II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 28 March 1989

authorizing certain Member States to provide for derogations from certain provisions of Council Directive 77/93/EEC in respect of isolated bark of conifers originating in California (USA)

(Only the Danish, German, French and Dutch texts are authentic)

(89/247/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to 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 [1], as last amended by Directive 89/83/EEC [2], and in particular Article 14 (3) thereof,

Having regard to the requests made by the Member States concerned,

Whereas under the provisions of Directive 77/93/EEC, isolated bark of conifers originating in non-European countries may in principle not be introduced into the Community because of the risk of introducing harmful organisms;

Whereas, however, Article 14 (3) of the abovementioned Directive permits derogations from that rule, provided that it is established that there is no risk of spreading harmful organisms;

Whereas it has appeared that coniferous bark originating in California of the quality available there is particularly appropriate as a growing medium or part of a growing medium for orchid plants, thus reducing the number of transplanting or repotting operations necessary in the process of orchid growing;

Whereas the Commission has established on the basis of the information available at present that the risk of spreading harmful organisms, in particular Scolytidae and *Bursaphelencus xylophilus* through the introduction of coniferous bark originating in California for the aforementioned purpose is obviated provided that certain technical conditions are satisfied; whereas this Decision might be revised in the light of the effectiveness of certain fumigation schedules on the control of *Bursaphelencus xylophilus*;

Whereas the Member States concerned should therefore be authorized to provide for derogations in respect of coniferous bark originating in California under those technical conditions;

Whereas the measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Plant Health,

HAS ADOPTED THIS DECISION:

Article 1

1. Belgium, Denmark, the Federal Republic of Germany, France, Luxembourg and the Netherlands are hereby authorized to provide, under the conditions laid down in paragraph 2, for derogations from Article 4 (1) of Directive 77/93/EEC, with regard to the prohibition referred to in Part A (5) of Annex III thereto, for coniferous bark, originating in California (USA) provided that it is intended as a growing medium for orchid plants.

[1] OJ No L 26, 31. 1. 1977, p. 20.
[2] OJ No L 32, 3. 2. 1989, p. 29.

2. For the purposes of paragraph 1, the following conditions shall be satisfied :

(a) The bark shall be stored in heaps on hard standing in the open and subsequently, within two weeks prior to dispatch and under a gas-proof cover, undergo fumigation with methylbromide which is carried out at a minmum rate of 32 g/m³ of total volume for at least 72 hours at an initial temperature of + 10 °C. It may be decided, on the basis of scientific evidence and in accordance with the procedure laid down in Article 16 of Directive 77/93/EEC, that other schedules shall or may be used.

(b) The fumigation procedures as described in (a) shall be carried out by officially licensed fumigation operatives using proper fumigation facilities and qualified staff to requisite standards. The operatives shall be informed of the details of the procedure required for bark fumigation.

(c) The individual fumigation procedure shall systematically be supervised at the fumigation site directly by officials of the official plant protection organization of the USA or by cooperating State officials in such a way as to guarantee compliance with the requirements laid down in (a) and (b).

(d) The bark shall be consigned in bags or other containers which habe been closed, sealed and labelled with the indication 'fumigated' immediately after fumigation under the supervision of the official plant protection organization of the USA.

(e) The bark shall be accompanied by an official plant health certificate issued by the official plant protection organization of the USA after finalization of fumigation, closing and sealing.

(f) Without prejudice to the information required under the section relating to disinfestation and/or disinfection treatment, the certificate shall bear the following additional declaration :

'It is hereby certified that the bark shipped under this certificate been fumigated by ..... (licensed fumigation operative) ..... at ..... (fumigation site) ..... in accordance with Commission Decision 89/247/EEC.'

(g) The importing Member States shall draw representative samples from each consignment for official examination in respect of the presence of harmful organisms and the effectiveness of fumigation.

Article 2

The authorization granted in Article 1 shall expire on 31 December 1991. It shall be revoked in so far as it is established that the conditions laid down therein are not sufficient to prevent the introduction of harmful organisms or have not been complied with.

Article 3

Member States shall notify the Commission and the other Member States of the provisions under which they make use of the authorization granted in Article 1. They shall provide the Commission and the other Member States, before 1 March of each year, with the information on amounts imported pursuant to this Decision and with a detailed technical report of the official examination referred to in Article 1 (2) (g) ; copies of each plant health certificate shall be transmitted to the Commission.

Article 4

This Decision is addressed to the Kingdom of Belgium, the Kingdom of Denmark, the Fedeal Republic of Germany, the French Republic, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands.

Done at Brussels, 28 March 1989.

For the Commission

Ray MAC SHARRY

Member of the Commission