

Council Directive 2008/90/EC of 29 September 2008 on the marketing of fruit plant propagating material and fruit plants intended for fruit production (Recast version)

COUNCIL DIRECTIVE 2008/90/EC

of 29 September 2008

on the marketing of fruit plant propagating material  
and fruit plants intended for fruit production

(Recast version)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 37 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament<sup>(1)</sup>,

Whereas:

- (1) Council Directive 92/34/EEC of 28 April 1992 on the marketing of fruit plant propagating material and fruit plants intended for fruit production<sup>(2)</sup> has been substantially amended several times<sup>(3)</sup>. Since further amendments are to be made, it should be recast in the interests of clarity.
- (2) Fruit production occupies an important place in the agriculture of the Community.
- (3) Satisfactory results in the cultivation of fruit depend to a large extent on the quality and plant health of the material used for their propagation and of the fruit plants intended for fruit production.
- (4) Harmonised conditions at Community level ensure that purchasers throughout the Community receive propagating material and fruit plants which are healthy and of good quality.
- (5) In so far as they relate to plant health, such harmonised conditions must be consistent with 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<sup>(4)</sup>.
- (6) It is appropriate to establish Community rules for those genera and species of fruit plant which are of major economic importance in the Community, with a Community procedure for adding further genera and species later to the list of genera and species to which this Directive applies. The genera and species listed should be those which are widely grown in Member States and for whose propagating material and/or fruit plants there is a substantial market which covers more than one Member State.

- (7) Without prejudice to the plant health provisions of Directive 2000/29/EC, it is not appropriate to apply the Community rules on the marketing of propagating material and fruit plants when it is shown that such products are intended for export to third countries, as the rules applicable there may be different from those contained in this Directive.
- (8) In the interest of clarity the necessary definitions should be established. Those definitions should be based on technical and scientific progress and cover the term concerned in a complete and clear manner, in order to facilitate the harmonisation of the internal market taking into account all new opportunities of the market and all new processes used for the production of propagating material. Those definitions should be harmonised with those adopted for the marketing of other propagating material covered by Community legislation.
- (9) It is desirable to establish plant health and quality standards for each genus and species of fruit plant based on international schemes which may include, *inter alia*, provisions for pathogen testing. It is appropriate to provide, therefore, for a system of harmonised rules for the different categories of propagating material and fruit plants to be marketed by reference to those international schemes, where available.
- (10) It is consistent with current agricultural practice to require that propagating material and fruit plants are either officially examined or examined under official supervision as foreseen for other species covered by Community legislation.
- (11) Genetically modified propagating material and fruit plants should not be placed on the market and fruit varieties should not be officially registered unless all the appropriate measures have been taken to avoid any risk to human health or the environment as referred to in Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms<sup>(5)</sup> and Regulation (EC) No 1829/2003 of the European Parliament and of the Council of 22 September 2003 on genetically modified food and feed<sup>(6)</sup>.
- (12) It is desirable to ensure that genetic diversity is preserved and used in a sustainable way. Appropriate biodiversity conservation measures to guarantee the conservation of existing varieties should be taken in line with other relevant Community legislation.
- (13) It is appropriate to establish conditions for the marketing of material intended for trials, scientific purposes or selection work if this material cannot fulfil the normal plant health and quality standards due to the particular use.
- (14) In the first instance it is the responsibility of the suppliers of propagating material and/or fruit plants to ensure that their products fulfil the conditions laid down in this Directive. It is appropriate to define the role of the suppliers and the conditions to which they are to refer. Suppliers should be officially registered in order to create a transparent and economically valid process of certification of propagating material and fruit plants.
- (15) Suppliers marketing only to non-professional final consumers may be exempted from the obligation of registration.

