this Directive. A Member State in whose territory a check is being carried out shall give all necessary assistance to the experts in carrying out their duties. The Commission shall inform the Member States of the result of the investigations.

2. Detailed rules for the application of paragraph 1 shall be adopted in accordance with the procedure laid down in Article 21.

Article 8

1. Propagating material or fruit plants may be marketed only by accredited suppliers, and provided they meet the requirements laid down for CAC material in the schedule referred to in Article 4.

2. Pre-basic, basic and certified material may not be certified unless it belongs to a variety referred to in Article 9 (2) (i) and unless it meets the requirements for the category concerned laid down in the schedule referred to in Article 4. The category shall be indicated on the official document referred to in Article 11.

With regard to the varietal aspect, in the schedule to be drawn up in accordance with Article 4 provision may be made for an exemption for rootstocks where the material does not belong to a variety.

3. Without prejudice to the provisions of Directive 77/93/EEC, the previous paragraphs shall not apply to propagating material or fruit plants intended for:

(a) trials or scientific purposes; or

(b) selection work; or

(c) measures for the conservation of genetic diversity.

Detailed rules for the application of points (a) and (b) shall be adopted, as necessary, in accordance with the procedure laid down in Article 21. Detailed rules for the application of point (c) shall be adopted preferably before 1 January 1993, in accordance with the same procedure.

Article 9

1. Propagating material and fruit plants shall be marketed with a reference to the variety to which they belong. Where, in the case of rootstocks, the material does not belong to a variety, reference shall be made to the species or interspecific hybrid concerned.

2. The varieties to which reference shall be made pursuant to paragraph 1 must be:

(i) either commonly known, and protected in accordance with the provisions on the protection of new varieties of plants, or officially registered on a voluntary or other basis;

(ii) or entered on lists kept by the suppliers, with their detailed descriptions and relevant denominations. These lists must be available, upon request, to the responsible official body of the Member State concerned.

Each variety shall be described and, as far as possible, bear the same denomination in all Member States, in accordance with accepted international guidelines.

3. Varieties may be officially registered if they have been found to satisfy certain officially approved conditions and have an official description. They may also be officially registered if their material has been marketed in the territory of the Member State concerned prior to 1 January 1993, provided that they have an official description. In the latter case the registration shall expire not later than 30 June 2000, unless by that date the varieties in question have been:

— either confirmed, in accordance with the procedure laid down in Article 21, with a detailed description if they have been officially registered in at least two Member States,

— or registered in accordance with the first sentence.

4. Except where the varietal aspect is explicitly mentioned in the schedules referred to in Article 4, paragraphs (1) and (2) shall not entail any extra responsibility for the responsible official body.

5. Requirements for the official registration referred to in paragraph 2 (i) shall be established in accordance with the procedure laid down in Article 21, taking into account current scientific and technical knowledge and covering:

(a) the conditions of official acceptance, which may include, in particular, distinctness, stability and sufficient uniformity;

(b) the characteristics which as a minimum the examinations of the various species must cover;

(c) the minimum requirements for carrying out the examinations;

(d) the maximum period of validity of the official acceptance of a variety.

6. In accordance with the procedure laid down in Article 21:

— a system for the notification of varieties or species or interspecific hybrids to the responsible official bodies of the Member States may be set up,

— additional implementing provisions for paragraph 2 (ii) may be adopted,

— it may be decided that a common catalogue of varieties may be established and published.

Article 10

1. While growing and during lifting or removal from the parent material, propagating material and fruit plants shall be kept in separate lots.

2. If propagating material and fruit plants of different origins are put together or mixed during packaging, storage, transport or at delivery, the supplier shall keep records including the following data: composition of the lot and origin of its individual components.

3. Member States shall ensure compliance with the requirements referred to in paragraphs 1 and 2 by carrying out official inspections.

Article 11

Without prejudice to Article 10 (2), propagating material and fruit plants shall be marketed only in sufficiently homogeneous lots and if they are:

(i) qualified as CAC material and accompanied by a document made out by the supplier in accordance with the conditions laid down in the schedule established pursuant to Article 4. In an official declaration appears on this document, it shall be clearly separate from all other information in the document; or

(ii) qualified as pre-basic, basic or certified material, and certified as such by the official responsible body in accordance with the conditions laid down in the schedule referred to in Article 4.

Requirements in respect of propagating material and/or fruit plants with regard to labelling and/or sealing and packaging shall be indicated in the schedule referred to in Article 4.

In the case of retail supply of propagating material or fruit plants to a non-professional final consumer, requirements regarding labelling may be confined to appropriate product information.

Article 12

Member States may exempt:

— from the application of Article 11, small producers all of whose production and sales of propagating material and fruit plants is intended for final use by persons on the local market who are not professionally involved in plant production ('local circulation'),

— from the checks and official inspections provided for in Article 18, the local circulation of propagating materials and fruit plants produced by such exempt persons.

