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COMMISSION DECISION

of 27 August 2010

providing for the temporary marketing of varieties of *Avena strigosa* Schreb. not included in the common catalogue of varieties of agricultural plant species or in the national catalogues of varieties of the Member States

(notified under document C(2010) 5835)

(Text with EEA relevance)

(2010/468/EU)

(OJ L 226, 28.8.2010, p. 46)

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(2010/468/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Directive 66/402/EEC of 14 June 1966 on the marketing of cereal seed [1], and in particular Article 17(1) thereof,

Whereas:

(1) Commission Directive 2009/74/EC of 26 June 2009 amending Council Directives 66/401/EEC, 66/402/EEC, 2002/55/EC and 2002/57/EC as regards the botanical names of plants, the scientific names of other organisms and certain Annexes to Directives 66/401/EEC, 66/402/EEC and 2002/57/EC in the light of developments of scientific and technical knowledge [2] has identified the species *Avena strigosa* Schreb. (hereinafter '*A. strigosa*') as an independent species to be included in the list of species covered by Directive 66/402/EEC.

(2) *A. strigosa* is a crop proved to be among the most effective in reducing soil erosion, nitrogen leaching, in particular leaching of nitrates from agricultural sources, and it is an important component of seed mixtures for forage purposes. According to the information provided by the authorities of 6 Member States (Belgium, France, Germany, Italy, Spain and Portugal), the demand for seed of this species has in the last years increased considerably in the Union and in particular in these Member States.

(3) Before the entry into force of Directive 2009/74/EC and the subsequent listing of *A. strigosa* among the species covered by Directive 66/402/EEC, the supply of the market was ensured by national production and mainly by the import from third countries of seed of this species in accordance with national legislation applicable at that time. Following the inclusion of *A. strigosa* in the list of the species covered by Directive 66/402/EEC, only seed of varieties registered in the common catalogue of varieties of agricultural plant species may be marketed and imported.

[1] OJ 125, 11.7.1966, p. 2309/66.
[2] OJ L 166, 27.6.2009, p. 40.

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(4) Since the inclusion of the species *A. strigosa* among the list of species covered by Directive 66/402/EEC, only two varieties of that species have been registered in the common catalogue of varieties of agricultural plant species.

(5) In the light of these circumstances, temporary difficulties in the general supply of *A. strigosa* have occurred and are expected to continue. These difficulties cannot be overcome otherwise than through Member States permitting, for a specified period and subject to an appropriate maximum quantity, the marketing of varieties of *A. strigosa* not included in the common catalogue of varieties of agricultural plant species or in the national catalogues of varieties of the Member States.

(6) Member States should therefore be authorised to temporarily permit the marketing of such seed, subject to certain conditions and limitations and without prejudice to the more stringent provisions concerning the presence of *Avena fatua* in cereal seed which Denmark, Estonia, Finland, Ireland, Latvia, Lithuania, Malta, the Netherlands, Sweden and the United Kingdom in respect of Northern Ireland may apply pursuant to the relevant Commission Decisions.

(7) It appears from the information provided to the Commission by the Member States that, in total, a quantity of 4 970 tonnes is necessary to resolve these supply difficulties (Belgium 300 tonnes, France 3 700 tonnes, Germany 200 tonnes, Italy 220 tonnes, Spain 300 tonnes and Portugal 250 tonnes), for a period expiring on 31 December 2010. To ensure that this seed is of sufficient quality it should meet at least the requirements laid down in Annex II to Directive 66/402/EEC as regards germination, analytical purity and content of seeds of other plant species for the category certified seed, 2nd generation of *A. strigosa*.

(8) It is appropriate that one Member State acts in order to ensure that the quantity of seed authorised for marketing by the Member States pursuant to this Decision does not exceed the total maximum quantity of 4 970 tonnes that is necessary to resolve the supply difficulties. In line with the requests of the six Member States, France should therefore act as single coordinator. In order to ensure the good functioning of the system set out by this Decision, it is further necessary that the coordinating Member State, the other Member States and the Commission immediately share the relevant information regarding applications and the granting of authorisations for marketing.

(9) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Seeds and Propagating Material for Agriculture, Horticulture and Forestry,

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HAS ADOPTED THIS DECISION:

Article 1

1. The marketing in the Union of seed of varieties of *A. strigosa* not included in the common catalogue of varieties of agricultural plant species or in the national catalogues of varieties of the Member States shall be permitted, for a period expiring on ►M1 31 December 2011 ◄ and subject to the conditions referred to in paragraphs 2 to 5.

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2. The total quantity of seed authorised for marketing in the Union pursuant to this Decision shall not exceed 4 970 tonnes in 2010. The total quantity of seed authorised for marketing in the Union pursuant to this Decision shall not exceed 5 130 tonnes in 2011.

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3. The seed referred to in paragraph 1 shall comply with the requirements laid down in Annex II to Directive 66/402/EEC as regards the conditions concerning germination, analytical purity and content of seeds of other plant species to be satisfied by the seed for the category certified seed, 2nd generation of *A. strigosa*.

4. Without prejudice to any labelling requirement of Directive 66/402/EEC, the official label shall contain the statement that the seed in question is of a category satisfying less stringent requirements than those laid down by that Directive, and that this category is lower than the category certified seed, 2nd generation. The colour of the label shall be brown.

5. The marketing of the seed referred in paragraph 1 shall be permitted upon application in conformity with Article 2.

Article 2

Any seed supplier wishing to place on the market the seed referred to in Article 1(1) shall apply for authorisation to the Member State in which he is established or to the Member State in which he wishes to place the seed on the market. The application shall specify the quantity of seed that the supplier wishes to place on the market.

The Member State concerned shall authorise the supplier to place the quantity of seed specified in the application on the market, unless:

(a) there is sufficient evidence to doubt whether the supplier is able and intends to place the quantity of seed specified in his application on the market; or

(b) having regard to the information provided by the coordinating Member State referred to in the third subparagraph of Article 3, granting the authorisation would result in the total maximum quantity of seed referred to in Article 1(2) being exceeded; or

(c) the conditions concerning germination, analytical purity and content of seeds of other plant species referred to in Article 1(3) have not been met.

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As regard point (b), in case the total maximum quantity would only allow for authorisation of part of the quantity specified in the application, the Member State concerned may authorise the supplier to place that lesser quantity on the market.

Article 3

Member States shall assist each other administratively in the application of this Decision.

For the period starting from the entry into force of this Decision until ►M1 31 December 2011 ◄, France shall act as coordinating Member State in order to ensure that the quantity of seed authorised for marketing in the Union by the Member States pursuant to this Decision shall not exceed the total maximum quantity of seed referred to in Article 1(2).

Any Member State receiving an application pursuant to Article 2 shall immediately inform the coordinating Member State of the quantity specified in that application. The coordinating Member State shall immediately inform that Member State as to whether and to what extent granting authorisation for marketing upon that application would result in the total maximum quantity of seed being exceeded.

Article 4

Member States shall immediately notify the Commission and the other Member States of the quantities in respect of which they have granted authorisation for marketing pursuant to this Decision.

Article 5

This Decision is addressed to the Member States.