- (16) It is in the interests of the purchasers of propagating materials and fruit plants that the names of varieties be known and that their identity be safeguarded to permit the traceability of the system and to increase the confidence on the market.
- (17) That objective can best be achieved either through common knowledge of the variety, in particular for old varieties, or through the availability of a description based on Community Plant Variety Office (CPVO) protocols or in their absence on other international or national rules.
- (18) In order to ensure the identity and orderly marketing of propagating material and fruit plants, Community rules should be laid down concerning the separation of lots and marking. The labels should give the particulars needed both for official control and for the information of the user.
- (19) The competent authorities of the Member States should, when carrying out controls and inspections, ensure that conditions with regard to propagating material or fruit plants and suppliers are fulfilled. The level, intensity and frequency of such inspections should be determined taking account of the category of material concerned.
- (20) Community control measures should be provided for to ensure uniform application in all the Member States of the standards laid down in this Directive.
- (21) Rules should be established permitting, in the case of temporary supply difficulties due to natural disasters, such as fire and gales or unforeseen circumstances, the marketing of propagating material and fruit plants subject to requirements less stringent than those contained in this Directive for a limited period and subject to specific conditions.
- (22) In accordance with the principle of proportionality, provision should be made to allow Member States to exempt small producers all of whose production and sales of propagating material and fruit plants is intended for final use by persons on the local market who are not professionally involved in plant production (local circulation) from the conditions on labelling and from the checks and official inspections.
- (23) Member States should be prohibited in the case of the genera and species referred to in Annex I from imposing new conditions or restrictions to the market other than those provided for in this Directive.
- (24) Provision should be made for authorising the marketing, within the Community, of propagating material and fruit plants produced in third countries, provided always that they afford the same guarantees as propagating material and fruit plants produced in the Community and complying with Community rules.
- (25) In order to harmonise the technical methods of examination used in the Member States and to compare propagating material and fruit plants produced in the Community with those produced in third countries, comparative trials should be carried out to check compliance of such products with the requirements of this Directive.
- (26) In order to avoid any disruption of trade, Member States should be allowed to authorise the marketing in their own territory of certified and CAC (*Conformitas Agraria Communitatis*) material taken from parent plants in existence and already certified or

accepted as CAC material at the date of application of this Directive for a transitional period even if that material does not fulfil the new conditions.

- (27) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>(7)</sup>.
- (28) This Directive should be without prejudice to the obligations of the Member States relating to the time limits for transposition into national law and application of the Directives set out in Annex II, Part B,

HAS ADOPTED THIS DIRECTIVE:

## CHAPTER 1

### SCOPE AND DEFINITIONS

#### *Article 1*

##### **Scope**

1 This Directive shall apply to the marketing of fruit plant propagating material and fruit plants intended for fruit production within the Community.

2 This Directive shall apply to the genera and species listed in Annex I as well as to their hybrids. It shall also apply to rootstocks and other parts of plants of other genera or species than those listed in Annex I or their hybrids, if material of genera or species listed in Annex I or their hybrids is grafted or is to be grafted onto them.

3 This Directive shall apply without prejudice to the plant health rules laid down by Directive 2000/29/EC.

4 This Directive shall not apply to propagating material or fruit plants shown to be intended for export to third countries, provided they are identified as such and kept sufficiently isolated.

Implementing measures for the first subparagraph, with particular reference to identification and isolation, shall be adopted in accordance with the procedure referred to in Article 19(2).

#### *Article 2*

##### **Definitions**

For the purposes of this Directive, the following definitions shall apply:

1. 'propagating material' means seeds, parts of plants and all plant material, including rootstocks, intended for the propagation and production of fruit plants;
2. 'fruit plants' means plants intended to be planted or replanted, after marketing;
3. 'variety' means a plant grouping within a single botanical taxon of the lowest known rank, which can be:

- (a) defined by the expression of the characteristics resulting from a given genotype or combination of genotypes;
  - (b) distinguished from any other plant grouping by the expression of at least one of the said characteristics; and
  - (c) considered as an entity in view of its ability to be propagated unchanged;
4. 'clone' means the vegetative genetically uniform progeny of a single plant;
5. 'pre-basic material' means propagating material which:
- (a) has been produced, according to generally accepted methods, for the maintenance of the identity of the variety including the relevant pomological characteristics and for the prevention of diseases;
  - (b) is intended for the production of basic material or certified material other than fruit plants;
  - (c) satisfies the specific requirements for pre-basic material established pursuant to Article 4; and
  - (d) has been found by official inspection to satisfy the conditions in (a), (b) and (c);
6. 'basic material' means propagating material which:
- (a) has been produced either directly or in a known number of stages in a vegetative way from pre-basic material, according to generally accepted methods, for the maintenance of the identity of the variety including the relevant pomological characteristics and for the prevention of diseases;
  - (b) is intended for the production of certified material;
  - (c) satisfies the specific requirements for basic material, established pursuant to Article 4; and
  - (d) has been found by official inspection to satisfy the conditions in (a), (b) and (c);
7. 'certified material' means:
- (a) propagating material which:
    - (i) has been produced directly in a vegetative way from basic material or pre-basic material or, if intended to be used for the production of rootstocks, by certified seeds from basic or certified material of rootstocks;
    - (ii) is intended for the production of fruit plants;
    - (iii) satisfies the specific requirements for certified material, established pursuant to Article 4; and
    - (iv) has been found by official inspection to satisfy the conditions in (i), (ii) and (iii);
  - (b) fruit plants which:

