COUNCIL DIRECTIVE

of 12 November 1979

amending Directives 66/403/EEC, 70/457/EEC and 70/458/EEC on the marketing of seed potatoes, the common catalogue of varieties of agricultural plant species and the marketing of vegetable seed

(79/967/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 43 and 100 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 Member States may subdivide the categories of seed potatoes into grades satisfying different requirements; whereas it seems appropriate to provide that Community grades and their requirements may be established in an accelerated procedure; whereas in this respect it should be left to Member States to decide the extent to which they apply these grades to their own production;

Whereas the provisions of the common catalogues of varieties of agricultural plant species and of vegetable species permit Member States to allow in respect of their own territory a period for the disposal of seed or propagating materials of varieties whose acceptance has expired; whereas it is appropriate to provide for a disposal period at Community level in the case of seed or propagating materials of varieties which were listed in one of the two common catalogues;

Whereas, in order to improve the functioning of the system of the common catalogue of varieties of vegetable species, certain provisions relating to the acceptance of varieties at national level, to the names of varieties and to the exchange of information between the Member States should be adapted to internationally established rules, given the fact that certain provisions on the common catalogue of varieties of agricultural plant species have already been similarly adapted by Council Directive 79/692/EEC of 24 July 1979 amending Directives 66/401/EEC, 66/402/EEC, 70/458/EEC and 70/457/EEC on the marketing of fodder plant seed, cereal seed and vegetable seed and on the common catalogue of varieties of agricultural plant species (4),

HAS ADOPTED THIS DIRECTIVE:

Article 1

The following paragraph shall be added to Article 3 of Council Directive 66/403/EEC of 14 June 1966 on the marketing of seed potatoes (5), as last amended by Directive 78/816/EEC (6):

'3. For seed potatoes which have been officially certified, the following may be determined in accordance with the procedure laid down in Article 19:

— Community grades,

— the conditions applicable to such grades,

— designations applicable to such grades.

Member States may prescribe the extent to which they apply these Community grades in certifying their own production.'

Article 2

Council Directive 70/457/EEC of 29 September 1970 on the common catalogue of varieties of agricultural plant species (7), as last amended by Directive 79/692/EEC, is hereby amended as follows:

1. Article 14 (2) shall be replaced by the following:

'2. Member States may, in respect of their own territory, allow a period for the certification and marketing of seed or propagating material up to 30 June of the third year at the most after expiry of the acceptance.

In the case of varieties that were listed pursuant to Article 15 (1) in the common catalogue of varieties referred to in Article 18, the period which expires last among those granted by the various Member States of acceptance under the first subparagraph shall apply to marketing in all the Member States, provided that the seed or propagating material of the variety concerned has not been subject to any marketing restriction as regards the variety.'

(1) OJ No C 130, 3. 6. 1977, p. 2 and OJ No C 174, 21. 7. 1978, p. 8.
(2) OJ No C 183, 1. 8. 1977, p. 64 and OJ No C 239, 9. 10. 1978, p. 54.
(3) OJ No C 180, 28. 7. 1977, p. 29 and OJ No C 114, 7. 5. 1979, p. 26.
(4) OJ No L 205, 13. 8. 1979, p. 1.
(5) OJ No 125, 11. 7. 1966, p. 2320/66.
(6) OJ No L 281, 6. 10. 1978, p. 18.
(7) OJ No L 225, 12. 10. 1970, p. 1.

2. Article 18 shall be supplemented as follows :

'The published notice shall list those varieties for which a period has been applied in accordance with the second subparagraph of Article 14 (2). This shall indicate the length of the period and, where appropriate, the Member States to which the period does not apply.'

Article 3

Council Directive 70/458/EEC of 29 September 1970 on the marketing of vegetable seed [1], as last amended by Directive 79/692/EEC, is hereby amended as follows :

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

'1. A variety shall be regarded as distinct if, whatever the origin, artificial or natural, of the initial variation from which it has resulted, it is clearly distinguishable in one or more important characteristics from any other variety known in the Community.