In accordance with the procedure laid down in Article 21, implementing measures relating to other requirements concerning the exemptions referred to in the first and second indents, in particular as regards the concepts of 'small producers' and 'local market', and to the related procedures, shall be adopted.

Article 13

In the event of temporary difficulties in the supply of propagating material and fruit plants satisfying the requirements of this Directive, measures may be adopted, in accordance with the procedure laid down in Article 21, concerning the marketing of propagating material and fruit plants meeting less stringent requirements, without prejudice to the plant-health rules laid down in Directive 77/93/EEC.

Article 14

Propagating material and fruit plants which comply with the requirements and conditions of this Directive shall be subject to no marketing restrictions as regards supplier, plant health, growing medium and inspection arrangements, other than those laid down in this Directive.

Article 15

As regards the products referred to in Annex II Member States shall refrain from imposing more stringent conditions or marketing restrictions other than the conditions laid down in the schedules referred to in Article 4 or those obtaining on the date of adoption of this Directive, as the case may be.

Article 16

1. In accordance with the procedure laid down in Article 21, it shall be decided whether propagating material and fruit plants produced in a third country and affording the same guarantees as regards obligations on the supplier, identity, characteristics, plant health, growing medium, packaging, inspection arrangements, marking and sealing, are equivalent in all these respects to propagating material and fruit plants produced in the Community and complying with the requirements and conditions of this Directive.

2. Pending the decision referred to in paragraph 1, Member States may, until 1 January 1993, and without prejudice to the provisions of Directive 77/93/EEC, apply to the import of propagating material and fruit plants from third countries conditions at least equivalent to those indicated, on a temporary or permanent basis, in the schedules adopted pursuant to Article 4. If such conditions are not laid down in the schedules, the conditions for importation must be at least equivalent to those applicable to production in the Member State concerned.

In accordance with the procedure laid down in Article 21, the date referred to in the first subparagraph may, for the various third countries, be extended pending the decisions referred to in paragraph 1.

Propagating material and fruit plants imported by a Member State in accordance with a decision taken by that Member State pursuant to the first subparagraph shall be subject to no marketing restrictions in the other Member States as regards the matters referred to in paragraph 1.

Article 17

Member States shall ensure that propagating material and fruit plants are officially inspected during production and marketing, and by random checks in the case of CAC material, to verify compliance with the requirements and conditions set out in this Directive.

Article 18

Detailed rules for implementing the controls provided for in Article 5 and for the official inspection provided for in Articles 10 and 17, including sampling methods, shall be adopted in accordance with the procedure laid down in Article 21.

Article 19

1. If, during the supervision and monitoring provided for in Article 6 (4), the official inspection referred to in Article 17, or the trials referred to in Article 20, it is found that propagating material or fruit plants do not meet the requirements of this Directive, the responsible official body of the Member State shall take appropriate action to ensure that they do comply with the provisions of this Directive or, if that is not possible, to ban the marketing of that propagating material or those fruit plants in the Community.

2. If it is found that propagating material or fruit plants marketed by a particular supplier do not comply with the requirements and conditions of this Directive, the Member State concerned shall ensure that appropriate measures are taken against that supplier. If the supplier is forbidden to market propagating material and fruit plants, the Member State shall accordingly inform the Commission and the competent national bodies in the Member States.

3. Any measures taken under paragraph 2 shall be withdrawn as soon as it has been established with sufficient certainty that the propagating material or fruit plants intended for marketing by the supplier will, in the future, comply with the requirements and conditions of this Directive.

Article 20

1. Trials, or, where appropriate, tests shall be carried out in the Member States on samples to check that propagating material or fruit plants comply with the requirements and conditions of this Directive, including those relating to plant health. The Commission may organize inspections of the trials by representatives of the Member States and of the Commission.

2. It may be decided in accordance with the procedure laid down in Article 21 that it is necessary to carry out Community trials or tests for the same purpose as mentioned in paragraph 1. The Commission may organize inspections of Community trials by representatives of the Member States and of the Commission.

3. The trials or tests referred to in paragraphs 1 and 2 shall be used to harmonize technical methods of examination of propagating material and fruit plants. Progress reports shall be made on the trials or tests and sent in confidence to the Member States and to the Commission.

4. The Commission shall ensure that, where necessary, arrangements for coordinating, carrying out and inspecting the trials referred to in paragraphs 1 and 2, and assessing their results, are adopted by the Committee set up by Article 21. When plant health problems occur, the Commission shall notify the Standing Committee on Plant Health. If necessary, specific arrangements shall be adopted. Propagating material and fruit plants produced in third countries shall be included in the trials.

