

Proposal for a Council Directive amending Directive 68/193/EEC on the marketing of material for the vegetative propagation of the vine

(2000/C 177 E/12)

COM(2000) 59 final — 2000/0036(CNS)

(Submitted by the Commission on 7 February 2000)

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,

Having regard to the opinion of the Economic and Social Committee,

Whereas:

- (1) For the reasons explained below, Directive 68/193/EEC on the marketing of material for the vegetative propagation of the vine ⁽¹⁾, as last amended by the Act of Accession of Austria, Finland and Sweden, should be amended.
- (2) In the context of consolidating the internal market, various provisions of that Directive should be amended or repealed to remove all barriers to trade likely to prevent the free movement of vine propagating material in the Community. To that end, any possibility for Member States to make unilateral derogations from the Directive should be removed.
- (3) It should be made possible, on certain conditions, to market new types of propagating material.
- (4) The Commission, assisted by the Standing Committee on Seeds and Propagating Material for Agriculture, Horticulture and Forestry, should be able to lay down the conditions in which the Member States may authorise the marketing of propagating materials for trials, scientific purposes or selection work.
- (5) The Member States should be authorised to adopt more stringent provisions for the marketing of propagating material in all or part of their territory than those provided for in Annexes I and II to combat organisms that appear particularly harmful to vines in the regions concerned.
- (6) In the light of the experience gained in other sectors regarding the marketing of seed and propagating material, temporary trials should be organised, subject to

certain conditions, to find better alternatives to certain provisions of the Directive.

- (7) As a result of scientific and technical progress, it is now possible to genetically modify vine varieties. When deciding whether to accept genetically modified vine varieties, the Member States should ensure that their deliberate release into the environment does not pose any risk to human health or the environment. Procedures should therefore be established for marketing propagating material of such varieties.
- (8) Regulation (EC) No 258/97 on novel foods and novel food ingredients includes provisions on genetically modified food and food ingredients; in determining whether a genetically modified vine variety can be accepted on the market and in order to protect public health, it is necessary to ensure that novel foods and novel food ingredients are subject to a safety assessment through a Community procedure by applying the authorisation procedure, evaluation principles and criteria laid down in Regulation (EC) No 258/97, including the consultation of the Scientific Committee for Food.
- (9) To ensure that the movement of vine propagating material is adequately monitored, provision should be made for batches to be accompanied by a control document.
- (10) It is desirable to ensure that genetic resources are conserved.
- (11) The procedure for close cooperation between Member States and the Commission within a Standing Committee on Seeds and Propagating Material for Agriculture, Horticulture and Forestry should be updated.
- (12) In the light of experience, various other provisions of the above Directive should be clarified and updated.

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 68/193/EEC is hereby amended as follows:

1. The following sub-subparagraphs are added after Article 2(1)(A):
 - '(AA) Variety: a plant grouping within a single botanical taxon of the lowest known rank, which can be:

⁽¹⁾ OJ L 93, 17.4.1968, p. 15.

- defined by the expression of the characters resulting from a given genotype or combination of genotypes,
- distinguished from any other plant grouping by the expression of at least one of the said characters, and
- considered as an entity in view of its ability to be propagated unchanged.

(AB) Clone: a clone is the vegetative progeny of a variety true to a vinestock selected for the identity, phenotypic characters and health status of the parent plant.'

2. Article 2(1)(B) is replaced by the following:

'(B) Propagating materials:

(i) Young vine plants

- (a) rooted cuttings: ungrafted pieces of rooted vine shoot or herbaceous cutting intended for planting ungrafted or for use as rootstocks;
- (b) rooted grafts: pieces of vine shoot or herbaceous cutting joined by grafting, the underground part of which is rooted.

(ii) Parts of young vine plants:

- (a) vine shoots: one-year shoots;
- (b) herbaceous cuttings: un lignified shoots;
- (c) graftable rootstock cuttings: pieces of vine shoot or herbaceous cuttings intended to form the underground part when preparing rooted grafts;
- (d) pieces of vine shoot or herbaceous cuttings intended to form the part above ground when preparing rooted grafts or when grafting plants in situ;
- (e) nursery cuttings: pieces of vine shoot or herbaceous cuttings intended for the production of rooted cuttings.'

