VERŻJONI ELETTRONIKA

Suppliment tal-Gazzetta tal-Gvern ta' Malta Nru. 18,578, 13 ta' April, 2010

Taqsima B

L.N. 223 of 2010

PLANT QUARANTINE ACT (CAP. 433)

Fruit Trees Propagation Material Regulations, 2010

IN exercise of the powers conferred by article 32 of the Plant Quarantine Act, 2001, the Minister for Resources and Rural Affairs has made the following regulations:-

Title and commencement.

1. (1) The title of these regulations is the Fruit Trees Propagation Material Regulations, 2010;

(2) These regulations shall come into force on the 30th September 2012.

Scope.

2. (1) The scope of these regulations is to make provisions to assure that any propagation material of fruit trees and fruit trees for fruit production produced in Malta or placed on the market in Malta or intended to be marketed in another Member State meet specified standards of quality.

(2) These regulations shall apply to the marketing of propagation material of fruit trees and fruit trees intended for fruit production within the European Union, of the genera and species and their hybrids listed in Schedule I to these regulations and shall apply without prejudice to the plant health rules laid down by Council Directive 2000/29/EC as transposed in the Plant Quarantine (Harmful Organisms) Regulations, 2004 and their amendments.

(3) Rootstocks and other parts of plants of other genera or species than those listed in Schedule I or their hybrids shall also be subject to these regulations if material of genera or species listed in Schedule I or their hybrids, is grafted or is to be grafted onto them.

(4) These regulations shall not apply to propagation material or fruit trees intended to be exported to third countries provided that they are identified as such and kept sufficiently isolated.

(5) These regulations transpose Council Directive 2008/90/EC.

Interpretation.

3. For the purpose of these regulations, the following definitions shall apply:

"the Act" means the Plant Quarantine Act;

"basic material" refers to propagation 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 regulation 5; and

(d) has been found by official inspection to satisfy the above mentioned conditions;

"certified material" refers to:

(a) propagation material which:

(i) which 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 trees;

(iii) satisfies the specific requirements for certified material, established pursuant to regulation 5; and

(iv) has been found by official inspection to satisfy the above mentioned conditions;

(b) fruit trees which:

(i) have been produced directly from certified, basic or pre-basic propagation material;

(ii) are intended for the production of fruit;

(iii) satisfy the specific requirements for certified material, established pursuant to regulation 5; and

(iv) have been found by official inspection to satisfy the above mentioned conditions;

"clone" refers to the vegetative genetically uniform progeny of a single plant;

"Conformitas Agraria Communitatis material" or "CAC material" refers to propagation material and fruit trees which:

(a) have varietial identity and adequate varietal purity;

(b) are intended for:

- the production of propagation material;

- the production of fruit trees, and/or

- the production of fruit;

(c) satisfy the specific requirements for CAC material established pursuant to regulation 5;

"the Department" means the Department responsible for plant health;

"the Director" means the Director responsible for the Department and includes to the extent of the authority given, any officer authorised by him, in writing, to act in that behalf for any of the purposes of the Act;

"fruit trees" are plants intended to be planted or replanted, after marketing;

"lot" is a number of units of a single commodity, identifiable by its homogeneity in composition and origin;

"marketing" refers to the sale, holding with a view to sale, offer for sale and any disposal, supply or transfer aimed at commercial exploitation of propagation material or fruit trees to third parties, whether or not for consideration;

"official inspection" is an inspection carried out by the responsible official body or under the responsibility of the responsible official body;

"pre-basic material" refers to propagation 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 regulation 5; and

(d) has been found by official inspection to satisfy the above mentioned conditions;

"propagation material" refers to seeds, parts of plants and all plant material, including rootstocks, intended for the propagation and production of fruit plants;

"variety" refers to 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;

"responsible official body" means the Department;

"supplier" means any natural or legal person carrying out professionally at least one of the following activities with regards to propagation material or fruit trees: reproducing, producing, preserving or treating, importing and marketing.

Notification.

4. Any person or entity introducing or importing in Malta propagation material or fruit trees from a foreign country shall notify the Department in accordance with the Trading Regulations, 2004. L.N. 315 of 2004.

Specific requirements for genera and species.

5. (1) Specific requirements for each genus or species listed in Schedule I to these regulations shall be established in accordance with the procedure referred to in Article 19(3) of Council Directive 2008/90/EC, 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 Schedule I, or their hybrids, must comply if propagation material of the genus or species listed in Schedule I or their hybrids is grafted onto them.

Specific requirements for varieties.