Article 21

1. The Commission shall be assisted by a committee, referred to as the 'Standing Committee on Propagating Material and Plants of Fruit Genera and Species', chaired by a representative of the Commission.

2. The representative of the Commission shall submit to the standing committee a draft of the measures to be taken. The standing committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the standing committee between shall be weighted in the manner set out in that Article. The chairman shall not vote.

3. The Commission shall adopt measures which shall apply immediately.

However, if these measures are not in accordance with the opinion of the standing committee, they shall be communicated by the Commission to the Council forthwith. In that event, the Commission may defer application of the measures which it has decided for a period of not more than one month from the date of such communication.

The Council, acting by a qualified majority, may take a different decision within the time limit referred to in the previous paragraph.

Article 22

1. The Commission shall be assisted by the Standing Committee on Propagating Material and Plants of Fruit Genera and Species, chaired by the representative of the Commission.

2. The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

3. The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the committee.

If the measures envisaged are not in accordance with the opinion of the committee, or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority.

If, on the expiry of a period of three months from the date of referral to the Council, the Council has not acted, the proposed measures shall be adopted by the Commission.

Article 23

Amendments to the schedules established pursuant to Article 4 and to the conditions and detailed rules adopted for the implementation of this Directive shall be adopted in accordance with the procedure laid down in Article 21.

Article 24

1. Member States shall ensure that propagating material and fruit plants produced in their territory and intended for marketing comply with the requirements of this Directive.

2. If it is found, during an official inspection, that propagating material or fruit plants cannot be marketed because they fail to comply with a condition relating to plant health, the Member State concerned shall take appropriate official measures to eliminate any consequent plant-health risk.

Article 25

Within five years from the date of adoption of this Directive, the Commission shall examine the results of its application and submit to the Council a report, accompanied by any necessary proposals for amendments.

Article 26

1. Member States shall bring into force the laws, regulations or administrative provisions necessary to comply with this Directive no later than 31 December 1992. They shall forthwith inform the Commission thereof.

When these measures are adopted by the Member States, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. The methods for making such reference shall be adopted by the Member States.

2. As far as Articles 5 to 11, 14, 15, 17, 19 and 24 are concerned, the date of application for each genus or species referred to in Annex II shall be fixed in accordance with the procedure provided for in Article 21, when the schedule referred to in Article 4 is drawn up.

Article 27

This Directive is addressed to the Member States.

Done at Luxembourg, 28 April 1992.

For the Council

The President

Arlindo MARQUES CUNHA

ANNEX I

Schedules referred to in accordance with Article 4

ANNEX II

List of genera and species to which this Directive applies

— Citrus sinensis (L.) Osbeck	orange
— Citrus limon (L.) Burm. f.	lemon
— Citrus reticulata Blanco	mandarin
— Citrus paradisi Macf.	grapefruit
— Citrus aurantifolia (Christm.) Swing	lime
— Corylus avellana L.	hazel
— Fragaria x ananassa Duch.	strawberry
— Juglans regia L.	walnut
— Malus Mill.	apple
— Prunus amygdalus Batsch	almond
— Prunus armeniaca L.	apricot
— Prunus avium L.	sweet cherry
— Prunus cerasus	sour cherry
— Prunus domestica L.	plum
— Prunus persica (L.) Batsch	peach
— Pyrus communis L.	pear
— Prunus Salicina	Japanese plum
— Cydonia Mill.	quince
— Ribes	redcurrant
— Rubus	blackberry
— Pistacia vera	pistachio
— Olea europaea	olive

COUNCIL DIRECTIVE 92/35/EEC

of 29 April 1992

laying down control rules and measures to combat African horse sickness

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 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 Council Directive 90/426/EEC of 26 June 1990 on animal health conditions governing the movement and import from third countries of equidae (4) seeks to liberalize the movement of equidae on Community territory; whereas, under Article 5 (4) thereof, Community measures must be introduced to harmonize rules for controlling and measures to combat African horse sickness;

Whereas such measures will make it possible to ensure rational development of the farming sector and contribute to the protection of animal health in the Community;

Whereas an outbreak of this disease can quickly assume epizootic proportions, causing mortality and disturbance which may severely reduce the profitability of livestock production;

Whereas control measures must be taken as soon as the presence of the disease is suspected and whereas immediate and effective action must be implemented as soon as it is confirmed in order to guarantee animal health protection in the Community;

Whereas the measures to be taken must aim at preventing the spread of African horse sickness; whereas the movement of animals liable to transmit the infection must be strictly controlled and insects must be eradicated from infected holdings;

Whereas the conditions under which vaccination against African horse sickness may be carried out and the rules governing such vaccination must be specified;

Whereas, in order to ensure more effective control of the disease, action should be taken to establish protection and surveillance zones, taking into account geographical, administrative, ecological and epizootiological factors;

Whereas a thorough epizootiological inquiry is essential in order to prevent any spread of the disease;

Whereas Article 3 of Council Decision 90/424/EEC of 26 June 1990 on expenditure in the veterinary field (5) applies in the event of the occurrence of African horse sickness,

HAS ADOPTED THIS DIRECTIVE:

Article 1

This Directive lays down control rules and measures to combat African horse sickness.

