COUNCIL DIRECTIVE 97/3/EC

of 20 January 1997

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 by Directive 77/93/EEC (4), the Council laid down protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community; whereas the protection of plants against such organisms is absolutely necessary to increase agricultural productivity which is one of the objectives of the common agricultural policy;

Whereas the completion of the internal market entailed the application of the Community plant-health regime established by Directive 77/93/EEC to the Community, as an area without internal frontiers;

Whereas several measures have been adopted to strengthen effective application of the Community plant-health regime in the internal market, which is intended to protect the different areas of the Community (Member States, regional or local entities as well as individual plant growers) against damage caused by the introduction of harmful organisms;

Whereas, in addition, it is necessary to establish a system of Community financial contributions to share at Community level the burden of possible risks which might remain in trade under the Community plant-health regime;

Whereas, in order to prevent infections by harmful organisms introduced from third countries, there should be a Community financial contribution aimed at reinforcing the plant health inspection infrastructure at the Community's external frontiers;

Whereas the regime should also provide for adequate contributions to certain expenses for specific measures, which Member States have adopted to control and, where applicable, eradicate infections by harmful organisms introduced from third countries or from other areas in the Community, and, where possible, to repair the damage caused;

Whereas the details of the mechanism for granting the Community financial contribution should be determined under a rapid procedure;

Whereas it must be ensured that the Commission is informed in full of the possible causes for the introduction of the harmful organisms concerned;

Whereas, in particular, the Commission shall monitor correct application of the Community plant-health regime;

Whereas, should it be established that the introduction of the harmful organisms has been caused by inadequate examinations or inspections, Community law shall apply in respect of the consequences, taking into account certain specific measures,

HAS ADOPTED THIS DIRECTIVE:

Article 1

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

1. The following paragraph shall be inserted after paragraph 6 of Article 12:

'6a. There shall be a Community financial contribution for Member States in order to strengthen inspection infrastructures insofar as they relate to plant-health checks carried out in accordance with the fourth subparagraph of paragraph 6.

The purpose of this contribution shall be to improve the provision, at inspection posts other than those at the place of destination, of the equipment and facilities required to carry out inspection and examination and, where necessary, to carry out the measures provided for in paragraph 8, beyond the level already achieved by complying with the minimum conditions stipulated in the implementing provisions pursuant to paragraph 6, fourth subparagraph.

The Commission shall propose the entry of suitable appropriations for that purpose in the general budget of the European Communities.

Within the limits set by the appropriations available for these purposes, the Community contribution shall cover up to 50 % of expenditure relating directly to improving equipment and facilities.

(1) OJ No C 31, 9. 2. 1990, p. 8 and OJ No C 205, 6. 8. 1991, p. 16.
(2) OJ No C 106, 22. 4. 1991, p. 36 and OJ No C 255, 20. 9. 1993, p. 242.
(3) OJ No C 201, 26. 7. 1993, p. 31.
(4) OJ No L 26, 31. 1. 1977, p. 20. Directive as last amended by Commission Directive 96/78/EC (OJ No L 321, 12. 12. 1996, p. 20).

The details shall be laid down in an implementing Regulation, in accordance with the procedure laid down in Article 16a.

The allocation and the amount of the Community financial contribution shall be decided in accordance with the same procedure in the light of the information and documents submitted by the Member State concerned and, where appropriate, the results of investigations carried out on the Commission's authority by the experts referred to in Article 19a, and depending on the appropriations available for the purposes concerned.';

2. The following Articles shall be inserted:

'Article 19b

In the event of the actual or suspected appearance of a harmful organism as a result of its introduction or spread within the Community, Member States may receive a "plant-health control" financial contribution from the Community pursuant to Articles 19c and 19d to cover expenditure relating directly to the necessary measures which have been taken or are planned for the purpose of combating that harmful organism in order to eradicate or, if that is not possible, contain it. The Commission shall propose the entry of suitable appropriations for that purpose in the general budget of the European Communities.