The characteristics must be capable of precise recognition and of precise definition.

A variety in the Community shall be any variety which, at the time when the application for the acceptance of the variety to be assessed is duly made, is :

— either listed in the common catalogue of varieties of vegetable species or in the common catalogue of varieties of agricultural plant species,
— or, without being listed in one of those catalogues, has been accepted or has been submitted for acceptance in the Member State in question or in another Member State, either for certification and marketing, or for certification for other countries, or for checking as standard seed,

unless the aforementioned conditions are no longer fulfilled in all the Member States concerned before the decision on the application for acceptance of the variety to be assessed is taken.'

2. In the first subparagraph of Article 7 (1) the following sentences shall be inserted after the second sentence :

'In order to establish distinctness, the growing trials shall include at least the available comparable varieties which are varieties known in the Community within the meaning of Article 5 (1). For the purpose of applying Article 10, other available comparable varieties shall be included.'

3. Article 10 (3) shall be replaced by the following :

'3. In taking into account the information available, Member States shall also ensure that a variety which is not clearly distinguishable :

— from a variety previously accepted in the Member State in question or in another Member State, or
— from another variety which has been assessed with regard to distinctness, stability and uniformity in accordance with rules correponding to those of this Directive, without, however, being a variety known in the Community within the meaning of Article 5 (1),

bears the name of that variety. This provision shall not apply if this name is likely to mislead or cause confusion concerning the variety in question, or if, pursuant to all the provisions of the Member State concerned governing the names of varieties, other facts prevent its utilization, or if the rights of third parties impede the free use of that name in connection with the variety in question.'

4. Former Article 10 (3) shall become Article 10 (4).

5. Article 11 (1) shall be replaced by the following :

'1. Any application or withdrawal of an application for acceptance of a variety, any entry in a catalogue of varieties as well as any amendment thereto shall be notified forthwith to the other Member States and the Commission.'

6. The following Article shall be inserted :

'*Article 13a*

1. Member States shall ensure that any doubts which arise after the acceptance of a variety concerning the appraisal of its distinctness or of its name at the time of acceptance are removed.

2. Where, after acceptance of a variety, it is established that the condition concerning distinctness within the meaning of Article 5 was not fulfilled at the time of acceptance, acceptance shall be replaced by another decision or, where appropriate, a revocation, which conforms with this Directive.

By this other decision, the variety shall, with effect from the date of its initial acceptance, no longer be regarded as a variety known in the Community within the meaning of Article 5 (1).

3. Where, after acceptance of a variety, it is established that its name within the meaning of Article 10 was not acceptable when the variety was accepted, the name shall be adapted in such a way that it conforms with this Directive. Member States may permit the previous name to be used temporarily as an additional name. The detailed arrangements in accordance with which the previous name may be used as an additional name may be laid down in accordance with the procedure provided for in Article 40.'

[1] OJ No L 225, 12. 10. 1970, p. 7.

7. Article 15 (2) shall be replaced by the following:

'2. Member States may, in respect of their own territory, allow a period for certification, checking as standard seed and marketing of seed up to 30 June of the third year at the most after expiry of the acceptance.

In the case of varieties that were listed pursuant to Article 16 (1) in the common catalogue of varieties referred to in Article 17, the period which expires last among those granted by the various Member States of acceptance under the first subparagraph shall apply to marketing in all the Member States, provided that the seed of the variety concerned has not been subject to any marketing restriction as regards the variety.'

8. Article 17 shall be supplemented as follows:

'The published notice shall list those varieties for which a period has been applied in accordance with the second subparagraph of Article 15 (2). This list shall indicate the length of the period and, where appropriate, the Member States to which the period does not apply.'

Article 4

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply:

— with Article 1, on 1 January 1980,

— with the other provisions of this Directive, on 1 July 1982.

Article 5

This Directive is addressed to the Member States.

Done at Brussels, 12 November 1979.

For the Council

The President

J. GIBBONS