Article 2

For the purposes of this Directive, the definitions given in Article 2 of Directive 90/426/EEC shall apply as and where necessary.

However, *holding* means holding within the meaning of Directive 90/426/EEC and nature reserves in which equidae live in freedom.

Furthermore:

(a) *owner or keeper* means any natural or legal person(s) having ownership of the equidae or charged with their keep, whether or not for finanical reward;

(b) *vector* means an insect of the *imicola Culicoides* species or any other Culicoides insect liable to transmit African horse sickness, identifiable under the procedure provided for in Article 19, following the opinion of the Scientific Veterinary Committee;

(c) *confirmation* means the declaration, by the competent authority, of the presence of African horse sickness, based on laboratory results; however, in the event of an epidemic the competent authority may also confirm the disease on the basis of clinical and/or epidemiological results;

(d) *competent authority* means the central authority of a Member State responsible for carrying out veterinary checks or any veterinary authority to which it has delegated that responsibility;

(e) *official veterinarian* means the veterinarian appointed by the competent authority.

(1) OJ No C 312, 3. 12. 1991, p. 12.
(2) Opinion delivered on 10 April 1992 (not yet published in the Official Journal).
(3) Opinion delivered on 29 April 1992 (not yet published in the Official Journal).
(4) OJ No L 224, 18. 8. 1990, p 42. Directive as last amended by Decision 92/130/EEC (OJ No L 47, 22. 2. 1992, p. 26).
(5) OJ No L 224, 18. 8. 1990, p. 19. Decision as last amended by Regulation (EEC) No 3763/91 (OJ No L 356, 24. 12. 1991, p. 1.).

Article 3

Member States shall ensure that the occurrence or suspicion of African horse sickness is subject to compulsory and immediate notification to the competent authority.

Article 4

1. Where a holding contains one or more equidae suspected of being infected with African horse sickness, Member States shall ensure that the official veterinarian immediately sets in motion official means of investigation to confirm or rule out the presence of the said sickness.

2. From the moment when the suspected infection is notified, the official veterinarian shall:

(a) have the suspect holding(s) placed under official surveillance;

(b) initiate:

(i) an official census of the species of equidae, stating in the case of each species the number of equidae already dead, infected or liable to be infected, and the updating of that census to take account of equidae born or dying during the period of suspicion; the information in the census must be produced on request and may be checked at each inspection;

(ii) a census of places likely to facilitate the survival of the vector or to accommodate it and the use of appropriate means of eradicating insects in such places;

(iii) an epizootiological inquiry in accordance with Article 7;

(c) regularly visit the holding(s), when he shall:

(i) examine each equid kept there;

(ii) carry out a detailed clinical examination or an autopsy on the suspect or dead animals and take the samples necessary for laboratory examinations;

(d) ensure that:

(i) all equidae on the holding(s) are kept in their living quarters or in other places protected against the vector;

(ii) all movement of equidae to or from the holding(s) is prohibited;

(iii) appropriate means of eradicating insects are employed in and around the buildings housing the equidae;

(iv) the carcases of equidae which have died on the holding are destroyed, disposed of, burnt or buried in accordance with Council Directive 90/667/EEC of 27 November 1990 laying down the veterinary rules for the disposal and processing of animal waste, for its placing on the market and for the prevention of pathogens in feedstuffs of animal or fish origin and amending Directive 90/425/EEC (1).

3. Pending the introduction of the official measures referred to in paragraph 2, the owner or keeper of any animals suspected of having the disease shall take all the necessary precautionary action to ensure compliance with paragraph 2 (d).

4. The competent authority may apply any of the measures provided for in paragraph 2 to other holdings should their location, their geographical situation or contacts with the holding where the disease is suspected give reason to suspect possible contamination.

5. Apart from the provisions of paragraph 2, specific provisions may be laid down in accordance with the procedure referred to in Article 19 for nature reserves in which equidae live in freedom.

6. The measures covered by this Article shall be officially discontinued only when the competent authority no longer suspects the presence of African horse sickness.

Article 5

Vaccination against African horse sickness may be practised solely in accordance with the provisions laid down in this Directive.