- (i) have been produced directly from certified, basic or pre-basic propagating material;
  - (ii) are intended for the production of fruits;
  - (iii) satisfy the specific requirements for certified material, established pursuant to Article 4; and
  - (iv) have been found by official inspection to satisfy the conditions in (i), (ii) and (iii);
- 8. 'CAC (*Conformitas Agraria Communitatis*) material' means propagating material and fruit plants which:
  - (a) have varietal identity and adequate varietal purity;
  - (b) are intended for:
    - the production of propagating material,
    - the production of fruit plants, and/or
    - the production of fruits;
  - (c) satisfy the specific requirements for CAC material established pursuant to Article 4;
- 9. 'supplier' means any natural or legal person carrying out professionally at least one of the following activities with regard to propagating material or fruit plants: reproducing, producing, preserving and/or treating, importing and marketing;
- 10. 'marketing' means the sale, holding with a view to sale, offer for sale, and any disposal, supply or transfer aimed at commercial exploitation of propagating material or fruit plants to third parties, whether or not for consideration;
- 11. 'responsible official body' means:
  - (a) an authority, established or designated by the Member State under the supervision of the national government and responsible for questions concerning the quality of propagating material and fruit plants;
  - (b) any State authority established:
    - either at national level, or
    - at regional level, under the supervision of the national authorities, within the limits set by the national legislation of the Member State concerned;
- 12. 'official inspection' means inspection carried out by the responsible official body or under the responsibility of the responsible official body;
- 13. 'lot' means a number of units of a single commodity, identifiable by its homogeneity of composition and origin.

## CHAPTER 2

**REQUIREMENTS FOR PROPAGATING MATERIAL AND FRUIT PLANTS***Article 3***General requirements for placing on the market**

- 1 Propagating material and fruit plants may only be marketed if:
  - a the propagating material has been officially certified as ‘pre-basic material’, ‘basic material’ or ‘certified material’ or if it meets the conditions to be qualified as CAC material;
  - b the fruit plants have been officially certified as certified material or they meet the conditions to be qualified as CAC material.
- 2 Propagating material and fruit plants which consist of a genetically modified organism within the meaning of points 1 and 2 of Article 2 of Directive 2001/18/EC shall be placed on the market only if the genetically modified organism has been authorised pursuant to that Directive or pursuant to Regulation (EC) No 1829/2003.
- 3 Where products derived from fruit plants or propagating material are intended to be used as or in food falling within the scope of Article 3 or as or in a feed falling within the scope of Article 15 of Regulation (EC) No 1829/2003, the propagating material and fruit plants concerned shall be placed on the market only if the food or the feed derived from this material has been authorised pursuant to that Regulation.
- 4 Notwithstanding paragraph 1, Member States may authorise suppliers on their own territory to place on the market appropriate quantities of propagating material and fruit plants intended:
  - a for trials or scientific purposes;
  - b for selection work; or
  - c to help preserve genetic diversity.

The conditions under which Member States may grant such authorisation may be adopted in accordance with the procedure referred to in Article 19(2).

*Article 4***Specific requirements for genus and species**

In accordance with the procedure referred to in Article 19(3), specific requirements for each genus or species referred to in Annex I shall be established, specifying:

- (a) the conditions with which CAC material must comply, in particular those relating to the propagation system applied, to the purity of the growing crop, plant health, and, except in the case of rootstocks, where the material does not belong to a variety, to varietal aspects;
- (b) the conditions with which pre-basic, basic and certified material must comply, relating to quality (including, for pre-basic and basic material, methods for the maintenance of the identity of the variety and, where applicable, of the clone, including the relevant pomological characteristics), plant health, the testing methods and procedures applied,

- the propagation system(s) applied and, except in the case of rootstocks where the material does not belong to a variety, to varietal aspects;
- (c) the conditions with which rootstocks and other parts of plants of genera or species other than those listed in Annex I, or their hybrids, must comply if propagating material of the genus or species listed in Annex I or their hybrids is grafted onto them.

