II

(Preparatory Acts)

COMMISSION

Proposal for a Council Regulation (EEC) on the marketing of young plants and propagating material other than seeds, of vegetables

(COM(89) 649 final)

(Submitted by the Commission on 21 December 1989)

(90/C 46/05)

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,

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

Whereas the production of vegetables occupies an important place in the agriculture of the Community;

Whereas a significant part of this production is raised from young vegetable plants purchased for planting or replanting, or from propagating material of vegetables other than seeds;

Whereas satisfactory results in the cultivation of vegetables by this method depend to a large extent on the quality and health of the young plants or propagating material used; whereas certain Member States have in consequence introduced rules intended to guarantee the quality and health of young plants and propagating material placed on the market;

Whereas the different treatment accorded to young plants and propagating material in different Member States is likely to create barriers to trade and thus hinder the free movement of these goods within the Community; whereas, with a view to achieving the Single Market, these barriers should be removed, by setting up Community provisions to replace those laid down by the Member States;

Whereas the establishment of harmonized conditions at Community level will ensure that purchasers throughout the Community receive young plants and propagating material which are healthy and of good quality;

Whereas, so far as they relate to plant health, such harmonized conditions must be coherent with the provisions of Council Directive 77/93/EEC of 21 December 1976 on protective measures against the introduction into the Member States of organisms harmful to plants or plant products [1], as last amended by Directive 89/439/EEC [2];

Whereas young plants raised directly from vegetable seed constitute at present the major part of the market in young vegetable plants and propagating material of vegetables (other than seeds) in the Community; whereas it is therefore appropriate that the Community rules should apply initially to such young plants and that they should be extended subsequently to other young plants and to propagating material, as knowledge of, and trade in them develops; whereas, for the same reason, these Community rules should apply initially to vegetable species for which there is a market in young plants raised directly from seed;

Whereas it is not appropriate to apply the Community rules to young plants and propagating material shown to be intended for export to third countries as the rules applicable there may be different from those contained in this Regulation;

Whereas obligations should be imposed on suppliers with a view to proper production and conservation, and adequate monitoring by Member States, of young plants and propagating material;

Whereas, as a first step towards harmonized conditions, Member States should be prohibited from imposing new conditions or marketing restrictions on young plants or propagating material, other than those provided for in this Regulation;

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[1] OJ No L 26, 31. 1. 1977, p. 20.

[2] OJ No L 212, 22. 7. 1989, p. 106.

Whereas young plants and propagating material should be marketed only if they have been found by official examination to satisfy certain plant health conditions and if they also satisfy certain quality conditions, these quality conditions being subject, however, to official examination only by check inspections;

Whereas, in order to guarantee, for the benefit of purchasers, orderly marketing of young plants and propagating material, they should be marketed only in homogeneous lots;

Whereas, in order to attest their plant health status and to ensure their identity, young plants and propagating material should generally be accompanied, when marketed, by an official plant health statement made following the official examination referred to above, and by a supplier's document containing specified descriptive information;

Whereas provision should be made for authorizing the marketing within the Community of young plants and propagating material produced in third countries, provided always that they afford the same assurances as young plants and propagating material produced in the Community and complying with Community rules;

Whereas rules should be established permitting, in the case of temporary supply difficulties, the marketing of young plants and propagating material subject to requirements less stringent than those contained in this Regulation;

Whereas, in order to harmonize the various technical methods of examination used in the Member States, and to compare young plants and propagating material produced in the Community with those produced in third countries, Community comparative tests should be carried out to permit post-control of young plants and propagating material;

Whereas, in order to facilitate the effective operation of this Regulation, the Commission should be entrusted with the task of adopting measures for its implementation and for the adaptation of its Annexes; whereas such measures should be adopted by a procedure involving close cooperation between the Commission and the Member States within the Standing Committee on Seeds and Propagating Material in Agriculture, Horticulture and Forestry, established by Council Decision 66/399/EEC (1), and the Standing Committee on Plant Health established by Council Decision 76/894/EEC (2),

HAS ADOPTED THIS REGULATION:

Article 1

This Regulation applies to:

(a) young plants raised directly from seed,

(b) other young plants,

and

(c) propagating material,

of vegetables, marketed within the Community.

Article 2

This Regulation shall not apply to young plants or propagating material shown to be intended for export to third countries.

Article 3

For the purposes of this Regulation:

(a) (i) 'Vegetables' means plants of vegetable species grown in agricultural or horticultural production but not for ornamental uses.