Article 6

1. Where the presence of African horse sickness is officially confirmed, the official veterinarian:

(a) shall proceed immediately with the killing under official control of any equidae on the infected holding which are infected with or present clinical symptoms of African horse sickness;

(b) shall arrange for the destruction, disposal, burning or burial of the carcases of the aforesaid equidae in accordance with Directive 90/667/EEC and/or;

(c) shall extend the measures laid down in Article 4 to holdings situated within a 20 km radius (included in the protection zone) around the infected holding(s);

(d) shall proceed, in the zone laid down in (c), with the systematic vaccination of all equidae using a vaccine authorized by the competent authority, and shall identify them by a clear, indelible mark applied by an approved method in accordance with the procedure laid down in Article 19. However, on the basis of the epizootiological, meteorological, geographical or climatological circumstances, the vaccination requirements may be waived by the competent authority. The competent authority shall inform the Commission thereof;

(e) carry out an epizootiological enquiry in accordance with Article 7.

(1) OJ No L 363, 27. 12. 1990, p. 51.

2. The competent authority may extend the measures provided for in paragraph 1 beyond the zone referred to in point (c) thereof if, on account of the geographical, ecological or meteorological situation or of movements to or from the holding where the disease has been confirmed, there are grounds for suspecting an extension of African horse sickness. It shall inform the Commission accordingly.

3. Where the zone referred to in paragraph 1 is situated in the territory of more than one Member State the competent authorities of the Member States concerned shall collaborate in defining this zone. If necessary, the latter shall be defined under the procedure laid down in Article 19.

Article 7

1. The epizootiological inquiry shall cover:

— the length of time during which African horse sickness may have existed on the holding,

— the possible origin of the African horse sickness on the holding and the identification of other holdings on which there are equidae which may have become infected or contaminated from the same source,

— the presence and distribution of disease vectors,

— the movement of equidae to or from the holdings concerned or any carcases of equidae removed from them.

2. In order to provide full coordination of all measures necessary to ensure eradication of African horse sickness as quickly as possible and for the purpose of carrying out the epizootiological inquiry, a crisis unit shall be established.

The general rules concerning national crisis units and Community crisis units shall be adopted by the Council, acting on a proposal from the Commission.

Article 8

1. The Member States shall ensure that, in addition to the measures referred to in Article 6, the competent authority establishes a protection zone and a surveillance zone. The establishment of the zones shall take account of the geographical, administrative, ecological and epziootiological factors connected with African horse sickness and of the control structures.

2. (a) The protection zone shall consist of a part of Community territory with a radius of at least 100 km around the entire infected holding.

(b) The surveillance zone shall consist of a part of Community territory extending at least 50 km beyond the protection zone, in which no systematic vaccination has been carried out in the last 12 months.

(c) Where such zones are situated on the territory of several Member States, the competent authorities of the Member States concerned shall collaborate in order to define the zones referred to in (a) and (b). However, if necessary, the protection zone and the surveillance zone shall be defined in accordance with the procedure laid down in Article 19.

3. At the duly substantiated request of a Member State a decision may be taken in accordance with the procedure laid down in Article 19, with a view to amending the demarcation of the zones defined in paragraph 2, taking into account:

— their geographical situation and ecological factors,

— the meteorological conditions,

— the presence and distribution of the vector,

— the results of the epizootiological studies carried out in accordance with Article 7,

— the results of the laboratory examinations,

— the application of the control measures, in particular the insect eradication measures.

Article 9

1. Member States shall ensure that the following measures are applied in the protection zone:

(a) all holdings containing equidae within the zone are identified;

(b) the official veterinarian conducts:

— periodic visits to all holdings containing equidae,

— a clinical examination of the said equidae including, if necessary, the collection of samples for laboratory examination; a record of visits and findings must be kept;

(c) equidae leave the holding on which they are kept only for transport directly under official supervision for emergency slaughter to a slaughterhouse located in that zone or, if that zone has no slaughterhouse, to a slaughterhouse in the surveillance zone designated by the competent authority.

2. In addition to the measures provided for in paragraph 1, a decision to carry out systematic vaccination of equidae against African horse sickness and to identify them in the protection zone may be taken under the procedure laid down in Article 19.

Article 10

Member States shall ensure that:

1. the measures provided for in Article 9 (1) apply in the surveillance zone. However, if the surveillance zone has no slaughterhouse, the equidae may be slaughtered in the protection zone in a slaughterhouse designated by the competent authority;

2. all vaccination against African horse sickness is prohibited in the surveillance zone.

Article 11

The period of application and maintenance of the measures provided for in Articles 6, 8, 9 and 10 shall be determined by the procedure laid down in Article 19. The period may in no case be less than 12 months where vaccination has been carried out in accordance with Articles 6 (1) and 9 (2).