## CHAPTER 3

### REQUIREMENTS TO BE MET BY SUPPLIERS

#### *Article 5*

#### **Registration**

- 1 Member States shall ensure that suppliers are officially registered in relation to the activities which they carry out under this Directive.
- 2 Member States may decide not to apply paragraph 1 to suppliers marketing only to non-professional final consumers.
- 3 Detailed rules for the application of paragraphs 1 and 2 may be established in accordance with the procedure referred to in Article 19(2).

#### *Article 6*

#### **Specific requirements**

- 1 Member States shall ensure that pre-basic, basic, certified material as well as CAC material is produced under the responsibility of suppliers that are engaged in the production or reproduction of propagating material and fruit plants. To this effect, those suppliers shall:
- identify and monitor critical points in their production process which influence the quality of the material,
  - keep information on the monitoring referred to in the first indent available for examination when requested by the responsible official body,
  - take samples where necessary for analysis in a laboratory, and
  - ensure that, during production, lots of propagating material remain separately identifiable.
- 2 Member States shall ensure that in the case of the appearance, on the premises of a supplier, of a harmful organism listed in the Annexes to Directive 2000/29/EC or referred to in the specific requirements established pursuant to Article 4 of this Directive at a level higher than the level allowed in these specific requirements, the supplier reports it to the responsible official body without delays, notwithstanding any reporting obligations under Directive 2000/29/EC and carries out any measures imposed by that body.
- 3 Member States shall ensure that suppliers shall keep records of their sales or purchases for at least 3 years when propagating material or fruit plants are marketed.

The first subparagraph shall not apply to suppliers who are exempted from registration in accordance with Article 5(2).



4 Detailed rules for the application of paragraph 1 may be established in accordance with the procedure referred to in Article 19(2).

## CHAPTER 4

### VARIETY IDENTIFICATION AND LABELLING

#### *Article 7*

#### **Variety identification**

1 Propagating material and fruit plants shall be marketed with a reference to the variety to which they belong. Where, in the case of rootstocks, the material does not belong to a variety, reference shall be made to the species or interspecific hybrid concerned.

- 2 The varieties to which reference is to be made pursuant to paragraph 1 shall be:
- a legally protected by a plant variety right in accordance with provisions on the protection of new varieties;
  - b officially registered pursuant to paragraph 4 of this Article; or
  - c commonly known; a variety is considered to be commonly known if:
    - (i) it has been officially registered in another Member State;
    - (ii) it is the subject of an application for official registration in any Member State, or of an application for a plant variety right referred to in point (a); or
    - (iii) it has been already marketed before 30 September 2012 in the territory of the Member State concerned or of another Member State, provided that it has an officially recognised description.

A reference pursuant to paragraph 1 may also be made to a variety of no intrinsic value for commercial crop production provided that the variety has an officially recognised description and the propagating material and fruit plants are marketed as CAC material in the territory of the Member State concerned and are identified by a reference to this provision on the label and/or document.

3 As far as possible, each variety shall bear the same denomination in all the Member States, in accordance with implementing measures which may be adopted in accordance with the procedure referred to in Article 19(2) or, in their absence, in accordance with accepted international guidelines.

4 Varieties may be officially registered if they have been found to satisfy certain officially approved conditions and have an official description. They may also be officially registered if their material has been already marketed before 30 September 2012 in the territory of the Member State concerned, provided that they have an officially recognised description.

A genetically modified variety may be officially registered only if the genetically modified organism of which it consists has been authorised pursuant to Directive 2001/18/EC or pursuant to Regulation (EC) No 1829/2003.

Where products derived from fruit plants or propagating material are intended to be used as or in food falling within the scope of Article 3 or as or in a feed falling within the scope of Article 15 of Regulation (EC) No 1829/2003, the variety concerned shall

be officially registered only if the food or feed derived from this material has been authorised pursuant to that Regulation.