The following vegetable species shall come under the rules laid down in Articles 3, 4, 6, to 15 and 18 of this Regulation:

— *Allium porrum* L.	Leek
— *Apium graveolens* L.	Celery/Celeriac
— *Beta vulgaris* L. var. *vulgaris*	Spinach beet, chard
— *Beta vulgaris* L. var. *conditiva* Alef.	Red beet or beetroot
— *Brassica oleracea* L. convar. *acephala* (DC.) Alef. var. *sabellica* L.	Curly kale
— *Brassica oleracea* L. convar. *botrytis* (L.) Alef. var. *botrytis* L.	Cauliflower
— *Brassica oleracea* L. convar. *botrytis* (L.) Alef. var. *cymosa* Duch.	Sprouting broccoli or Calabrese
— *Brassica oleracea* L. convar. *oleracea* var. *gemmifera* DC.	Brussels sprouts
— *Brassica oleracea* L. convar. *capitata* (L.) Alef. var. *sabauda* L.	Savo y cabbage
— *Brassica oleracea* L. convar. *capitata* (L.) Alef. var. *alba* DC.	Cabbage

(1) OJ No 125, 11. 7. 1966, p. 2289/66.
(2) OJ No L 340, 9. 12. 1976, p. 25.

— *Brassica oleracea* L. convar. *capitata* (L.) Alef. var. *rubra* DC.	Red cabbage
— *Brassica oleracea* L. convar. *acephala* (DC.) Alef. var. *gongylodes*	Kohlrabi
— *Capsicum annuum* L.	Pepper/Chili/ Capsicum
— *Cucumis melo* L.	Melon
— *Cucumis sativus* L.	Cucumber, gherkin
— *Cucurbita maxima* Duchesne	Gourd
— *Cucurbita pepo* L.	Marrow
— *Lactuca sativa* L.	Lettuce
— *Lycopersicon lycopersicum* (L.) Karsten ex Farw.	Tomato
— *Solanum melongena* L.	Aubergine or eggplant

(ii) Amendments to the list of species in point (i) shall be adopted in accordance with the procedure laid down in Article 19.

(b) (i) 'Young plants' means plants which, or, in the case of grafted plants, the elements of which, were raised directly from seeds or from vegetative reproduction material, and which are intended to be planted or replanted after marketing, mainly for the production of vegetables.

(ii) 'Propagating material' means any other material of vegetables which reproduces the plants vegetatively; the types of material shall be specified and defined in accordance with the procedure laid down in Article 20.

(c) (i) In relation to young plants raised directly from seed, 'lot' means a number of such plants prepared together for marketing which:

— were raised from seed of the same seed lot,

— were raised from seed sown at one time, and

— have been grown under the same conditions.

(ii) In relation to other young plants and to propagating material, 'lot' shall be defined in accordance with the procedure laid down in Article 20.

(d) Measures are 'official' if taken:

(i) by State authorities,

or

(ii) by any legal person whether governed by public or by private law, acting under the responsibility of the State,

or

(iii) in the case of ancillary activities which are also under State control, by any natural person duly authorized for that purpose,

provided that the persons mentioned under points (ii) and (iii) have no personal interest in the outcome of such measures.

Article 4

1. Suppliers of young plants and propagating material shall comply with the requirements laid down in Annex I.

2. Member States shall ensure compliance with the requirements referred to in paragraph 1 by carrying out official check inspections.

Article 5

1. Subject to Article 12, Member States shall not impose on young plants or propagating material of any vegetable species any conditions or marketing restrictions additional to or more stringent than those existing on the day of entry into force of this Regulation, other than those provided for herein.

2. In accordance with the procedure laid down in Article 19, derogations from paragraph 1 may be authorized in respect of young plants other than those raised directly from seed, and propagating material. Such derogations shall expire at the latest on 31 December 1992.

Article 6

1. Young plants and propagating material placed on the market shall comply with the conditions laid down in Annex II, Part A.

2. Member States shall ensure compliance with the conditions referred to in paragraph 1 by carrying out official inspections in accordance with Annex II, Part B. Official inspections shall not be carried out at borders between Member States.

3. If young plants or propagating material are found not to comply with the conditions laid down in Annex II, Part A, point 3, Member States shall take appropriate official measures to eliminate any consequent plant health risk.

4. Rules for carrying out the inspections referred to in paragraph 2, including sampling methods, may be established in accordance with the procedure laid down in Article 20.

Article 7

Young plants and propagating material may be marketed only in lots, which are kept separate and which are sufficiently homogeneous in all respects, including vigour and size, account being taken of the particularities of the species concerned.