3. The following definition is added after Article 2(1)(D):

'(DA) Initial propagating materials: propagating materials:

- (a) which have been produced on the responsibility of the plant breeder according to accepted practices for the maintenance of the identity of the variety and, where applicable, of the clone, and for the prevention of diseases;
- (b) which are intended for the production of basic propagating materials or certified materials;

- (c) which satisfy the conditions laid down in Annexes I and II for basic materials. These Annexes may be amended in accordance with the procedure laid down in Article 17 in order to set additional or more stringent conditions for the certification of initial propagating materials;
- (d) which have been found by official examination to satisfy the above conditions.'

4. Article 2(1)(E) is replaced by the following:

'(E) Basic propagating materials: propagating materials:

- (a) which have been produced on the responsibility of the plant breeder according to accepted practices for the maintenance of the identity of the variety and, where applicable, of the clone, and for the prevention of diseases, and which are obtained by vegetative propagation directly from initial material;
- (b) which are intended for the production of certified materials;
- (c) which satisfy the conditions laid down in Annexes I and II for basic materials; and
- (d) which have been found by official examination to satisfy the above conditions.'

5. Article 2(1)(F)(a) is replaced by the following:

'which are obtained directly from basic materials or initial materials'.

6. The following definition is added to Article 2(1):

'(I) Marketing:

The sale, holding with a view to sale, offer for sale and any disposal, supply or transfer of propagating material to third parties, whether or not for a consideration, with a view to commercial exploitation.

The rules for the application of these provisions shall be adopted in accordance with the procedure laid down in Article 17.'

7. Article 3 is replaced by the following:

'1. The Member States shall require that vine propagating materials may not be placed on the market unless:

- they have been officially certified as "initial material", "basic material" or "certified material" or, in the case of propagating material not intended for use as rootstocks, is officially checked standard material, and
- they satisfy the conditions laid down in Annex II.

2. Notwithstanding paragraph 1, Member States may authorise producers on their own territory to place on the market appropriate quantities of propagating materials:

- (a) intended for trials or for scientific purposes;
- (b) for selection work;
- (c) intended to help preserve genetic diversity.

The conditions on which Member States may grant such authorisation may be determined in accordance with the procedure laid down in Article 17.

In the case of genetically modified material, the authorisation may be granted only if all the appropriate steps have been taken to avoid endangering human health and the environment. For the purposes of the environmental impact assessment which must be carried out in this respect, Article 5ba of this Directive shall apply *mutatis mutandis*.

3. In the case of propagating material produced by micropropagation, the following provisions may be adopted in accordance with the procedure laid down in Article 17:

- derogation from specific provisions of this Directive,
- conditions applicable to such propagating material,
- names that may be used for such propagating material.

4. In the case of officially certified material, the following may be adopted in accordance with the procedure laid down in Article 17:

- Community classes within each category,
- the conditions that apply to those classes,
- the names that apply to those classes.

The Member States may determine the extent to which they apply these Community classes for the certification of their own production.

5. The Commission, acting in accordance with the procedure laid down in Article 17, may

- (a) require that after specified dates propagating material other than for use as rootstocks may only be placed on the market if it has been officially certified as “initial material”, “basic material” or “certified material”

— throughout the Community, in the case of certain vine varieties for which the Community's needs can be covered, if necessary, under a relevant programme, by propagating material officially certified as “initial material”, “basic material” or “certified material”, and

— in the case of propagating material of varieties other than referred to in the first indent, if intended for use in the territory of Member States which have already required, in accordance with Article 12(2) and not later than the date of adoption of this Directive, that “standard material” may no longer be marketed.

- (b) authorise the Member States, by derogation from paragraph 1, to market “standard material” for use in certain areas as rootstocks for certain varieties for which the Community's needs cannot be covered by “initial material”, “basic material” or “certified material” and to lay down the conditions for such marketing.’

8. The following Article is added after Article 3:

‘Article 3a

The Commission may authorise Member States, in accordance with the procedure laid down in Article 17, to adopt more stringent provisions for the marketing of propagating material in all or part of the territory of one or more Member States than those provided for in Annexes I and II in order to combat harmful organisms that appear particularly threatening to vines in the regions concerned.’

9. The following paragraph is added to Article 4:

‘This provision shall not apply, in the case of grafting, to parts of young plants produced in another Member State or in a third country under Article 15(2).’

10. In Article 5, the words ‘, and where applicable clones,’ are added after ‘Each Member State shall establish a list of the vine varieties’.