6. (1) Propagation material and fruit trees 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 shall be made pursuant to subregulation (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 subregulation (4) of this regulation; 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 paragraph (a); or

(iii) it has already been marketed before 30th September 2012 in Malta or in another Member State, provided that it has an officially recognised description:

Provided that reference pursuant to subregulation (1) may also be made to a variety of no intrinsic value for commercial crop production in so far as the variety has an officially recognised description and the propagation material and fruit trees are marketed as CAC material in the territory of Malta and are identified by a reference to this regulation on the label or document.

(3) As far as possible, each variety shall bear the same denomination in all Member States, in accordance with the implementing measures which may be adopted in accordance with the procedure of Article 19(2) of Council Directive 2008/90/EC or, in their absence, in accordance with accepted international guidelines.

(4) (a) 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 the 30th September 2012 in the territory of Malta, provided that they have an officially recognised description.

(b) A genetically modified variety may be officially registered only if the genetically modified organism of which it consists has been authorised pursuant to Council Directive 2001/18/EC as transposed in L. N. 170 of 2002 – The Deliberate Release into the Environment of Genetically Modified Organisms Regulations, 2002 (hereinafter the 2002 Regulations) or pursuant to Regulation (EC) No 1829/2003. Where products derived from fruit trees or propagation material are intended to be used as, or in, food falling within the scope of Article 3 or as 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 subregulation (4) shall be established in accordance with the procedure of Article 19(2) of Council Directive 2008/90/EC, 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; and

(d) the maximum period of validity of the official registration of a variety.

(6) It may be decided in accordance with the procedure of Article 19(2) of Council Directive 2008/90/EC that:

(a) 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; and

(b) a common list of varieties may be established and published.

Specific requirements for suppliers.

7. (1) (a) The responsible official body shall ensure that suppliers are officially registered in relation to the activities which they carry out under these regulations.

(b) Malta may decide not to apply paragraph (a) hereof to suppliers marketing only to non-professional final consumers.

(2) It shall be ensured 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 propagation material and fruit trees. To this effect, those suppliers shall:

(a) identify and monitor critical points in their production process which influence the quality of the material;

(b) keep information on the monitoring referred to in paragraph (a) hereof available for examination when requested by the responsible official body;

(c) take samples where necessary for analysis in a laboratory; and

(d) ensure that, during production, lots of propagating material remain separately identifiable.

(3) It shall be ensured that in the case of the appearance, on the premises of a supplier, of a harmful organism listed in the Annexes to Council Directive 2000/29/EC as transposed in the Plant Quarantine (Harmful Organisms) Regulations, 2004 and their amendments or referred to in the specific requirements established pursuant to regulation 5 of these regulations at a level higher than the level allowed in these specific requirements, the supplier shall report such presence to the responsible official body without delays, notwithstanding any reporting obligations under Council Directive 2000/29/EC as transposed in the Plant Quarantine (Harmful Organisms) Regulations, 2004 and their amendments and carry out any measures imposed by that body.

(4) (a) Suppliers shall keep records of their sales or purchases for at least three years when propagation material or fruit trees are marketed.

(b) Paragraph (a) shall not apply to suppliers who are exempted from registration in accordance with subregulation (1) (b) hereof.

(5) Detailed rules for the application of subregulations (1) and (2) hereof may be established in accordance with the procedure of Article 19(2) of Council Directive 2008/90/EC.

Labelling.

8. (1) Propagation material and fruit plants shall be marketed only in sufficiently homogeneous lots and if they have:

(a) qualified as CAC material and accompanied by a document issued by the supplier in accordance with the specific requirements established pursuant to regulation 5. 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 regulation 5.

Provided that requirements in respect of propagation material or fruit trees with regard to labelling and/or sealing and packaging may be indicated in implementing measures to be adopted in accordance with the procedure of Article 19(3) of Council Directive 2008/90/EC.

(2) In the case of retail supply of propagation material or fruit trees to a non-professional final consumer, requirements regarding labelling referred to in subregulation (1) may be confined to appropriate product information.

(3) In the case of propagation material or fruit trees of a variety which has been genetically modified, any label and document, official or otherwise, which is affixed to or accompanies the material under these regulations shall clearly indicate that the variety has been genetically modified and shall identify the genetically modified organisms.

Lot composition and identification.

9. (1) While growing and during lifting or removal from the parent material, propagation material and fruit trees shall be kept in separate lots.

(2) If propagation material and fruit trees of different origins are put together or mixed during packaging, storage, transport or at delivery, the supplier shall keep records including the data relating to the composition of the lot and origin of its individual components.