Article 8

1. Subject to paragraph 2, lots of young plants and propagating material may be marketed only if accompanied by an official plant health statement satisfying the conditions laid down in Annex III and a document made out by the supplier which contains the information specified in Annex IV. If the official statement appears on the supplier's document, it shall be clearly separated from all other contents of the document. The official statement and the supplier's document shall be in one of the official languages of the Community.

2. The official statement or information referred to in paragraph 1 is not required for small quantities delivered to a final grower in the same local administrative area as the supplier or in an adjoining local administrative area.

Article 9

Young plants and propagation material which comply with the requirements and conditions of this Regulation and the rules adopted for its implementation shall be subject to no marketing restrictions as regards supplier's obligations, characteristics, plant health, growing medium, packaging, the arrangements for their examination, for ensuring identity or for control, or the information which accompanies them, other than those laid down in this Regulation or in the said rules.

Article 10

Member States shall ensure that young plants and propagating material are officially controlled during marketing, at least by check sampling, to verify compliance with the requirements and conditions of this Regulation. Official controls shall not be carried out at borders between Member States.

Article 11

1. If, during the official inspections referred to in Article 6 (2) or the official control referred to in Article 10, it is repeatedly found that young plants or propagating material marketed by a particular supplier does not comply with the requirements and conditions of this Regulation, the Member State concerned may ensure that for a specified period the supplier is forbidden to market young plants or propagating material, as the case may be.

2. Any measures taken under paragraph 1 shall be withdrawn as soon as it has been established with adequate certainty that the young plants or propagating material intended for marketing by the supplier will, in future, comply with the said requirements and conditions.

Article 12

Member States may impose:

— requirements additional to, or more stringent than, those laid down in Annex I on suppliers established in their own territory, and

— conditions additional to, or more stringent than, those laid down in Annex II, Part A, on young plants and propagating material produced in their own territory.

Article 13

1. In accordance with the procedure laid down in Article 19 it shall be determined whether young plants and propagating material produced in a third country, and affording the same assurance as regards supplier's obligations, characteristics, plant health, growing medium, packaging, the arrangements for their examination, for ensuring identity and for control, and the information which accompanies them, are equivalent in these respects to young plants and propagating material produced in the Community and complying with the provisions of this Regulation.

2. Until a decision has been taken under paragraph 1, Member States may take such decisions themselves, subject to the provisions of Directive 77/93/EEC. This right shall expire on 1 January 1993.

In accordance with the procedure laid down in Article 19, this period may be extended for third countries if and for as long as the available information does not permit a determination under paragraph 1.

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

Article 14

Rules may be adopted in accordance with the procedure laid down in Article 19 concerning the marketing of young plants and propagating material subject to requirements or conditions less stringent than those of this Regulation, in case of temporary difficulties in the supply of young plants and propagating material satisfying the requirements and conditions of this Regulation. Such rules shall not, however, derogate from the

conditions laid down in Annex II, Part A, points 3 (a) and 3 (b).

Article 15

1. Community comparative tests shall be carried out within the Community for the post-control of young plants and propagating material taken during check sampling. Young plants and propagating material produced in third countries may be included in the comparative tests. The Commission shall organize inspections of the comparative tests by representatives of the Member States and the Commission.

2. These comparative tests shall, during a first stage, be used to harmonize technical methods of examination. As soon as this aim is achieved, progress reports shall be made on the comparative tests and sent in confidence to the Member States and the Commission.

3. The Commission shall ensure that arrangements for carrying out the comparative tests and assessing their results are made within the Joint Standing Committee referred to in Article 19. If necessary, specific arrangements for carrying out comparative tests shall be adopted in accordance with the procedure laid down in Article 20.

Article 16

Amendments to the content of the Annexes to be made:

— in view of the application of this Regulation to young plants other than those raised directly from seed, and to propagating material, or

— in the light of the development of scientific or technical knowledge

shall be adopted in accordance with the procedure laid down in Article 19, in the case of Annex II, and in accordance with the procedure laid down in Article 20, in the case of Annexes I, III and IV.

Article 17

Detailed rules for the application of the provisions of this Regulation may be adopted in accordance with the procedure laid down in Article 20.

Article 18

In accordance with the procedure laid down in Article 20, Member States may upon request be wholly or partially released from the obligation to apply this Regulation to species which are not normally produced or marketed in their territory, except to the extent that this would conflict with the provisions laid down in Article 9.

Article 19

Where the procedure laid down in this Article is to be followed, the Commission shall be assisted by the Standing Committee on Seeds and Propagating Material for Agriculture, Horticulture and Forestry, and the Standing Committee on Plant Health, both hereafter called 'the Joint Standing Committee', chaired by the representative of the Commission.