However, notwithstanding Articles 9 (1) (c) and 10 (1):

(a) equidae from the protection zone and from the surveillance zone may be transported under official supervision and under the conditions laid down in Article 5 (3) of Directive 90/426/EEC to the quarantine station referred to in Article 5 (3) (d) of that Directive;

(b) movements of equidae within zones of the same status shall be subject to authorization from the competent authorities on the basis of the following rules:

(i) equidae shall:

— undergo a prior official check,

— require identification, and

— be accompanied by an official document;

(ii) Member States shall ensure, in all events, that equidae vaccinated less than 60 days previously cannot leave the holding on which they were at the time the vaccination was carried out;

(iii) Member State shall inform the Commission within the Standing Veterinary Committee on measures taken in this field.

Article 12

Where the African horse sickness epizootic is exceptionally serious in a particular region, any additional measures to be taken by the Member States concerned shall be adopted in accordance with the procedure laid down in Article 19.

Article 13

Member States shall ensure that the competent authority takes all necessary and appropriate measures for all persons established in the protection and surveillance zones to be fully informed of the restrictions in force and to take the steps necessary for the appropriate implementation of the measures in question.

Article 14

1. In each Member State, a national laboratory shall be designated to carry out the laboratory examinations stipulated in this Directive. These national laboratories and their powers and duties are listed in Annex I to this Directive.

2. The national laboratories listed in Annex I shall liaise with the Community reference laboratory referred to in Article 15.

Article 15

The Community reference laboratory for African horse sickness is named in Annex II. Notwithstanding the provisions of Decision 90/424/EEC, and in particular Article 28 thereof, the functions and duties of the laboratory shall be defined in Annex III.

Article 16

Experts from the Commission may, in so far as is necessary for the uniform application of this Directive and in cooperation with the competent authorities, make on-site checks. To this end they may, by inspecting a representative percentage of holdings, verify whether the competent authorities are monitoring compliance with the provisions of this Directive. The Commission shall inform the Member States of the results of the checks carried out.

A Member State in the territory of which an inspection is being carried out shall give all necessary assistance to the experts in carrying out their duties.

The general rules for implementing this Article shall be adopted in accordance with the procedure laid down in Article 19.

Article 17

1. Each Member State shall draw up a contingency plan, specifying how it will implement the measures laid down in this Directive.

This plan should allow access to facilities, equipment, personnel and all other appropriate materials necessary for the rapid and efficient eradication of the disease.

2. The criteria to be applied for drawing up the plans referred to in paragraph 1 are laid down in Annex IV.

Plans drawn up in accordance with these criteria shall be submitted to the Commission not later than three months after this Directive takes effect.

The Commission shall examine the plans in order to determine whether they permit the desired objective to be attained and shall suggest to the Member State concerned any amendments required, in particular to ensure that they are compatible with those of the other Member States.

The Commission shall approve the plans, if necessary amended, in accordance with the procedures laid down in Article 19.

The plans may subsequently be amended or supplemented in accordance with the same procedure to take account of developments in the situation.

Article 18

The Annexes shall be amended by the Council, acting on a proposal from the Commission.

Article 19

1. Where the procedure defined in this Article is to be followed, the chairman shall refer the matter without delay to the Standing Veterinary Committee set up by Decision 68/361/EEC (1), hereinafter referred to as 'the committee', either on his own initiative or at the request of a Member State.

2. The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States shall be weighted in the manner set out in that Article. The chairman shall not vote.

3. (a) The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the committee.

(b) If the measures envisaged are not in accordance with the opinion of the committee, or if no opinion is delivered, the Commission shall without delay submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority.

If, within three months of the date of referral to the Council, the Council has not acted, the proposed measures shall be adopted by the Commission save where the Council has decided against the said measures by a simple majority.

Article 20

The Member States shall bring into force, the laws, regulations and administrative provisions necessary to comply with this Directive no later than 31 December 1992. 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 at the time of their official publication. The methods of making such a reference shall be laid down by the Member States.

Article 21

The Commission shall submit to the Council, before 1 October 1993 and based on acquired experience, a report on the application of this Directive together with any appropriate proposals.

Article 22

This Directive is addressed to the Member States.

Done at Luxembourg, 29 April 1992.

For the Council

The President

Arlindo MARQUES CUNHA

(1) OJ No L 255, 18. 10. 1968, p. 23.