5 Requirements for the official registration referred to in paragraph 4 shall be established in accordance with the procedure referred to in Article 19(2), taking into account current scientific and technical knowledge and covering:

- a the conditions of official registration, which may include, in particular, distinctness, stability and sufficient uniformity;
- b the characteristics which as a minimum the examinations of the various species must cover;
- c the minimum requirements for carrying out the examinations;
- d the maximum period of validity of the official registration of a variety.

6 In accordance with the procedure referred to in Article 19(2):

- a system for the notification of varieties or species or interspecific hybrids to the responsible official bodies of the Member States may be set up,
- it may be decided that a common list of varieties may be established and published.

#### *Article 8*

### **Lot composition and identification**

1 While growing and during lifting or removal from the parent material, propagating material and fruit plants shall be kept in separate lots.

2 If propagating material and fruit plants of different origins are put together or mixed during packaging, storage, transport or at delivery, the supplier shall keep records including the following data: composition of the lot and origin of its individual components.

#### *Article 9*

### **Labelling**

1 Propagating material and fruit plants shall be marketed only in sufficiently homogeneous lots and if they are:

- a qualified as CAC material and accompanied by a document made out by the supplier in accordance with the specific requirements established pursuant to Article 4. If an official declaration appears on this document, it shall be clearly separate from all other information in the document; or
- b qualified as pre-basic, basic or certified material, and certified as such by the responsible official body in accordance with the specific requirements established pursuant to Article 4.

Requirements in respect of propagating material and/or fruit plants with regard to labelling and/or sealing and packaging may be indicated in implementing measures adopted in accordance with the procedure referred to in Article 19(3).

2 In the case of retail supply of propagating material or fruit plants to a non-professional final consumer, requirements regarding labelling referred to in paragraph 1 may be confined to appropriate product information.

3 In the case of propagating material or a fruit plant of a variety which has been genetically modified, any label and document, official or otherwise, which is affixed to or accompanies the material under this Directive shall clearly indicate that the variety has been genetically modified and shall identify the genetically modified organisms.

## CHAPTER 5

### EXEMPTIONS

#### *Article 10*

##### **Local circulation**

- 1 Member States may exempt:
  - a from the application of Article 9(1), small producers all of whose production and sales of propagating material and fruit plants is intended for final use by persons on the local market who are not professionally involved in plant production (local circulation);
  - b from the checks and official inspections provided for in Article 13, the local circulation of propagating materials and fruit plants produced by such exempt persons.
- 2 In accordance with the procedure referred to in Article 19(2), implementing measures relating to other requirements concerning the exemptions referred to in paragraph 1 of this Article, in particular as regards the concepts of 'small producers' and 'local market', and to the related procedures, may be adopted.

#### *Article 11*

##### **Temporary difficulties in supply**

In the event of temporary difficulties in the supply of propagating material and fruit plants satisfying the requirements of this Directive due to natural disasters or unforeseen circumstances, measures may be adopted, in accordance with the procedure referred to in Article 19(2), concerning the marketing of propagating material and fruit plants meeting less stringent requirements.

## CHAPTER 6

### **PROPAGATING MATERIAL AND FRUIT PLANTS PRODUCED IN THIRD COUNTRIES**

#### *Article 12*

- 1 In accordance with the procedure referred to in Article 19(2), it shall be decided whether propagating material and fruit plants produced in a third country and affording the same guarantees as regards obligations on the supplier, identity, characteristics, plant health, growing medium, packaging, inspection arrangements, marking and sealing, are equivalent in all these respects to propagating material and fruit plants produced in the Community and complying with the requirements and conditions of this Directive.
- 2 Pending the decision referred to in paragraph 1, Member States may, until 31 December 2010, and without prejudice to the provisions of Directive 2000/29/EC, apply to the

import of propagating material and fruit plants from third countries conditions at least equivalent to those indicated, on a temporary or permanent basis, in the specific requirements adopted pursuant to Article 4. If such conditions are not laid down in the specific requirements the conditions for importation must be at least equivalent to those applicable to production in the Member State concerned.

In accordance with the procedure referred to in Article 19(2), the date referred to in the first subparagraph of this paragraph may, for the various third countries, be extended pending the decision referred to in paragraph 1 of this Article.

Propagating material and fruit plants imported by a Member State in accordance with a decision taken by that Member State pursuant to the first subparagraph shall be subject to no marketing restrictions in the other Member States as regards the matters referred to in paragraph 1.