The representative of the Commission shall submit to the Joint Standing Committee a draft of the measures to be taken. The Joint Standing Committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the Joint Standing Committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

The Commission shall adopt measures which shall apply immediately. However, if these measures are not in accordance with the opinion of the Joint Standing Committee, they shall be communicated by the Commission to the Council forthwith. In that event, the Commission may defer application of the measures which it has decided for a period of not more than one month from the date of such communication.

The Council, acting by a qualified majority, may take a different decision within the time limit referred to in the previous paragraph.

Article 20

Where the procedure laid down in this Article is to be followed, the Commission shall be assisted by the Joint Standing Committee referred to in Article 19, acting as committee of an advisory nature and chaired by the representative of the Commission.

The representative of the Commission shall submit to the Joint Standing Committee a draft of the measures to be taken. The Joint Standing Committee shall deliver its opinion on the draft, within a time limit which the chairman may lay down according to the urgency of the matter, if necessary by taking a vote.

The opinion shall be recorded in the minutes; in addition, each Member State shall have the right to ask to have its position recorded in the minutes.

The Commission shall take the utmost account of the opinion delivered by the Joint Standing Committee. It shall inform the Joint Standing Committee of the manner in which its opinion has been taken into account.

Article 21

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

Articles 4 and 6 to 12 shall apply:

— in so far as they relate to young plants raised directly from seed, from 1 January 1992, and

— in so far as they relate to other young plants, and to propagating material, from 1 January 1993.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

ANNEX I

Requirements to be complied with by suppliers

1. Suppliers shall notify Member States of the date their activities will begin and of the date they end.

2. Conditions on suppliers' premises shall be conducive to the proper production and conservation of young plants and propagating material.

3. Suppliers shall permit the inspections referred to in Article 4 (2) and Annex II, Part B, points 1 and 3 and the taking of samples for the official post-control referred to in Annex I, Part B, point 2.

4. Suppliers shall keep records of young plants and propagating material showing:

   — for any acquisitions, the date, the amount, the reference numbers of the lots and the name of the supplier,

   — for young plants raised directly from seed, the reference number of the seed lot and the date of sowing, and

   — for sales (except sales of small quantities delivered to a final grower in the same local administrative area as the supplier or in an adjoining local administrative area) the date, the amount, the reference numbers of the lots and the name of the purchaser.

5. Suppliers shall keep records of:

   — specific treatments and methods of cultivation of young plants and propagating material,

   — all occurrences of the harmful organisms referred to in Annex II, Part A, point 3 and all measures taken in consequence.

6. The records referred to in points 4 and 5 shall be available for inspection by Member States for at least one year.

ANNEX II

PART A

CONDITIONS TO BE SATISFIED BY YOUNG PLANTS AND PROPAGATING MATERIAL

1. Young plants raised directly from seed shall be produced directly from seed of one of the categories defined in Council Directive 70/458/EEC.

2. Young plants and propagating material shall have sufficient varietal identity and varietal purity.

3. (a) The following harmful organisms shall not be present on any of the vegetable species listed in Article 2 (a) (i):

   (i) Live organisms of the animal kingdom, at all stages of their development:

   Bemisia tabaci (Genn.)
   Frankliniella occidentalis (Pergande)
   Heterodera pallida (Stone)
   Heterodera rostochiensis (Woll.)
   Leptinotarsa decemlineata (Say)
   Liriomyza trifolii (Burgess).

   (ii) Fungi:

   Synchytrium endobioticum (Schilb.) Perc.

   (iii) Viruses and virus-like pathogens:

   Tomato spotted wilt virus
   Tomato ring spot virus.

(b) The harmful organisms listed in column 1 below shall not be present on the vegetable species listed against them in column 2.

Harmful organism	Subject of contamination
1	2
(i) Live organisms of the animal kingdom at all stages of their development:	
Ditylenchus dipsaci (Kühn)	*Allium porrum*
(ii) Bacteria:	
Corynebacterium michiganense (E. F. Sm.) Jensen	*Lycopersicon lycopersicum*
Pseudomonas solanacearum (E. F. Sm.) Jensen	*Lycopersicon lycopersicum* *Solanum melongena*
Xanthomonas campestris pv. *vesicatoria* (Doidge) Dye	*Lycopersicon lycopersicum*
(iii) Fungi:	
Urocystis cepulæ (Frost)	*Allium porrum*
(iv) Viruses and virus-like pathogens:	
Beet curly top virus *Beet leaf curl virus* *Beet necrotic yellow vein virus*	*Beta vulgaris*
Potato spindle tuber viroid	*Lycopersicon lycopersicum*
Stolbur pathogen	*Capsicum annuum* *Lycopersicon lycopersicum* *Solanum melongena*
Tomato yellow leaf curl virus	*Lycopersicon lycopersicum*

(c) The presence of the harmful organisms listed in column 1 below on the vegetable species listed against them in column 2 shall not exceed the tolerance specified in column 3. Tolerances are expressed as the percentage of young plants in a lot which are detected upon visual examination to be affected by the harmful organism concerned.