11. The following paragraph is added to Article 5:

‘Member States shall ensure that varieties and clones accepted into the catalogues of the other Member States are also accepted for certification in their own territory, without prejudice to Council Regulation (EC) No 1493/1999 on general rules for the classification of vine varieties (1).’

(1) OJ L 271, 21.10.1999, p. 47.

12. Article 5b is replaced by the following:

'Article 5b

1. A variety shall be deemed to be distinct if it is clearly distinguishable, by reference to the expression of the characters resulting from a particular genotype or combination of genotypes, from any other variety whose existence is a matter of common knowledge in the Community.

A variety shall be deemed to be a matter of common knowledge in the Community if, on the date on which application is duly made for its acceptance, it is either: entered in the catalogue of the Member State in question or of another Member State; or the subject of an application for acceptance in the Member State in question or in another Member State; unless the conditions referred to in the first sentence of this paragraph are no longer met in all the Member States concerned before a decision is made regarding the application for acceptance of the new variety being assessed.

2. A variety shall be deemed to be stable if the expression of the characters which are included in the examination for distinctness, as well as any others used for the variety description, remain unchanged after repeated propagation.

3. A variety shall be deemed to be uniform if, subject to the variation that may be expected from the particular features of its propagation, it is sufficiently uniform in the expression of those characters which are included in the examination for distinctness, as well as any others used for describing the variety.'

13. The following Article is added after Article 5b:

'Article 5ba

1. Genetically modified varieties of vine within the meaning of Article 2(1) and (2) of Council Directive 90/220/EEC of 23 April 1990 on the deliberate release into the environment of genetically modified organisms ⁽¹⁾ shall be accepted only if all the appropriate steps have been taken to avoid endangering human health and the environment.

2. With regard to genetically modified varieties within the meaning of paragraph 1,

- (a) an environmental impact assessment equivalent to the assessment provided for in Directive 90/220/EEC shall be carried out;
- (b) the procedures ensuring an environmental risk assessment and other relevant information equivalent to the assessment laid down in Directive 90/220/EEC shall be introduced on a proposal from the Commission, in a Council regulation based on the appropriate legal basis in the Treaty. Until the entry into force of this regulation, genetically modified varieties may be accepted into national catalogues

only after being accepted for marketing in accordance with Directive 90/220/EEC;

(c) Articles 11 to 18 of Directive 90/220/EEC shall no longer apply to genetically modified varieties of vine authorised in conformity with the Regulation referred to in subparagraph (b) above;

(d) the technical and scientific details of implementing the environmental risk assessment shall be adopted in accordance with the procedure laid down in Article 17 of this Directive.

3. Where products derived from vine propagating material are intended to be used as a food or food ingredient falling within the scope of Regulation (EC) No 258/97 of the European Parliament and the Council of 27 January 1997 concerning novel foods and novel food ingredients, it must be ensured prior to the acceptance of genetically modified varieties of vine, that the foods or food ingredients derived therefrom do not:

- present a danger for the consumer,
- mislead the consumer,
- differ from foods or food ingredients which they are intended to replace to such an extent that their normal consumption would be nutritionally disadvantageous for the consumer.

Where material from one of the varieties referred to in this Directive is intended for use as a novel food or food ingredient covered by Regulation (EC) No 258/97 of the European Parliament and of the Council concerning novel foods and novel food ingredients ⁽²⁾, the variety shall be accepted only if the food or food ingredient has already been authorised in accordance with Regulation (EC) No 258/97.

However, where the authorisation decision referred to in Regulation (EC) No 258/97 is taken in connection with the procedure for official acceptance of a variety, the procedure laid down in Article 17 of this Directive shall be followed.'

14. In Article 5c, the words ', and where applicable clones,' are added after 'The Member States shall ensure that varieties'.

15. Article 5e(2) is replaced by the following:

'All applications or withdrawals of applications for acceptance of a variety, entries in a catalogue of varieties and any amendments made to it shall be notified immediately to the other Member States and to the Commission.

The Commission may publish notifications from the Member States in the Community Catalogue.'

⁽¹⁾ OJ L 117, 8.5.1990, p. 15.

⁽²⁾ OJ L 43, 14.2.1997, p. 1.

16. The following Articles are added after Article 5e:

'Article 5f

Member States shall ensure that genetically modified varieties which have been accepted are clearly indicated as such in the catalogue of varieties. They shall further ensure that any person marketing such a variety clearly indicates in their vine sales catalogue that the variety is genetically modified.

