COUNCIL DIRECTIVE 94/13/EC

of 29 March 1994

amending Directive 77/93/EEC on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European 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 Regulation (EEC) No 1911/91 of 26 June 1991 on the application of the provisions of Community law to the Canary Islands (4) integrates the Canary Islands into the Community's customs territory and into the common policies; whereas, under Articles 2 and 10 of that Regulation, application of the common agricultural policy is subject to the entry into force of specific supply arrangements; whereas such application must also be accompanied by specific measures concerning agricultural production;

Whereas Council Decision 91/314/EEC of 26 June 1991 setting up a programme of options specific to the remote and insular nature of the Canary Islands (Poseican) (5) outlines the options to be implemented to take account of the specific problems and constraints faced by the Islands;

Whereas these measures involve the adaptation of Directive 77/93/EEC (6) to accommodate the specific plant health situation in the Canary Islands and to extend the application of certain measures of that Directive for a period expiring six months after the date by which Member States must have implemented forthcoming provisions dealing with the Annexes to the Directive for the protection of the French overseas departments and of the Canary Islands;

Whereas it has become necessary to adapt the provisions relating to the derogations from the general rules provided for in Article 14 of Directive 77/93/EEC to the objectives of the internal market; whereas it is accordingly necessary to amend Articles 3, 4, 5, 6, 10 and 12 of the said Directive;

Whereas the provisions concerning additional requirements, referred to in Article 11 of Directive 77/93/EEC, are no longer compatible with the rules of the internal market, and should therefore be repealed,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 77/93/EEC is hereby amended as follows:

1. Article 1 shall be amended as follows:

(a) In paragraph 2 the words 'the Canary Islands' shall be deleted.

(b) The following paragraph shall be added after paragraph 3:

'3a This Directive shall also concern protective measures against the introduction of harmful organisms into the Canary Islands from other parts of Spain and, conversely, into other parts of Spain from the Canary Islands.'

(c) In paragraph 4 the words 'and in the Canary Islands' shall be inserted after the words 'French overseas departments'.

(d) The following paragraphs shall be added after paragraph 6:

'7. In respect of the protective measures against the introduction of harmful organisms from the French overseas departments into other parts of France and into the other Member States and against their spread within the French overseas departments, the dates referred to in Articles 1 (5), 3 (4), 4 (2) (a) and (4), 5 (2) and (4), 6 (4), (5) and (9), 10 (1), (2) (b) and (5) and 12 (6), (7) and (8) of this Directive shall be replaced by a date which corresponds to the end of a six-month period following the date by which Member States must implement forthcoming provisions dealing with Annexes I to V to Directive 77/93/EEC for the protection of the French overseas departments. With effect from the same date paragraphs (3) and (4) shall be repealed.

(1) OJ No C 97, 6. 4. 1993, p. 13.
(2) OJ No C 255, 20. 9. 1993, p. 242.
(3) OJ No C 201, 26. 7. 1993, p. 31.
(4) OJ No L 171, 29. 6. 1991, p. 1. Regulation as last amended by Regulation (EEC) No 284/92 (OJ No L 31, 7. 2. 1992, p. 6).
(5) OJ No L 171, 29. 6. 1991, p. 5.
(6) OJ No L 26, 31. 1. 1977, p. 20. Directive as last amended by Directive 92/103/EEC (OJ No L 363, 11. 12. 1992, p. 1).

8. In respect of the protective measures against the introduction of harmful organisms from the Canary Islands into other parts of Spain and into the other Member States and against their spread within the Canary Islands, the dates referred to in Articles 1 (5), 3 (4), 4 (2) (a) and (4), 5 (2) and (4), 6 (4), (5) and (9), 10 (1), (2) (b) and (5) and 12 (6), (7) and (8) of this Directive shall be replaced by a date which corresponds to the end of a six-month period following the date by which Member States must implement forthcoming provisions dealing with Annexes I to V to Directive 77/93/EEC for the protection of the Canary Islands. With effect from the same date paragraph 3a shall be repealed.'

2. Article 3 (7) shall be replaced by the following:

'7. (a) In accordance with the procedure laid down in Article 16a, it may be decided that Member States shall lay down that the introduction into their territories, and the spread within their territories, of specified organisms, whether singly or not, which are considered to be harmful to plants or plant products but are not listed in Annexes I and II, shall be prohibited or require special authorization under conditions specified under the same procedure.