## CHAPTER 7

### CONTROL MEASURES

#### *Article 13*

##### **Official inspection**

1 Member States shall ensure that propagating material and fruit plants are officially inspected during production and marketing to verify compliance with the requirements and conditions set out in this Directive. To this effect, the responsible official body shall have free access to all parts of premises of suppliers at all reasonable times.

2 The responsible official bodies may, in accordance with their national legislation, delegate the tasks provided for in this Directive to be accomplished under their authority and supervision to any legal person, whether governed by public or private law, which, under its officially approved statute, is charged exclusively with specific public functions, provided that such person, and its members, has no personal interest in the outcome of the measures it takes.

In accordance with the procedure referred to in Article 19(2), any other legal persons established on behalf of a responsible official body and acting under the authority and the supervision of such body, may be approved, provided that such person has no personal interest in the outcome of the measures it takes.

Member States shall notify the Commission of their responsible official bodies. The Commission shall forward that information to the other Member States.

3 Detailed rules for the application of paragraph 1 shall be adopted in accordance with the procedure referred to in Article 19(2). These rules shall be proportionate to the category of material concerned.

#### *Article 14*

##### **Community monitoring**

1 Trials, or, where appropriate, tests shall be carried out in the Member States on samples to check that propagating material or fruit plants comply with the requirements and conditions

of this Directive, including those relating to plant health. The Commission may organise inspections of the trials by representatives of the Member States and of the Commission.

2 Community comparative tests and trials may be carried out within the Community for the post-control of samples of propagating material or fruit plants placed on the market under the provisions of this Directive whether mandatory or discretionary, including those relating to plant health. The comparative tests and trials may include the following:

- propagating material or fruit plants produced in third countries,
- propagating material or fruit plants suitable for organic farming,
- propagating material or fruit plants marketed in relation to measures for the conservation of genetic diversity.

3 The comparative tests and trials referred to in paragraph 2 shall be used to harmonise the technical methods of examination of propagating material and fruit plants and to check satisfaction of the conditions with which the material must comply.

4 The Commission, acting in accordance with the procedure referred to in Article 19(2), shall make the necessary arrangements for the comparative tests and trials to be carried out. The Commission shall inform the Committee referred to in Article 19(2) about the technical arrangements for holding the tests and trials and the results thereof. When plant health problems occur, the Commission shall notify the Standing Committee on Plant Health.

5 The Community may make a financial contribution to the performance of the tests and trials foreseen in paragraphs 2 and 3.

The financial contribution shall not exceed the annual appropriations decided by the budgetary authority.

6 The tests and trials which may benefit from a Community financial contribution, and detailed rules for the provision of the financial contribution, shall be established in accordance with the procedure referred to in Article 19(2).

7 The tests and trials foreseen in paragraphs 2 and 3 may be performed only by State authorities or legal persons acting under the responsibility of the State.

#### *Article 15*

### **Community checks in Member States**

1 Commission experts may, in cooperation with the responsible official bodies of the Member States, make on-the-spot checks in so far as this is necessary to ensure the uniform application of this Directive, and in particular to verify whether suppliers are in effect complying with the requirements of this Directive. A Member State in whose territory a check is being carried out shall give all necessary assistance to the experts in carrying out their duties. The Commission shall inform the Member States of the result of the investigations.

2 Detailed rules for the application of paragraph 1 shall be adopted in accordance with the procedure referred to in Article 19(2).

### *Article 16*

#### **Follow-up actions by Member States**

1 Member States shall ensure that propagating material and fruit plants produced in their territory and intended for marketing comply with the requirements of this Directive.

2 If, during the official inspection referred to in Article 13, or the trials referred to in Article 14, it is found that propagating material or fruit plants do not meet the requirements of this Directive, the responsible official body of the Member State shall take appropriate action to ensure that they do comply with the provisions of this Directive or, if that is not possible, to ban the marketing of that propagating material or those fruit plants in the Community.

3 If it is found that propagating material or fruit plants marketed by a particular supplier do not comply with the requirements and conditions of this Directive, the Member State concerned shall ensure that appropriate measures are taken against that supplier. If the supplier is forbidden to market propagating material and fruit plants, the Member State shall accordingly inform the Commission and the competent national bodies in the Member States.