Article 19c

1. The Member State concerned may receive, at its request, the Community financial contribution referred to in Article 19b, where it is established that the harmful organism concerned, whether or not listed in Annexes I and II:

— has been notified under Article 15 (1) or (2) (a), and

— constitutes an imminent danger for all or part of the Community due to its appearance in an area where the organism had either not been known to occur previously or had been or was being eradicated, and

— was introduced into that area through consignments of plants, plant products or other objects from a third country or another area of the Community.

2. The following shall be regarded as necessary measures within the meaning of Article 19b:

— destruction, disinfection, disinfestation, sterilization, cleaning or any other treatment carried out officially or upon official request in respect of:

  — plants, plant products or other objects constituting the consignment(s) through which the harmful organism was introduced into the area in question and which are recognized as being contaminated or liable to be contaminated,

  — plants, plant products and other objects, recognized as being contaminated or liable to be contaminated by the harmful organism introduced, which have been grown from plants in the consignment(s) concerned or have been in close proximity to the plants, plant products or other objects of those consignments or to plants grown from them,

  — growing substrates and land recognized as being contaminated or liable to be contaminated by the harmful organism concerned,

  — production material, packaging, wrapping and storage material, storage or packaging premises and means of transport which have been in contact with all or some of the plants, plant products and other objects referred to above,

— inspections or testing carried out officially or upon official request to monitor the presence or extent of contamination by the harmful organism which has been introduced,

— prohibitions or restrictions in respect of the use of growing substrates, cultivable areas or premises, as well as plants, plant products or other objects other than material from the consignment(s) in question or grown therefrom where they result from official decisions taken on the grounds of plant-health risks related to the harmful organism introduced.

3. Payments made from public funds in order to:

— cover all or part of the costs of the measures described in the first and second indents of paragraph 2, except for those related to the regular running costs of the competent official body concerned, or

— to compensate for all or part of the financial losses other than loss of earnings resulting directly from one or more of the measures described in the third indent of paragraph 2,

shall be considered to be expenditure directly relating to the necessary measures referred to in paragraph 2.

By way of derogation from the second indent of the first subparagraph an implementing Regulation may specify, in accordance with the procedure laid down in Article 16a, cases in which compensation for loss of

earnings shall be considered to be expenditure directly relating to necessary measures subject to the conditions specified in this respect in paragraph 5 as well as the time limitations applicable to those cases, with a maximum of three years.

4. In order to qualify for the financial contribution from the Community and without prejudice to Article 15, the Member State concerned shall apply to the Commission, at the latest before the end of the calendar year following that in which the appearance of the harmful organism was detected, and shall forthwith inform the Commission and the other Member States of:

— the reference of the notification provided for in the first indent of paragraph 1,

— the nature and extent of the appearance of the harmful organism as referred to in Article 19b, and when, where and how it was detected,

— the identity of the consignments referred to in the third indent of paragraph 1 through which the harmful organism was introduced,

— the necessary measures which have been taken or are planned for which it is seeking assistance, together with timetables for them, and

— the results obtained and the actual or estimated cost of the expenditure incurred or to be incurred, and the proportion of such expenditure covered or to be covered from public funds allocated by the Member State for implementation of those same necessary measures.

Where the appearance of the harmful organism was detected prior to the date of entry into force of this Article, that date shall be deemed to be the date of detection within the meaning of paragraphs 4 and 5, provided that the actual date of detection is not earlier than 1 January 1995. However, this provision shall not apply in respect of compensation for loss of earnings referred to in paragraph 3, second subparagraph save in exceptional cases, under the conditions laid down in the implementing Regulation referred to in paragraph 3, to loss of earnings occurring thereafter.

5. Without prejudice to Article 19d, the allocation and the amount of the financial contribution from the Community shall be decided in accordance with the procedure laid down in Article 16a in the light of the information and documents submitted by the Member State concerned in accordance with paragraph 4 and, where appropriate, the results of investigations carried out on the Commission's authority by the experts referred to in Article 19a pursuant to the first subparagraph of Article 15 (3), taking into account the extent of the danger referred to in the second indent of paragraph 1 above, and depending on the appropriations available for these purposes.