(b) In accordance with the procedure laid down in Article 16a, it may be decided that Member States shall lay down that the introduction into their territories, and the spread within their territories, of specified organisms, which are listed in Annex II, but which occur on plants other that those listed in that Annex, and which are considered to be harmful to plants or plant products, shall be prohibited or require special authorization under conditions specified under the same procedure.

(c) In accordance with the procedure laid down in Article 16a, it may be decided that Member States shall lay down that the introduction into their territories, and the spread within their territories, of specified organisms, which are listed in Annexes I and II, which are in an isolated state and which are considered to be harmful to plants or plant products, shall be prohibited or require special authorization under conditions specified under the same procedure.

(d) Subparagraphs (a), (b) and (c) shall also apply to such organisms where they are not affected by Council Directive 90/220/EEC of 23 April 1990 on the deliberate release into the environment of genetically modified organisms (*) or other more specific Community provisions regarding genetically modified organisms.

(e) Paragraphs 1 and 5 (a) and paragraphs 2 and 5 (b) shall not apply, in accordance with the conditions which shall be determined pursuant to the procedure laid down in Article 16a, for trial or scientific purposes and for work on varietal selections.

(f) After the measures provided for in subparagraphs (a), (b) and (c) have been adopted, those subparagraphs shall not apply, in accordance with conditions which shall be determined pursuant to the procedure laid down in Article 16a, for trial or scientific purposes and for work on varietal selections.

(*) OJ No L 117, 8. 5. 1990, p. 15.'

3. In Article 4 the following paragraphs shall be added after paragraph 4:

'5. Paragraphs 1 and 2 (a) shall not apply, in accordance with conditions which shall be determined pursuant to the procedure laid down in Article 16a, for trials or scientific purposes and for work on varietal selections.

6. (a) Provided that there is no risk of harmful organisms spreading, a Member State may provide that paragraphs 1 and 2 (a) shall not apply in individual specified cases to plants, plant products and other objects which are grown, produced or used in its immediate frontier zone with a third country and introduced into that Member State in order to be worked in nearby locations in the frontier zone of its territory.

(b) When granting such a derogation, the Member State shall specify the location and the name of the person working it. Such details, which shall be updated regularly, shall be available to the Commission.

(c) Plants, plant products and other objects which form the subject of a derogation under subparagraph (a) shall be accompanied by documentary evidence of the location in the relevant third country from which the said plants, plant products and other objects originate.'

4. Article 5 shall be amended as follows:

(a) In paragraph 4, the following sentence shall be added:

'This paragraph and paragraphs 1 and 2 shall not apply to the movement of small quantities of plants, plant products, foodstuffs or animal feedingstuffs where they are intended for use by the owner or recipient for non-industrial and non-commercial purposes or for consumption during transport, provided that there is no risk of harmful organisms spreading.'

(b) The following paragraphs shall be added after paragraph 4:

'5. Paragraphs 1, 2 and 4 shall not apply, in accordance with the conditions which shall be determined pursuant to the procedure laid down in Article 16a, for trial or scientific purposes and for work on varietal selections.

6. (a) Provided that there is no risk of harmful organisms spreading, a Member State may provide that paragraphs 1, 2 and 4 shall not apply in individual specified cases to plants, plant products and other objects which are grown, produced or used in its immediate frontier zone with a third country and introduced into that Member State in order to be worked in nearby locations in the frontier zone of its territory.

(b) When granting such a derogation, the Member State shall specify the location and the name of the person working it. Such details which shall be updated regularly, shall be available to the Commission.

(c) Plants, plant products and other objects which form the subject of a derogation under subparagraph (a) shall be accompanied by documentary evidence of the location in the relevant third country from which the said plants, plant products and other objects originate.'

5. Article 6 shall be amended as follows:

The following subparagraph shall be added to paragraph 4:

'Paragraphs 1, 2 and 3 shall not apply to the movement of small quantities of plants, plant products, foodstuffs or animal feedingstuffs where they are intended for use by the owner or recipient for non-industrial and non-commercial purposes or for consumption during transport, provided that there is no risk of harmful organisms spreading.'

6. Article 10 shall be amended as follows:

In paragraph 2 the following subparagraph shall be added:

'(c) Paragraphs (a) and (b) shall not apply to the movement of small quantities of plants, plant products, foodstuffs or animal feedingstuffs where they are intended for use by the owner or recipient for non-industrial and non-commercial purposes or for consumption during transport, provided that there is no risk of harmful organisms spreading.'