4 Any measures taken under paragraph 3 shall be withdrawn as soon as it has been established with sufficient certainty that the propagating material or fruit plants intended for marketing by the supplier will, in the future, comply with the requirements and conditions of this Directive.

## CHAPTER 8

### **GENERAL AND FINAL PROVISIONS**

#### *Article 17*

##### **Free movement clause**

1 Propagating material and fruit plants which comply with the requirements and conditions of this Directive shall be subject to no marketing restrictions as regards supplier, plant health, growing medium and inspection arrangements, other than those laid down in this Directive.

2 As regards the propagating material and fruit plants of the genera and species referred to in Annex I, Member States shall refrain from imposing more stringent conditions or marketing restrictions other than those laid down in this Directive or in the specific requirements established pursuant to Article 4 or those existing on 28 April 1992, as the case may be.

#### *Article 18*

##### **Amendments and adaptation of Annexes**

The Commission may, in accordance with the procedure referred to in Article 19(3), amend Annex I, for the purpose of adapting it to developments in scientific and technical knowledge.

### *Article 19*

#### **Committee**

1 The Commission shall be assisted by the Standing Committee on Propagating Material and Plants of Fruit Genera and Species, hereinafter referred to as ‘the Committee’.

2 Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply.

The period laid down in Article 4(3) of Decision 1999/468/EC shall be set at one month.

3 Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

4 The Committee shall adopt its Rules of Procedure.

### *Article 20*

#### **Transposition**

1 Member States shall adopt and publish, by 31 March 2010 at the latest, the laws, regulations and administrative provisions necessary to comply with Articles 1(2) and (3), 2, 3, 5, 6, 7(2), (3) and (4), 9(3), 12(2), 13(1), 16, and 21. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

They shall apply those provisions from 30 September 2012.

2 When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to the Directive repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.

3 Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

### *Article 21*

#### **Transitional measures**

Member States may, until 31 December 2018, allow the marketing in their own territory of propagating material and fruit plants taken from parent plants that existed before 30 September 2012 and have been officially certified or meet the conditions to be qualified as CAC material before 31 December 2018. When marketed, such propagating material and fruit plants shall be identified by a reference to this Article on the label and/or document. Beyond 31 December 2018 propagating material and fruit plants may be marketed if the requirements of this Directive are fulfilled.

*Article 22***Repeal**

1 Directive 92/34/EEC, as amended by the acts listed in Annex II, Part A, is repealed with effect from 30 September 2012, without prejudice to the obligations of the Member States relating to the time limits for transposition into national law and application of the Directives set out in Annex II, Part B.

2 References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex III.

*Article 23***Entry into force**

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

*Article 24*

This Directive is addressed to the Member States.

Done at Brussels, 29 September 2008.

*For the Council*

*The President*

M. BARNIER



## ANNEX I

List of genera and species to which this Directive applies

*Castanea sativa* Mill.  
*Citrus* L.  
*Corylus avellana* L.  
*Cydonia oblonga* Mill.  
*Ficus carica* L.  
*Fortunella* Swingle  
*Fragaria* L.  
*Juglans regia* L.  
*Malus* Mill.  
*Olea europaea* L.  
*Pistacia vera* L.  
*Poncirus* Raf.  
*Prunus amygdalus* Batsch  
*Prunus armeniaca* L.  
*Prunus avium* (L.) L.  
*Prunus cerasus* L.  
*Prunus domestica* L.  
*Prunus persica* (L.) Batsch  
*Prunus salicina* Lindley  
*Pyrus* L.  
*Ribes* L.  
*Rubus* L.  
*Vaccinium* L.

## ANNEX II

### PART A

#### Repealed Directive with its successive amendments

(referred to in Article 22)

Council Directive 92/34/EEC (OJ L 157, 10.6.1992, p. 10).	
Commission Decision 93/401/EEC (OJ L 177, 21.7.1993, p. 28).	
Commission Decision 94/150/EC (OJ L 66, 10.3.1994, p. 31).	
Commission Decision 95/26/EC (OJ L 36, 16.2.1995, p. 36).	
Commission Decision 97/110/EC	

