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**COMMISSION STAFF WORKING DOKUMENT**

*Accompanying document to the*

**Proposal for a**

**COUNCIL DIRECTIVE**

**on the marketing of fruit plant propagating material and fruit plants intended for fruit  
production  
(Recast version)**

**Summary Impact Assessment**

**[COM(2007) 31 final  
SEC(2007) 93]**

## Summary Impact Assessment

### **On a Draft Proposal for a recast version of Council Directive 92/34/EEC on the marketing of fruit plant propagating material and fruit plants intended for fruit production**

#### **Procedural issues and consultation of interested parties**

The initiative was launched in 2004 and was listed in the Agenda Planning as 2004/SANCO/008 (certification system on the marketing of fruit plants propagating material).

Stakeholders and Member States have been consulted through a questionnaire published on the official SANCO Website. They have been also directly consulted by organising meetings of the relevant standing committee and the Advisory Group on Fruit and Vegetables.

An ad-hoc Inter-Services Steering Group was created by DG SANCO. The designated experts met on 1<sup>st</sup> June 2006.

#### **Problem definition**

Directive 92/34/EEC on the marketing of fruit plant propagating material and fruit plants intended for fruit production was adopted on 28 April 1992. The major aim of this Directive was “the establishment of harmonised conditions at Community level to ensure that purchasers throughout the Community receive propagating material and fruit plants which are healthy and of good quality”.

The legislation on the marketing of propagating material of vine, forest plants, fruit plants and ornamental plants was adopted<sup>1</sup> based on harmonised principles and current knowledge of the time.

In the meantime, scientific and technical knowledge has been greatly improved upon. For that reason all the legislation on the marketing of propagating material has recently been redrafted and harmonised<sup>2</sup>. The only exception is the Directive concerning the marketing of fruit plants propagating material.

In addition, stakeholders, in particular Member States, proposed to review some definitions concerning the propagating material (marketing, suppliers, identification of categories and quality) and therefore conditions to be applied to them.

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<sup>1</sup> In the year 1966 for forest reproductive material –Dir 66/404/EEC, in 1968 for vine propagation material – Dir 68/193/EEC, in 1991 for ornamental plants – Dir 91/682/EEC and in 1992 for fruit plants propagating material – Dir 92/34/EEC.

<sup>2</sup> In the year 1999 for forest reproductive material –Dir 1999/105/EC, in 2002 for vine propagation material – Dir 2002/11/EC and new codification in the pipeline, in 1998 for ornamental plants – Dir 98/56/EC.

## Objectives

Two objectives can be identified:

**(a) To clarify and simplify the regulatory framework in which business operates**

In the context of a people's Europe, the Commission attaches great importance to simplifying and clarifying Community law so as to make it clearer and more accessible to the ordinary citizen, thus giving him/her new opportunities and the chance to make use of the specific rights it grants.

This aim can be achieved only by a substantial review of the existing legislation on the marketing of fruit plant propagating material.

**(b) To respond to the technical and scientific progress and the new marketing environment in line with the new Common Agricultural Policy**

There is a need to respond to technical and scientific progress and the desire for clear definitions of the material to which this Directive applies (category, type of material), clear conditions to be satisfied, and to respond to consumers' and industry's needs and expectations.

The specific initiatives should be:

*Definition of marketing and suppliers and conditions to be applied to them*

A new definition of marketing covering all the activities concerning the commercial exploitation of propagating material and fruit should be adopted.

The action of importing will be added to the definition of suppliers' activities.

*Categories identification and conditions*

New definitions of categories should be in line with scientific and technical progress and in particular with the international certification schemes (EPPO<sup>3</sup> Standards).

*Quality of the material (Distinctness, Uniformity, Stability –DUS- and pomological value) and variety definition and conditions*

Conditions for listing varieties should be set out with reference to the international protocols (CPVO<sup>4</sup> and UPOV<sup>5</sup>, where appropriate). In addition, a reference to the pomological value (quality and performance of plants and their products–fruit) should be added e.g. biological value for direct consumption or processing to improve transparency for consumers.

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<sup>3</sup> European Plant protection Organisation.

<sup>4</sup> Community Plant Variety Office.

<sup>5</sup> Union internationale pour la Protection des Obtentions Végétales.

### *Plant health status definition and conditions*

A clear link with category identification should be established for the listing of new varieties and for the certification of material reproduced in a vegetative way to improve the management of the health status of the propagating material. Healthier propagating material is the first step towards permitting full exploitation of the new CAP approach in reducing the use of pesticides.

### **Policy options**

#### *Option A: Repealing of legislation*

General legislation on the marketing could partially replace the specific one based on Article 37 of the Treaty.

#### *Option B: No action (keeping the existing situation)*

Directive 92/34/EEC shall continue be applied as such.