7. In Article 11 (2) the second subparagraph shall be deleted.

8. Article 12 shall be amended as follows:

(a) The following paragraphs shall be added after paragraph 3a:

'3b. provided that there is no risk of harmful organisms spreading:

— paragraphs 1 and 2 shall not apply where plants, plant products or other objects are directly moved between two places within the Community via the territory of a non-member country;

— paragraphs 1 and 2 and Article 4 (1) shall not apply in the case of transit through the territory of the Community;

— paragraphs 1 and 2 shall not apply in the case of small quantities of plants, plant products, foodstuffs or animal feedingstuffs where they are intended for use by the owner or recipient for non-industrial and non-commercial purposes or for consumption during transport.

3c. Paragraphs 1 and 2 shall not apply, in accordance with the conditions which shall be determined pursuant to the procedure laid down in Article 16a, for trial or scientific purposes and for work on varietal selections.

3d. (i) Provided that there is no risk of harmful organisms spreading, a Member State may provide that paragraphs 1 and 2 shall not apply in individual specified cases to plants, plant products and other objects which are grown, produced or used in its immediate frontier zone with a third country and introduced into that Member State in order to be worked in nearby locatins in the frontier zone of its territory.

(ii) When granting such a derogation, the Member State shall specify the location and the name of the person working it. Such details, which shall be updated regularly, shall be available to the Commission.

(iii) Plants, plant products and other objects which form the subject of a derogation under point (i) shall be accompanied by documentary evidence of the location in the relevant third country from which the said plants, plant products and other objects originate.'

(b) In paragraph 8, the following subparagraph shall be added:

'In the case of a removal referred to in first subparagraph, second indent, or a refusal referred to in the first subparagraph, fourth indent, the Member States shall lay down that the phytosanitary certificates or the reforwarding phytosanitary certificates produced when the plant, plant products or other objects are submitted for introduction into their territory, be cancelled by the responsible official bodies referred to in Article 2 (1) (g). Upon cancellation, the said certificate shall bear on its face and in a prominent position a triangular stamp in red, marked "certificate cancelled", from the said responsible bodies showing at least their name and the date of refusal. It shall be in capital letters, and in at least one of the official languages of the Community.'

9. Article 14 shall be amended as follows:

(a) Paragraphs 1 and 2 shall be deleted.

(b) Former paragraph 3 shall become paragraph 1 and first subparagraph shall be replaced by the following:

'1. In accordance with the procedure laid down in Article 16, or, in urgent cases, with that laid down in Article 17, Member States may be authorized on request to provide for derogations:

— from Article 4 (1) with regard to Annex III, Part A and Part B without prejudice to the provisions of Article 4 (5) and from Article 5 (1) and the third indent of Article 12 (1) (a) with regard to other requirements referred to in Annex IV, Part A, Section 1 and Annex IV, Part B;

— from Articles 7 (2) and 12 (1) (b), in the case of wood, if equivalent safeguards are given,

provided that it is established that the risk of spreading harmful organisms is obviated by one or more of the following factors:

— the origin of the plants or plant products,

— appropriate treatment,

— special precautions for the use of the plants or plant products.'

(c) Former paragraph 4 shall become paragraph 2 and shall be replaced by the following:

'2. In the case of the derogations provided for in paragraph 1, an official statement that the conditions for granting the derogation are fulfilled shall be required for each individual case.'

(d) Former paragraph 5 shall become paragraph 3 and shall be replaced by the following:

'3. Member States shall inform the Commission of the derogations which they have granted in accordance with paragraph 1. The Commission shall notify the other Member States of this information each year.

In accordance with the procedure laid down in Article 16, Member States may be exempted from providing this information.'

(e) Paragraph 6 shall be deleted.

Article 2

The conditions referred to in Article 1 (2), Article 1 (3), Article 1 (4) (b) and Article 1 (8) shall be adopted by 1 September 1994.

Article 3

1. Member States shall bring into force the laws, regulations or administrative provisions necessary to comply with this Directive by 1 January 1995. 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 on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

2. Member States shall immediately communicate to the Commission all provisions of national law which they adopt in the field governed by this Directive. The Commission shall inform the other Member States thereof.

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 29 March 1994.

For the Council

The President

G. MORAITIS