*Status: This is the original version (as it was originally adopted).*

(OJ L 39, 8.2.1997, p. 22).	
Commission Decision 1999/30/EC (OJ L 8, 14.1.1999, p. 30).	
Commission Decision 2002/112/EC (OJ L 41, 13.2.2002, p. 44).	
Council Regulation (EC) No 806/2003 (OJ L 122, 16.5.2003, p. 1).	Only point 7 of Annex II and point 28 of Annex III
Council Directive 2003/61/EC (OJ L 165, 3.7.2003, p. 23).	Only Article 1(5)
Commission Directive 2003/111/EC (OJ L 311, 27.11.2003, p. 12).	
Commission Decision 2005/54/EC (OJ L 22, 26.1.2005, p. 16).	
Commission Decision 2007/776/EC (OJ L 312, 30.11.2007, p. 48)	

## PART B

**List of time limits for transposition into national law and application****(referred to in Article 22)**

<b>Directive</b>	<b>Time limit for transposition</b>	<b>Date of application</b>
92/34/EEC	31 December 1992	31 December 1992 <sup>a</sup>
2003/61/EC	10 October 2003	
2003/111/EC	31 October 2004	

<sup>a</sup> As far as Articles 5 to 11, 14, 15, 17, 19 and 24 are concerned, the date of application for each genus or species referred to in Annex II shall be fixed in accordance with the procedure provided for in Article 21, when the schedule referred to in Article 4 is drawn up (see Article 26(2) of Directive 92/34/EEC).

## ANNEX III

## CORRELATION TABLE

<b>Directive 92/34/EEC</b>	<b>This Directive</b>
Articles 1(1)	Articles 1(1)
Article 1(2)	—
Article 1(3)	Article 18 amended
—	Article 1(2)(3)
Article 2	Article 1(4)

*Status: This is the original version (as it was originally adopted).*

Article 3 (a), (b)	Article 2(1), (2)
—	Article 2(3), (4)
Article 3 (c) – (f)	Article 2(5) – 2 (8) amended
Article 3 (g) – (h)	—
Article 3 (i) – (j)	Article 2(9) – (10) amended
Article 3 (k) (i and ii)	Article 2(11)
Article 3 (k) partim.	Article 13(2) amended
Article 3 (l) (m)	Article 2(12), (13)
Article 3 (n)	—
Article 3 (o)	Article 2(14)
Article 3 (p)	—
Article 4(1)	Article 4 amended
Article 4(2)	—
Article 5	—
—	Article 5
Article 6	—
—	Article 6
Article 7	Article 15
Articles 8(1) (2)	Article 3(1)(a), (b) amended
—	Article 3(2)
—	Article 3(3)
Article 8(3)	Article 3(4) amended
Article 9(1)	Article 7(1)
—	Article 7(2)
Article 9(2)(i), (ii)	Article 7(3)(a), (b) amended
Article 9(2) final provision	Article 7(4) amended
Article 9(3)	Article 7(5)
Article 9(4)	—
Article 9(5)	Article 7(6)
Article 9(6)	Article 7(7)
Articles 10(1) (2)	Articles 8(1) (2) amended
Article 10(3)	—
Article 11	Article 9 amended
Article 12	Article 10

---

*Status: This is the original version (as it was originally adopted).*

---

Article 13	Article 11 amended
Article 14	Article 17(1)
Article 15	Article 17(2) amended
Article 16	Article 12
Article 17	Article 13(1) amended
Article 18	Article 13(3) amended
Article 19(1)	Article 16(2)
Article 19(2)	Article 16(3)
Article 19(3)	Article 16(4)
Article 20	Article 14
Article 21(1) (2)	Article 19(1) (2)
Article 21(3)	Article 19(4)
Article 22(1) (2)	Article 19(1) (3)
Article 23	—
Article 24(1)	Article 16(1)
Article 24(2)	—
Article 25	—
Article 26	Article 20
—	Article 21
—	Article 22
—	Article 23
Article 27	Article 24
Annex I	—
Annex II	Annex I
—	Annexes II and III

- (1) Opinion delivered on 11 December 2007 (not yet published in the Official Journal).
- (2) [OJ L 157, 10.6.1992, p. 10.](#)
- (3) See Annex II, Part A.
- (4) [OJ L 169, 10.7.2000, p. 1.](#)
- (5) [OJ L 106, 17.4.2001, p. 1.](#)
- (6) [OJ L 268, 18.10.2003, p. 1.](#)
- (7) [OJ L 184, 17.7.1999, p. 23.](#)