#### *Option C: Alternative regulation, Self regulation*

Non-legislative options (voluntary agreements) or standardisation beyond the internal market should be envisaged.

#### *Option D: Simplification of legislation*

Clarification, simplification and technical updating of the existing legislation on fruit plant propagating material, taking into consideration the legislation on the marketing of other plant propagating material and the new Agricultural Policy would be introduced.

SUMMARY OF THE MAIN POLICY OPTIONS				
Policy	Option A	Option B	Option C	Option D
definition and conditions for: Marketing, Suppliers, Categories, variety, DUS, pomological value and quality plant health status	Repealing of legislation	No action (keeping the existing situation)	Alternative regulation, Self regulation	Simplification of legislation

## **Analysis of impacts**

### ***Option A - Repealing of the legislation***

#### ***1. Economic impact***

- (a) The definitions and conditions are the cornerstone of the legislation on the marketing of fruit plant propagating material. If they are repealed the remaining part of the relevant legislation would also have to be repealed.
- (b) The first step in the food chain would not be regulated while all others are subject to EU rules (e.g. fruit marketing and fruit quality regulations) under Article 37 of the Treaty.
- (c) Due to the market organisation, the absence of a minimum level of harmonisation could increase costs supported by suppliers to find a certain standard based on a voluntary approach in a high risk market. As a consequence, small/medium size suppliers would have to re-orientate their activity to farming or to trade, in particular in the less favoured areas.
- (d) Consumers, in particular those professionally engaged in fruit production, would be faced with a high risk market due to the absence of a minimum harmonised standard or to the non-official intermediate categories, now present on the market.
- (e) The benefits for suppliers are related to the possibility of applying new inputs based on their own cost/benefit analysis and avoiding any delays related to the adoption of rules. This could stimulate competition, but based on the existing situation (the majority of them are medium/small size enterprises) the risk of incorrect implementation of those inputs would increase the risk of collapse/bankruptcy.
- (f) As regards third countries and international relations, the existing temporary regime (applied as a derogation authorising MS's authorities to authorise the importation from third countries) may become the norm. At the moment it is subject to criticism by some Member States.

2. *Environmental impact*

No major changes are expected in comparison with the existing situation. However as regards :

*Biodiversity:* Attention must be paid to a possible negative impact on the implementation by applicants of Reg. (EC) No 870/2004 establishing a Community programme for the conservation, characterisation, collection and utilisation of genetic resources in agriculture and repealing Regulation (EC) No 1467/94<sup>6</sup>

*Plant health:* Plant health aspects might not be considered economically important by the suppliers. This would imply higher production costs for spraying and increased costs for the presence of residues in the environment and on food and feed. This could also lead to being ineligible for participation in certain agri-environmental programmes.

3. *Social impact*

Due to re-organisation and concentration, a possible loss of jobs could be expected, in particular, at small and medium-size enterprise levels.

***Option B - No Action (keeping the existing situation)***

The weak points identified in the existing legislation (e.g. obsolescence of certain definitions and conditions) would still remain. In particular, under the existing situation, the costs supported by farmers would further increase. These costs result from the need to replace material which is found not to satisfy the expected characteristics when the production of fruit starts (3-5 years after the planting season for the majority of species).

***Option C - self regulation***

1. *Economic impact*

*Competitiveness, trade and investment flows*

- (a) Standardisation in such a specific area of agriculture could be the best solution only in the case of enterprises with a similar level of knowledge and technical and economic performance. This is not the case at the moment in the Union, where a wide range of enterprises are present.

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<sup>6</sup> OJ L162, 30.4.2004, p. 18.

- (b) The costs to be supported by suppliers to find a certain standard based on a voluntary approach could be too much for the smaller enterprises. Some costs related to fulfilling the requirements of existing legislation would simply be replaced by costs necessary for the implementation of possible new standards.
- (c) As regards third countries and international relations, as for point A), the existing temporary regime (applied as a derogation authorising MS authorities to authorise the importation from third countries) might become the norm.

## 2. *Environmental impact*

Plant health aspects might not be considered economically important by suppliers. The presence of propagating material which does not offer acceptable guarantees about its plant health status is an unknown hazard for the environment and human and animal health, due to the possible increased need for treatments to prevent or to control pests.

## 3. *Social impact*

Due to re-organisation and concentration, possible job losses could be expected, in particular in small-medium size enterprises.