ANNEX I

A. LIST OF NATIONAL LABORATORIES FOR AFRICAN HORSE SICKNESS

Belgium	Institut National de Recherche Vétérinaire (INRV), Groeselenberg 99, 1180 Bruxelles Nationaal Instituut voor Diergeneeskundig Onderzoek (NIDO), Groeselenbergstraat 99, 1180 Brussel
Denmark	Statens Veterinaere Institut for Virusforskning, Lindholm, 4771 Kalvehave
Germany	Bundesforschungsanstalt für Viruskrankheiten der Tiere, Paul-Ehrlich-Straße, 7400 Tübingen
France	Laboratoire Central de Recherches Vétérinaires, 22, rue Pierre Curie, BP 67, 94703 Maisons Alfort Cedex
Greece	Institut de fièvre aphteuse et des maladies exotiques du Centre des Instituts Vétérinaires d'Athènes, Rue Neapoleos 25, KA 15 310 Aghia Paraskevi, Athens
Ireland	Central Veterinary Research Laboratory, Department of Agriculture and Food, Abbotstown, Castleknock, Dublin
Italy	Istituto Zooprofilattico Sperimentale dell'Abruzzo e del Molise, Via Campo Boario, Teramo
Luxembourg	Laboratoire de Médecine Vétérinaire de l'État, 54, Avenue Gaston Diderich, L-Luxembourg
Netherlands	Centraal Diergeneeskundig Instituut, Lelystad
Portugal	Laboratório Nacional de Investigação Veterinária, Estrada de Benfica No 102, Lisboa
Spain	Laboratorio de sanidad y producción animal, Ministerio de Agricultura, Pesca y Alimentación, 28110 Algete, Madrid
United Kingdom	Institute of Animal Health, Ash Road, Pirbright, Woking, Surrey GU 24 ONF

B. FUNCTIONS AND DUTIES OF THE NATIONAL LABORATORIES FOR AFRICAN HORSE SICKNESS

The national laboratories for African horse sickness are responsible for coordinating the standards and diagnostic methods laid down in each diagnostic laboratory of the Member State, for the use of reagents and for the testing of vaccines. To this end, they:

(a) may provide diagnostic reagents to diagnostic laboratories requesting them;

(b) will control the quality of all diagnostic reagents used in that Member State;

(c) will arrange comparative tests periodically;

(d) will hold isolates of African horse sickness virus from cases confirmed in that Member State;

(e) will ensure the confirmation of positive results obtained in regional diagnostic laboratories.

ANNEX II

COMMUNITY REFERENCE LABORATORY

Laboratorio de sanidad y producción animal,

Ministerio de Agricultura, Pesca y Alimentación,

28110 Algete, Madrid — España.

ANNEX III

THE FUNCTIONS AND DUTIES OF THE COMMUNITY REFERENCE LABORATORY FOR AFRICAN HORSE SICKNESS

The Community reference laboratory has the following functions and duties:

1. to coordinate, in consultation with the Commission, the methods employed in the Member States for diagnosing African horse sickness, specifically by:

   (a) typing, storing and supplying strains of African horse sickness virus for serological tests and the preparation of antiserum;

   (b) supplying standard sera and other reference reagents to the national reference laboratories in order to standardize the tests and reagents used in each Member State;

   (c) building up and maintaining a collection of African horse sickness virus strains and isolates;

   (d) organizing periodical comparative tests of diagnostic procedures at Community level;

   (e) collecting and collating data and information on the methods of diagnosis used and the results of tests carried out in the Community;

   (f) characterizing isolates of African horse sickness by the most up-to-date methods available to allow greater understanding of the epizootiology of African horse sickness;

   (g) monitoring developments in African horse sickness surveillance, epizootiology and prevention throughout the world;

2. to assist actively in the diagnosis of African horse sickness outbreaks in Member States by receiving virus isolates for confirmatory diagnosis, characterization and epizootiologial studies;

3. to facilitate the training or retraining of experts in laboratory diagnosis with a view to the harmonization of techniques throughout the Community;

4. to carry out a mutual and reciprocal exchange of information with the world laboratory for African horse sickness designated by the International Office of Epizootics (IOE), in particular with regard to developments in the world situation concerning African horse sickness.

ANNEX IV

CRITERIA FOR CONTINGENCY PLANS

Contingency plans shall meet at least the following criteria:

1. the establishment of a crisis centre on a national level, which shall coordinate all control measures in the Member State concerned;
2. a list shall be provided of local disease control centres with adequate facilities to coordinate the disease control measures at a local level;
3. detailed information shall be given about the staff involved in control measures, their skills and their responsibilities;
4. each local disease control centre must be able to contact rapidly persons/organizations which are directly or indirectly involved in an outbreak;
5. equipment and materials shall be available to carry out the disease control measures properly;
6. detailed instructions shall be provided on action to be taken, including means of disposal of carcases, on suspicion and confirmation of infection or contamination;
7. training programmes shall be established to maintain and develop skills in field and administrative procedures;
8. diagnostic laboratories must have facilities for post-mortem examination, the necessary capacity for serology, histology, etc., and must maintain the skills for rapid diagnosis (to that end arrangements should be made for rapid transportation of samples);
9. details shall be provided of the quantity of African horse sickness vaccine estimated to be required in the event of a reinstatement of emergency vaccination;
10. provisions shall be made to ensure the legal powers, necessary for the implementation of the contingency plans.

