

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(89) 647 final

Brussels, 22 January 1990

Proposal for a

COUNCIL DIRECTIVE

amending Directive 77/93/EEC on protective measures against the
introduction into the Member States of organisms
harmful to plants or plant products

(presented by the Commission)

EXPLANATORY NOTE

By Directive 77/93/EEC (1) the Council laid down protective measures against the introduction into the Member States of organisms harmful to plants or plant products. The protection of plants or plant products against such organisms is absolutely necessary to increase agricultural productivity, which is one of the objectives of the Common Agricultural Policy.

One of the main aims of the Community plant health regime is to facilitate trade in plants and plant products. It is based on harmonized plant health standards and on the mutual recognition by Member States of certificates issued by exporting Member States. The present Directive covers intra-Community trade as well as third country imports.

The Community plant health regime in its present form will no longer be appropriate for the circumstances of the Community in 1993, as portrayed in the Commission's White Paper "Completing the Internal Market" (2). According to the White Paper, the internal market must be completed by the abolition of all physical barriers to trade, in particular those controls imposed at customs posts or other checkpoints at frontiers between Member States.

To achieve this objective in the field of plant health, the White Paper proposes a number of specific steps, listed in its Annex, which are further explained in the Commission's Communication "A New Strategy in the field of Plant Health" (3).

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- (1) OJ No L 26, 31.1.1977, p. 20.
 - (2) COM(85) 310 final.
 - (3) COM(87) 97 final.

While most of these steps are the subject of a separate, more general proposal, the present proposal is intended to establish the legislative framework for one particular step, listed as "establishment of certain rules of liability in respect of plant health" in the Annex to the White Paper (p. 10).

The proposal contains two essential elements:

1. It provides for a system of Community financial assistance to contribute towards public expenditure incurred by a Member State in taking specific measures to control or eradicate organisms harmful to plants or plant products, introduced from another Member State through intra-Community trade in plants or plant products under the Community plant health regime.
2. It also establishes a system under which the consignor Member State shall refund any Community financial contribution and, in certain cases, part also of the expenditure of control or eradication incurred by the infected Member State, in cases where it is established that the inspections or examinations required under the Community plant health regime were carried out inadequately in that Member State.

The first element should make plant health standards set up at Community level more acceptable as a replacement for national risk assessment.

The second element should encourage a correct application of Community rules, thus contributing to the establishment of the mutual confidence between Member States necessary for abolition of all plant health import checks.

The proposal provides for a regulatory committee procedure for determining plant health measures which may appear necessary in addition to those taken immediately by the Member State infected. The decision to propose a regulatory committee in this case is without prejudice to future Commission proposals relating to decision-making procedures. The consultative committee procedure applies for the exercise of all other powers delegated to the Commission.

This proposal forms part of a wider strategy, which will be completed by other proposals to be submitted to the Council at about the same time, including proposals containing plant health standards for particular sorts of material (for example, young vegetable plants and fruit plants). Together the proposals will define the Community plant health regime after 1992. It is recognised that amendments may in future need to be made to this proposal in order to maintain coherence with other proposals.

The proposal would have no impact on small or medium-sized enterprises.

Proposal for a Council Directive amending Directive 77/93/EEC on protective measures against the introduction into the Member States of organisms harmful to plants or plant products

COM(89) 647 final

(Submitted by the Commission on 21 December 1989)

(90/C 31/09)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 43 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas by Directive 77/93/EEC ⁽¹⁾, as last amended by Directive 89/439/EEC ⁽²⁾, the Council laid down protective measures against the introduction into the Member States of organisms harmful to plants or plant products; 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;

⁽¹⁾ OJ No L 26, 31. 1. 1977, p. 20.

⁽²⁾ OJ No L 212, 22. 7. 1989, p. 106.

Whereas the completion of the single market at the end of 1992 will entail the application of the Community plant-health regime established by Directive 77/93/EEC, with effect from that time, to the Community as an area without internal frontiers;

Whereas in addition to other measures adopted to ensure effective application of the Community plant-health regime in the single market, it is necessary to establish a system of Community financial assistance to share at Community level the burden of possible risks which might remain in trade under the Community plant-health regime;

Whereas such system should provide for adequate contributions to certain expenses for specific measures which Member States have adopted to control infections by harmful organisms introduced from another Member State;

Whereas the details of the mechanism for granting the Community financial assistance 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 provisions of the Community plant-health regime by the responsible public servants of the Member States;

Whereas a system of refunding for expenses of the type referred to in the system of Community financial assistance should be established, in order to increase the incentives for a correct application of Community rules;

Whereas, should it be established that the introduction of the harmful organisms has been caused by inadequate examinations or inspections in another Member State, that Member State should refund the payments made under the Community financial assistance,

HAS ADOPTED THIS DIRECTIVE:

Article 1

After Article 19a of Directive 77/93/EEC the following new Articles are inserted:

Article 19b

In the case of the spread of harmful organisms through plants, plant products and other objects moving in intra-Community trade, Member States may receive financial assistance from the Community pursuant to the provisions of Article 19c, for the

purpose of controlling these harmful organisms and within the limits of appropriations available for that purpose in the Community budget.