Harmful organism	Subject of Contamination	Tolerance (%)
1	2	3
(i) Live organisms of the animal kingdom, at all stages of their development:		
Pieris brassicæ (L.)	*Brassica* spp.	0,2
Polyphagotarsonemus latus (Banks)	*Capsicum annuum*	0,2
(ii) Bacteria:		
Xanthomonas campestris pv. *campestris* (Pammel) Dowson	*Brassica* spp.	0,2
(iii) Fungi:		
Bremia lactucæ (Regel)	*Lactuca sativa*	0,2
Didymella lycopersici (Kleb)	*Lycopersicon lycopersicum*	0,2
Fusarium oxysporum (Schlecht) f. sp. *lycopersici*	*Lycopersicon lycopersicum*	0,2
Leptosphaeria maculans (Desm.)	*Brassica spp.*	0,2
Plasmodiophora brassicæ (Wor.)	*Brassica spp.*	0,2
Pseudoperonospora cubensis (Berk. and Curt.) Rostovz	*Cucumis spp.* *Cucurbita spp.*	0,2 0,2
Sclerotium cepivorum (Berk.)	*Allium porrum*	0,2
Septoria apiicola (Speg.)	*Apium graveolens*	0,2
Verticillium albo-atrum (Reinke and Berth.)	*Lycopersicon lycopersicum*	0,2
Verticillium dahliæ (Kleb.)	*Lycopersicon lycopersicum*	0,2

Harmful organism	Subject of Contamination	Tolerance (%)
1	2	3
(iv) Viruses and virus-like pathogens:		
Cucumber mosaic virus	*Cucumis* spp.	0,2
	Cucurbita spp.	0,2
	Lycopersicon lycopersicum	0,2
Lettuce mosaic virus	*Lactuca sativa*	0,2
Tobacco mosaic virus	*Capsicum annuum*	0,2
	Lycopersicon lycopersicum	0,2
	Solanum melongena	0,2

4. Young plants and propagating material shall have a satisfactory external quality. In particular, they shall:

   — have normal vegetation and a normal root system;

   — be free from mechanical or physiological damage which could affect reestablishment or later growth;

   — be sufficiently tugescent to ensure viability and effective growth.

5. The growing medium attached to or associated with young plants and propagating material shall comply with conditions to be established in accordance with the procedure laid down in Article 20. Until these conditions are established Member States may maintain, for young plants and propagating material produced, planted or replanted in their own territory, their own provisions regarding growing medium.

6. Packaging used for young plants and propagating material shall be hygienic and sound. Re-usable packaging shall have been cleaned by appropriate methods before re-use.

PART B

METHODS OF ENSURING COMPLIANCE

1. The satisfaction of conditions 1, 4, 5 and 6 of Part A shall be examined by official check inspection.

2. The satisfaction of condition 2 shall be examined in official post-control by check inspection.

3. The satisfaction of condition 3 shall be examined by official inspection of the young plants and propagating material during production or storage on the premises of a supplier.

ANNEX III

OFFICIAL PLANT HEALTH STATEMENT

1. The statement shall be made by representatives of the official body which carried out the inspection referred to in Annex II, Part B, point 3 or, under their responsibility, by other public servants.

2. The statement shall contain the following information:

(a) 'plant health inspected under Regulation (EC) No . . .';
(b) official body and Member State or their initials;
(c) name and address of supplier or his identification mark;
(d) date of inspection of the lot;
(e) reference number of the lot inspected;
(f) species, indicated at least in Roman characters;
(g) variety, indicated at least in Roman characters;
(h) number of plants or parts of plants in the lot inspected.

ANNEX IV

INFORMATION REQUIRED ON SUPPLIER'S DOCUMENT

1. 'EEC rules and standards'.

2. Name and address of supplier or his identification mark.

3. Species, indicated at least in Roman characters.

4. Variety, indicated at least in Roman characters.

5. Reference number of the seed lot, in the case of young plants raised directly from seed.

6. Date of sowing, in the case of young plants raised directly from seed.

7. Reference number of the lot. This shall be the reference number of the producer's lot, where the supplier is the producer, and a reference number enabling the producer's lot to be identified, in other cases.

8. Country of production.

9. Number of plants or parts of plants.