COUNCIL DIRECTIVE 92/36/EEC

of 29 April 1992

amending, with regard to African horse sickness, Directive 90/426/EEC on animal health conditions governing the movement and import from third countries of equidae

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 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),

Wheres Directive 90/426/EEC (4) lays down animal health conditions governing the movement and import from third countries of equidae; whereas the said Directive indicates the limits of the territory infected with African horse sickness and the rules applicable to Member States not free from the disease;

Whereas Directive 92/35/EEC (5) has laid down the control rules; whereas Directive 90/426/EEC must be amended accordingly in order to take account of these provisions,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Article 5 of Directive 90/426/EEC shall be replaced by the following:

'*Article 5*

1. A Member State which is not free of African horse sickness within the meaning of Article 2 (f) may dispatch equidae from that part of its territory which is considered to be infected within the meaning of paragraph 2 of this Article only under the conditions set out in paragraph 3 of this Article.

2. (a) A part of the territory of a Member State shall be considered to be infected with African horse sickness if:

— clinical, serological (in unvaccinated animals) and/or epidemiological evidence has revealed the presence of African horse sickness in the past two years, or

— vaccination against African horse sickness has been carried out in the past 12 months.

(b) The part of the territory considered to be infected with African horse sickness must comprise as a minimum:

— a protection zone with a radius of at least 100 km around any centre of infection,

— a surveillance zone at least 50 km extending beyond the protection zone, in which no vaccination has been carried out in the last 12 months.

(c) The rules controlling the combat measures relating to the territories and zones referred to in points (a) and (b) and the relevant derogations are specified in Directive 92/35/EEC (*).

(d) All vaccinated equidae found in the protection zone must be registered and identified in accordance with Article 6 (1) of Directive 92/35/EEC.

The identification document and/or health certificate shall carry a clear reference to such vaccination.

3. A Member State may dispatch from the territory referred to in paragraph 2 (b) only equidae which meet the following requirements:

(a) they must be dispatched only during certain periods of the year, having regard to the activity of vector insects, to be determined in accordance with the procedure laid down in Article 25;

(b) they must show no clinical symptom of African horse sickness on the day of the inspection referred to in Article 4 (1);

(c) — if they have not been vaccinated against African horse sickness, they must have undergone and reacted negatively to a complement fixation test for African horse sickness as described in Annex D, on two occasions, with an interval of between 21 and 30 days between the two tests, the second of which must have been carried out during the 10 days prior to dispatch,

— if they have been vaccinated, they must not have undergone vaccination during the previous two

(1) OJ No C 312, 3. 12. 1991, p. 17.
(2) Opinion delivered on 10 April 1992 (not yet published in the Official Journal).
(3) Opinion delivered on 22 April 1992 (not yet published in the Official Journal).
(4) OJ No L 224, 18. 8. 1990, p. 42.
(5) See page 19 of this Official Journal.

months and must have undergone the fixation test described in Annex D at the aforementioned intervals without having recorded an increase in the antibody count. Under the procedure laid down in Article 24, the Commission may, following the opinion of the Scientific Veterinary Committee, recognize other monitoring methods;

(d) they must have been kept in a quarantine station for a minimum period of 40 days prior to dispatch;

(e) they must have been protected from vector insects during the period of quarantine and during transportation from the quarantine station to the place of dispatch.

(*) OJ No L 157, 10. 6. 1992, p. 19.'

Article 2

Commission Decisions 90/552/EEC (1), 90/553/EEC (2), 91/93/EEC (3) and 92/101/EEC (4) shall continue to apply for the purposes of this Directive.

Under the procedure laid down in Article 19 of Directive 92/35/EEC, the abovementioned Decisions may be amended with a view to adapting their scope to the provisions of this Directive or with a view to their future adaptation to scientific and technological developments.

Article 3

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive no later than 31 December 1992. The 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 methods of making such reference shall be laid down by the Member States.

Article 4

This Directive is addressed to the Member States.

Done at Luxembourg, 29 April 1992.

For the Council

The President

Arlindo MARQUÊS CUNHA

(1) Commission Decision 90/552/EEC of 9 November 1990 determining the limits of the territory infected with African horse sickness (OJ No L 313, 13. 11. 1990, p. 38). Decision as amended by Decision 91/645/EEC (OJ No L 349, 18. 12. 1991, p. 43).

(2) Commission Decision 90/553/EEC of 9 November 1990 establishing the identification mark for equidae vaccinated against African horse sickness (OJ No L 313, 13. 11. 1990, p. 40).

(3) Commission Decision 91/93/EEC of 11 February 1991 determining the period of the year during which Portugal may dispatch certain equidae from the part of its territory considered to be infected with African horse sickness (OJ No L 50, 23. 2. 1991, p. 27).

(4) Commission Decision 92/101/EEC of 28 January 1992 determining the period of the year during which Spain may dispatch certain equidae from the part of its territory considered to be infected with African horse sickness (OJ No L 39, 15. 2. 1992, p. 46).