# ***Option D - Simplification of the legislation***

## 1. *Economic impact*

- (a) For the Commission: the improvement of the existing monitoring system would permit a prompt response to the needs expressed by the market combined with the possibility of finding the most appropriate solution. It would reduce the risk of having to adopt frequent amendments to the basic legislation.
- (b) For the Member States: The resources now employed for transposition of technical measures would be better directed to possible initiatives on subsidiarity, where appropriate, or on monitoring of the system. The up-dating of equipment and training would be included in such processes.
- (c) For the industry and consumers: the new rules would be an incentive to improve their performance and the quality of propagating material, for both suppliers and farmers resulting also from the publication of a common catalogue of varieties. Their efforts may be encouraged by the measures foreseen in the new agricultural policy.
- (d) The resources freed as a result of the reduction of the risks due to unclear rules could be better exploited, e.g. through introducing new technology which could create direct and indirect demand for qualified employment (e.g. need of new special machinery).

- (e) A mid/long term impact on restructuring is expected in terms of concentration of firms, creation of new ones, specialisation and adoption of specialised channels for production or marketing.
- (f) An improvement in the knowledge and performance of suppliers who are faced with transparent rules is expected, as happened in the nineties after the adoption of the first Directive.
- (g) Small-medium enterprises (largely present in the area of fruit plant propagating material) could find new opportunities to identify different targets for the marketing of fruit plants which are grown under different climatic conditions in EU.
- (h) Possible impacts on the competitive position of EU firms in comparison with their non-EU rivals can be expected. The new legal basis would permit a fully transparent and harmonised approach, e.g. the possibility of planning importation and consequently exportation under the same conditions, or to relocate the plant nurseries.
- (i) To avoid any trade disruption, it would be necessary to allow a sufficient transitional period (3-7 years depending on the categories) to permit suppliers to grow material which can fulfil the conditions required by the new legislation.

## 2. *Environmental impact*

- (a) The most important impact should be the introduction of new propagating material which is healthier or resistant to pests. This action could have a positive impact on agriculture by reducing the spraying of plant protection products and consequently the risk of pollution of air and surface and ground water. An expected benefit for consumers would be the possibility of receiving fruit with a lower level of pesticide residues.
- (b) The new provisions would enable fruit producers to identify the most suitable varieties and would permit, by the adoption of an appropriate crop technology, an easier implementation of the measures foreseen by the new agricultural policy.

## 3. *Social impact*

- (a) An increased request for specialised jobs and specialised knowledge is expected in regions where special ecological conditions permit the achievement of the best results from fruit plant production (e.g. pest free areas, particular soil and weather conditions, etc.).
- (b) A moderate increase in more qualified jobs is foreseen due to the necessity of improving the existing nursery technology.



## Comparison of options and conclusions

SYNOPSIS OF IMPACT OF THE NEW PROPOSAL RECASTING DIRECTIVE 92/34/EEC							
	impact						
	Administrative impact for suppliers	technical impact for suppliers	Professional users impact	Final consumers impact	Transparency of the market	Employment	Environment
Repealing of the existing legislation	-+	+	--+	--	--	-+	-
No changes (keeping the existing situation)	0	0	-	-	--	0	-
Self regulation	-+	-+	-+	-	--+	-+	-
Simplification of the existing legislation	-++	-++	-+++	+	+++	+	++

Key:    - = Costs;  
           + = Benefits;  
           0 = no changes

### ***Option A - Repealing the existing legislation***

At the moment this option cannot be supported due to the risk of different approaches being adopted in the Member States which could create conflict in the internal market. During the fruit production process, suppliers would have to operate with un-harmonised legislation (either national legislation or no existing legislative system) and move to a market regulated by Community rules.

Therefore, costs would increase for producers and consumers and environmental and social costs would also be increased. The absence of harmonised rules in the internal market and/or the adoption of voluntary standards cannot be considered an incentive for research intended to transfer the results to the market.

### ***Option B - No Action keeping the existing legislation***

Based on the experience to date, this option is not acceptable for technical reasons as some definitions and conditions are obsolete, thus the weak points identified by experts and Member States (e.g. obsolescence of certain definitions and conditions) would remain unresolved.

### ***Option C - Alternative regulation***

Theoretically this option could be acceptable. However, due to the particular organisation of the market, the proposal for alternative regulation/self regulation is not realistic. In the Union, thousands of suppliers are involved in and grouped in several professional organisations. Only a low number of firms with a large business specialising in fruit plant propagating material, breeding or reproduction are present on the market. The large majority of firms are small and/or fruit plant propagating material production is not their most important business.

### ***Option D - Simplification of the existing legislation***

The recasting of Directive 92/34/EEC is a necessary requisite for a more efficient and transparent functioning of the internal market for fruit plant propagating material.

The basic approach to attain the objectives is as follows:

- Adoption of a harmonised approach for the marketing of propagating material (new definitions, new conditions to be met) set out in the framework Directive,
- Creation of a legal basis for increased guarantees of material marketed in relation to variety identification, genetic resources and biodiversity,
- Transfer to implementing measures of all the detailed rules to increase their harmonisation and management (e.g. rapid up-dating of technical conditions).