COMMISSION DECISION

of 21 April 2008

derogating from certain provisions of Decision 2006/923/EC on a Community financial contribution for 2006 and 2007 to cover expenditure incurred by Portugal for the purpose of combating *Bursaphelenchus xylophilus* (Steiner et Buhrer) Nickle et al. (pinewood nematode)

(notified under document number C(2008) 1444)

(Only the Portuguese text is authentic)

(2008/327/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 2000/29/EC of 8 May 2000 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community [1], and in particular Article 23(6) thereof,

Whereas:

(1) Commission Decision 2006/923/EC [2] approved a financial contribution from the Community for a programme of measures introduced by Portugal aiming in 2006 and 2007 at controlling the spread of *Bursaphelenchus xylophilus* (Steiner et Buhrer) Nickle et al. (pinewood nematode) to other Member States. The measures consisted of the creation of a barrier free from all host trees of the pinewood nematode vector, hereinafter the 'clear cut belt'.

(2) Since the adoption of Decision 2006/923/EC, Portugal has faced several adverse and exceptional circumstances, leading to a delay in the execution of the measures. Those circumstances were explained in a letter from Portugal to the Commission dated 28 September 2007. In particular, whilst the initial programme was based on an estimate of 700 000 pine trees to be felled, it became necessary to fell 980 000 in total. In addition, 3 700 000 young pine trees had also to be eliminated. The Portuguese authorities explained the difference in the number of trees by the fact that the sole data available at that time, the national forest inventory from 1995, appeared to be outdated and underestimated young trees, isolated trees and trees located in broadleaf dominated mixed stands.

(3) Notwithstanding the adverse circumstances, the Commission has verified by its missions in Portugal that the Portuguese authorities were able to meet the objectives laid down in Article 1 of Decision 2006/923/EC in an appropriate way. Inevitably the cumulative delays prevented them fully delivering the expected results within the strict deadline laid down in the Decision for the completion of the measures. Nevertheless, the delays were not such as to prevent the measures from being deployed to their full effect and, due to the weather conditions in spring 2007 in Portugal, not favourable to the flying of the insect vector of the pinewood nematode, did not result in an increased phytosanitary risk.

(4) Decision 2006/923/EC laid down penalties, in the form of progressive reductions of the Community financing, in case of non-implementation or late implementation of the measures. The application of such reductions and sanctions would be disproportionate given the exceptional circumstances.

(5) The documentation to be provided by Portugal has to be such that it enables the Commission to conclude that the conditions for the payment of the balance of the Community financial contribution laid down in Decision 2006/923/EC are met. As the exceptional circumstances faced by Portugal have also delayed the payments by Portugal to the private companies having executed the clear cut belt, the deadline for submitting the appropriate documentation should be extended.

(6) The measures provided in this Decision are in accordance with the opinion of the Standing Committee on Plant Health,

HAS ADOPTED THIS DECISION:

Article 1

1. By way of derogation from Article 4 of Decision 2006/923/EC, the balance of the Community financial contribution referred to in Article 2 of that Decision shall be paid once the following conditions have been satisfied:

(a) the measures necessary to the creation of a clear-cut belt as an area free from pinewood nematode vector hosts have been implemented by Portugal in an acceptable way and meet the objectives referred to in Article 1 of Decision 2006/923/EC;

[1] OJ L 169, 10.7.2000, p. 1. Directive as last amended by Commission Directive 2007/41/EC (OJ L 169, 29.6.2007, p. 51).
[2] OJ L 354, 14.12.2006, p. 42.

(b) Portugal has submitted to the Commission a financial report, including registered invoices or receipts, and a final technical report as provided for in Article 5 of Decision 2006/923/EC.

2. Article 7 of Decision 2006/923/EC shall not apply if the Commission is satisfied, on the basis of evidence provided by Portugal, that delays in the implementation of the measures have not affected the effectiveness of the measures.

Article 2

This Decision is addressed to the Portuguese Republic.

Done at Brussels, 21 April 2008.

For the Commission
Androulla VASSILIOU
Member of the Commission