Within the limits set by the appropriations available for these purposes, the financial contribution from the Community shall cover up to 50 % and, in case of compensation for loss of earnings referred to in paragraph 3, second subparagraph, up to 25 %, of expenditure relating directly to the necessary measures referred to in paragraph 2, provided that these measures have been taken within a period not more than two years after the date of detection of the appearance of a harmful organism as referred to in Article 19c, or are planned for that period.

The abovementioned period may be extended, in accordance with the same procedure, if examination of the situation concerned leads to the conclusion that the objective of the measures will be achieved within a reasonable additional period. The financial contribution from the Community shall be degressive over the years concerned.

Where the Member State is unable to supply the required information regarding the identity of the consignments in accordance with the third indent of paragraph 4, it shall indicate the presumed sources of the appearance and the reasons why the consignments could not be identified. The allocation of the financial contribution may be approved, in accordance with the same procedure, depending on the outcome of an assessment of that information.

Detailed rules for the implementation of paragraph 5 shall be established in an implementing Regulation in accordance with the procedure laid down in Article 16a.

6. In the light of the development of the situation in the Community, it may be decided, in accordance with the procedure laid down in Article 16a or 17, that further action will be implemented or that measures taken or planned by the Member State concerned will be made subject to certain requirements or additional conditions, if these are necessary for the achievement of the objective in question.

The allocation of the financial contribution from the Community for such further action, requirements or conditions shall be decided by the same procedure. Within the limits set by the appropriations available for these purposes, the financial contribution from the Community shall cover up to 50 % of expenditure relating directly to the further action, requirements or conditions concerned.

Where such further action, requirements or conditions are essentially designed to protect Community territories other than that of the Member State concerned, it may be decided, in accordance with the same procedure, that the Community financial allocation shall cover more than 50 % of the expenditure.

The financial contribution from the Community shall be of a limited duration and shall be degressive over the years concerned.

7. The allocation of a financial contribution from the Community shall be without prejudice to claims which the Member State concerned or individuals may have against others, including other Member States in the cases referred to in Article 19d (3), for the refunding of expenditure, compensation for losses or other damages under national law, Community law or international law. Rights in these claims will be the object of a transfer, by operation of law, to the Community with effect from the payment of the financial contribution from the Community, to the extent that such expenditure, losses or other damages are covered by that contribution.

8. The financial contribution from the Community may be paid in several instalments.

If it appears that the financial contribution from the Community as allocated is no longer justified, the following shall apply:

The amount of the financial contribution from the Community allocated to the Member State concerned pursuant to paragraphs 5 and 6 may either be reduced or suspended, if it is established from the information supplied by that Member State, or from the results of investigations carried out on the Commission's authority by the experts referred to in Article 19a, or from the results of the suitable examination which the Commission has conducted in accordance with the procedures analogous to those in Article 24 (1) of Regulation (EEC) No 4253/88 [1] that:

— failure to implement the necessary measures decided on in accordance with paragraphs 5 and 6, whether in whole or in part, or failure to comply with the rules or time limits set in accordance with those provisions or required by the objectives pursued is not justified, or

— the measures are no longer necessary, or

— a situation as described in Article 24 (2) of aforesaid Regulation (EEC) No 4253/88 is revealed.

9. Articles 8 and 9 of Council Regulation (EEC) No 729/70 of 21 April 1970 on the financing of the common agricultural policy [2], shall apply *mutatis mutandis.*

10. The Member State concerned shall repay the Community all or part of any amounts paid it by way of a Community financial contribution allocated under paragraphs 5 and 6 above if it is established from the sources as specified in paragraph 8, that

— the necessary measures taken into account pursuant to paragraphs 5 or 6

  — have not been implemented, or

  — have not been implemented in a manner which complies with the rules or time limits set in accordance with those provisions or required by the objectives pursued,

  or

— the amounts paid have been used for purposes other than those for which the financial contribution was allocated,

  or

— a situation as described in Article 24 (2) of aforesaid Regulation (EEC) No 4253/88 is revealed.