Article 19c

1. Where it is established that one or more of the harmful organisms listed in Annex I or Annex II were introduced into a Member State where the organisms concerned have not been known to occur, through consignments of plants, plant products or other objects coming from another Member State, the first mentioned Member State may receive financial assistance from the Community for expenses resulting from official measures which that Member State has adopted to control the harmful organisms concerned.

2. The official measures referred to in paragraph 1 shall be considered to mean:

- destruction, disinfection, disinfestation, sterilization or any other treatment carried out officially or upon official request, in respect of the consignment through which the harmful organisms were introduced, as well as in respect of plants, plant products or other objects which have been in contact with the consignment concerned or with parts thereof, or which are otherwise suspected to be potentially contaminated by, or potential carriers of, the harmful organisms introduced,
- disinfection, disinfestation, sterilization, cleaning or any other treatment carried out officially or upon official request, in respect of growing media, buildings, premises or equipment, which have been in contact with the consignment concerned or with parts thereof, or which are otherwise suspected to be potential carriers of the harmful organisms introduced,
- inspections or testing carried out officially or upon official request, to monitor the presence, or the extent, of the harmful organisms introduced,
- official orders relating to prohibitions or restrictions in respect of the use of land, premises, plants or plant products on the grounds of plant health risks related to the harmful organisms introduced.

3. The expenses referred to in paragraph 1 shall be considered to mean payments made from appropriations contained in a public budget, in order:

- to cover the costs of the measures described in paragraph 2 first, second and third indent, other

than those related to the current functioning of the authority or official body concerned, or

- to compensate for losses resulting from one or more of the measures mentioned in paragraph 2 fourth indent.

4. The Member State concerned shall inform the Commission and the other Member States of the measures taken and the results achieved thereby as well as of the expenses incurred, without delay.

5. The grant of Community financial assistance shall be decided in accordance with the procedure laid down in Article 17a.

This assistance may cover up to 50 % of the expenses; it may be divided into several instalments.

The level shall be calculated on the basis of documentary evidence submitted by the Member State concerned. In case of doubt, investigations may be organized by the Commission, to be made under its authority, by the experts referred to in Article 19a.

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, that further action shall be carried out or that further measures adopted by the Member State concerned shall be subjected to certain requirements or conditions, as may be considered necessary for the achievement of the aim in view.

The grant of Community financial assistance for such further action or measures shall be decided at the same time, in accordance with the procedure laid down in Article 17a. The provisions of paragraph 5 shall apply accordingly, with the exception of that related to the 50 % limit.

7. The grant of Community financial assistance shall be without prejudice to rights of the Member States concerned, or of individuals, against others for the refunding of expenses, losses or other damages under national law, general Community law or international law. To the extent that these expenses, losses or other damages are covered by Community financial assistance, these rights shall be ceded to the Community.

Article 19d

1. The Member State from which the consignment carrying the harmful organisms came shall inform the Commission, on its request, and without delay, of all

details relating to the origin or origins of that consignment and its administrative handling. For the purpose of completing that information, investigations may be organized by the Commission, to be made under its authority, by the experts referred to in Article 19a.

2. Where it is established, on the basis of the information obtained pursuant to paragraph 1, that the non-compliance of the consignment with the provisions of this Directive was not detected in the Member State referred to in that paragraph, because of wilfully or negligently inadequate examinations pursuant to Article 6, or inspections pursuant to Article 12 (1), by responsible public servants of that Member State, that Member State shall refund the Community for the Community financial assistance granted pursuant to Article 19c. For the purpose of this provision, inadequate examinations or inspections shall, in the absence of proof to the contrary, be deemed to be at least negligently inadequate. In the case of refunding, the Community shall cede all possible rights acquired under Article 19c (7) to the refunding Member State. Moreover, the refunding is without prejudice to rights of the refunding Member State under national law against legal or natural persons, including the responsible public servants concerned, for reimbursement of that refunding.

3. In accordance with the procedure laid down in Article 17a, it may be decided that the Member State shall also refund the Member State referred to in Article 19c for all or part of the expenses not covered by the Community financial assistance.

Article 2

1. Member States shall bring into force the laws, regulations or administrative provisions necessary to comply with this Directive by 1 January 1991.

The provisions adopted pursuant to the first subparagraph shall make express reference to this Directive.

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 3

This Directive is addressed to the Member States.

Statement of Impact on small or medium-sized enterprises

This proposal is concerned with financial arrangements between the governments of Member States and the Community relating to the costs of dealing with certain outbreaks of plant diseases and with the transfer of responsibility for taking certain plant health measures from Member States to the Community. It would have no impact on small or medium-sized enterprises.

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DOCUMENTS

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