Article 5g

1. Member States shall require that varieties, and clones where applicable, accepted into the catalogue are maintained by selection for conservation.

2. Maintenance must always be verifiable on the basis of records made by those responsible for maintenance of a variety.

3. Samples may be requested from those responsible for maintenance of a variety. Where necessary, samples may be taken officially.'

17. In Article 7, the words 'initial material,' are inserted before 'basic material'.

18. Article 8(2) is replaced by the following:

'By derogation from paragraph 1 as regards packaging, sealing and marking, Member States may authorise producers in their territory to sell in small quantities to final consumers and also to market vines in pots, crates or boxes.

The conditions on which Member States may grant such authorisation may be determined in accordance with the procedure laid down in Article 17.'

19. Article 9 is replaced by the following:

'Member States shall require packages and bundles of propagating material to be sealed officially or under official supervision, in such a manner that they cannot be opened without damaging the seal or without the official label referred to in Article 10(1) or, in the case of packaging, the packaging showing signs of tampering. To ensure proper sealing, the sealing device must comprise at least either the official label or an official seal. A decision may be taken in accordance with the procedure laid down in Article 17 as to whether a specific sealing device meets the requirements of this Article. Further sealing may take place only officially or under official supervision.'

20. Article 10 is replaced by the following:

'1. The Member States shall require that an official label in one of the official languages of the Community

conforming to the specification in Annex IV be affixed on the outside of packages and bundles of propagating material by means of the sealing device. The colour of the label shall be white with a diagonal violet stripe for initial material, white for basic material, blue for certified material and dark yellow for standard material.

2. However, Member States may authorise producers in their territory to market more than one package or bundle of grafted or rooted vines with the same characteristics using a single label conforming to the specification in Annex IV. In such cases, the packages or bundles shall be attached together in such a way that the attachment is damaged on separation and can no longer be put back. The label shall be affixed by means of the attachment. No resealing shall be authorised.

3. Member States shall require that each batch also be accompanied by a control document. The terms and conditions governing this accompanying document shall be determined in accordance with the procedure laid down in Article 17.

4. Plant passports as referred to in Commission Directive 92/105/EEC of 3 December 1992 establishing a degree of standardisation for plant passports⁽¹⁾ may constitute official labels as referred to in paragraph 1. However, all the requirements laid down in paragraph 1 for official labels must also be complied with.'

21. The following Article is added after Article 10:

'Article 10a

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

22. Article 11(2) is repealed.

23. Article 12 is replaced by the following:

'Member States shall ensure that propagating materials marketed according to this Directive, under either compulsory or to optional rules, are not subjected to any marketing restrictions as regards their characteristics, examination arrangements, marking and sealing other than those laid down in this Directive.'

24. Article 12a is replaced by the following:

'Member States shall ensure that propagating material of vine varieties, and where applicable clones, have been officially accepted in one of the Member States for certification and for checking as standard material in accordance with this Directive are not subjected to any marketing restrictions in their territory based on variety, without prejudice to Regulation (EC) No 1493/1999.'

⁽¹⁾ OJ L 4, 8.1.1993, p. 22.

25. Article 14(1) is replaced by the following:

'In order to eliminate any temporary difficulties in the general supply of basic material, certified material or standard material in the Community that cannot be overcome in any other way, a decision may be taken in accordance with the procedure laid down in Article 17 that the Member States should authorise, for a limited period, the marketing throughout the Community's territory of the quantity of propagating material of a category satisfying less stringent requirements needed to overcome the difficulties.'

26. The following Article is added after Article 14:

'Article 14a

For the purpose of seeking better alternatives to certain provisions of this Directive, it may be decided, in accordance with the procedure laid down in Article 17, to organise temporary experiments under specified conditions at Community level.'

27. Article 17 is replaced by the following:

'1. The Commission shall be assisted by the Standing Committee on Seeds and Propagating Material for Agriculture, Horticulture and Forestry.

2. Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

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

3. The Committee shall adopt its rules of procedure.'

Article 2

By derogation from Article 3(1) of Directive 68/193/EEC, Member States may, as a transitional measure until 1 January 2009, allow the marketing of standard materials intended for use as rootstocks and taken from rootstock nurseries existing at the date of entry into force of this Directive.

Article 3

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 1 January 2001. 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 at the time of their official publication. The methods of making such reference shall be laid down by Member States.

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

Article 4

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

Article 5

This Directive is addressed to the Member States.