The rights referred to in the second sentence of paragraph 7 will be the object of a transfer by operation of law back to the Member State concerned with effect from the time of repayment, inasmuch as they are covered by that repayment.

Interest on account of late payment shall be charged on sums not repaid in compliance with the provisions of the Financial Regulation and in accordance with the arrangements to be drawn up by the Commission in accordance with the procedure laid down in Article 16a.

Article 19d

1. In respect of the causes for the appearance of the harmful organism referred to in Article 19 (b), the following shall apply:

The Commission shall verify whether the appearance of the harmful organism in the area concerned was caused by the movement into that area of one or more consignments carrying the harmful organism and shall identify the Member State or the successive Member States from which the consignment(s) came.

The Member State from which the consignment(s) carrying the harmful organism came, whether or not the same Member State as that referred to above, shall forthwith inform the Commission, at the latter's request, of all details relating to the origin or origins of the consignment(s) and the administrative handling involved, including the examinations, inspections and controls provided for in this Directive, in order to determine why that Member State failed to detect that the consignment(s) did not comply with the provisions of this Directive. It shall also inform the Commission, at its request, of the destination of all the other consignments sent from the same origin or origins during a specified period.

[1] Council Regulation (EEC) No 4253/88 of 19 December 1988, laying down provisions for implementing Regulation (EEC) No 2052/88 as regards coordination of the activities of the different Structural Funds between themselves and with the operations of the European Investment Bank and the other existing financial instruments (OJ No L 374, 31. 12. 1988, p. 1). Regulation as last amended by Regulation (EC) No 3193/94 (OJ No L 337, 24. 12. 1994, p. 11).

[2] OJ No L 94, 28. 4. 1970, p. 13. Regulation as last amended by Regulation (EC) No 1287/95 (OJ No L 125, 8. 6. 1995, p. 1).

For the purpose of supplementing the information, investigations may be carried out on the Commission's authority by the experts referred to in Article 19a.

2. The information acquired pursuant to these provisions or those of Article 15 (3) shall be examined in the Standing Committee on Plant Health for the purposes of identifying any failings in the Community's plant health regulations or their implementation, and any measures that could be taken to remedy those failings.

The information referred to in paragraph 1 shall also be used to establish, in accordance with the Treaty, whether the Member State from which the consignment(s) came did not detect their non-compliance which resulted in the appearance of the harmful organism in the area concerned because that Member State failed to meet one of its obligations under the Treaty and under the provisions of this Directive relating in particular to the examinations laid down in Article 6 or the inspections laid down in Article 12 (1).

3. Where the conclusion referred to in paragraph 2 is reached in respect of the Member State referred to in Article 19c (1), the Community financial contribution shall not be allocated to that Member State or, if already allocated, shall not be paid or, if already paid, shall be refunded to the Community. In the latter case, the last subparagraph of Article 19c (10) shall apply.

Where the conclusion referred to in paragraph 2 is reached in respect of another Member State, Community law shall apply, taking into account the second sentence of Article 19c (7).'

Article 2

The Council, acting by qualified majority on a proposal from the Commission, shall adopt provisions in respect of the exceptional cases of predominant Community interest justifying a Community contribution, up to 70 %, of the expenditure relating directly to improving equipment and facilities, within the limits set by appropriations available for those purposes and provided that this would not affect decisions pursuant to Article 19 (c) (5) or (6) of Directive 77/93/EEC.

Article 3

Within five years from the date of adoption of this Directive, the Commission shall examine the results of its application and submit to the Council a report, accompanied by any necessary proposals for amendments.

Article 4

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with the relevant provisions of this Directive before 1 April 1998. 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 communicate to the Commission the provisions of national law which they adopt in the field governed by this Directive. The Commission shall inform the other Member States thereof.

Article 5

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Communities.*

Article 6

This Directive is addressed to the Member States.

Done at Brussels, 20 January 1997.

For the Council

The President

J. VAN AARTSEN