Marketing.

10. (1) Propagation material and fruit trees may only be marketed if:

(a) the propagation 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 trees have been officially certified as certified material or they meet the conditions to be qualified as CAC material.

(2) Propagation material and fruit trees which consist of a genetically modified organism within the meaning of points 1 and 2 of Article 2 of Council Directive 2001/18/EC as transposed in the 2002 Regulations 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. Where products derived from fruit trees or propagation 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 propagation material and fruit trees 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.

(3) Notwithstanding subregulation (1), suppliers may be authorised to place on the market in Malta appropriate quantities of propagation material or fruit trees intended for:

(a) trials or scientific purposes;

(b) selection work; or

(c) conservation of genetic diversity.

Provided that the conditions under which Member States may grant such authorisation may be adopted in accordance

with the procedure referred to in Article 19(2) of Council Directive 2008/90/EC.

Local circulation of plant material.

11. (1) The responsible official body may exempt:

(a) from the application of regulation 8 (1), small producers all of whose production and sales of propagation material and fruit trees 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 regulation 12, the local circulation of propagation material and fruit trees produced by such exempt persons.

(2) Implementing measures relating to other requirements concerning the exemptions referred to in subregulation (1), in particular as regards the concepts of "small producers" and "local market", and to related procedures, may be adopted in accordance with the procedure of Article 19(2) of Council Directive 2008/90/EC.

Official inspections.

12. (1) The responsible official body shall ensure that propagation material and fruit trees are officially inspected during production and marketing to verify compliance with the requirements and conditions set out in these regulations. To this effect, the responsible official body shall have free access to all parts of premises of suppliers at all reasonable times. Detailed rules for the application of subregulation (1) shall be adopted in accordance with the procedure of Article 19(2) of Council Directive 2008/90/EC. These rules shall be proportionate to the category of the material concerned.

(2) The responsible official body may, as stipulated in notices issued by the Director, delegate the tasks provided for in these regulations to be accomplished under its 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.

(3) Any other legal person established on behalf of the responsible official body and acting under the authority and supervision of such body may be approved in accordance with

the procedure of Article 19(2) of Council Directive 2008/90/EC, provided that such person has no personal interest in the outcome of the measures it takes.

Non-compliance with the legislation and enforcement.

13. (1) It shall be ensured that propagation material and fruit trees intended for marketing, comply with the requirements of these regulations.

(2) If, during the official inspection referred to in regulation 12 or the trials referred to in regulation 17, it is found that propagation material or fruit trees do not meet the requirements of these regulations, the responsible official body shall take appropriate action to ensure that they do comply with the provisions of these regulations or, if that is not possible, to ban the marketing of that propagation material or those fruit trees in the Community.

(3) If it is found that propagation material or fruit trees marketed by a particular supplier do not comply with the requirements and conditions of these regulations, the responsible official body shall ensure that appropriate measures are taken against that supplier in line with the Act and regulations made hereunder.

(4) Any measures taken under subregulation (3) shall be withdrawn as soon as it has been established with sufficient certainty that the propagation material or fruit trees intended for marketing by the supplier will, in the future, comply with the requirements and conditions of these regulations.

Less stringent requirements.

14. In the event of temporary difficulties in the supply of propagation material and fruit trees satisfying the requirements of these regulations due to natural disasters or unforeseen circumstances, measures may be adopted in accordance with the procedure of Article 19(2) of Council Directive 2008/90/EC, concerning the marketing of propagation material and fruit trees meeting less stringent requirements.

Marketing restrictions.

15. Propagation material and fruit trees which comply with the requirements and conditions of these regulations shall be subject to no marketing restrictions as regards suppliers, plant health, growing medium and inspection arrangements, other than those laid down in these regulations.

Equivalence.

16. (1) In accordance with the procedure of Article 19(2) of Council Directive 2008/90/EC, it shall be decided whether propagation material and fruit trees 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 propagation material and fruit trees produced in the Community and complying with the requirements and conditions of these regulations.

Pending the decision referred to in subregulation (1), Malta may until the 31st December 2010 and without prejudice to the provisions of Council Directive 2000/29/EC as transposed in the Plant Quarantine (Harmful Organisms) Regulations, 2004 and their amendments apply to the import of propagation material and fruit trees from third countries conditions at least equivalent to those indicated, on a temporary or permanent basis, in the specific requirements adopted pursuant to regulation 5. If such conditions are not laid down in the specific requirements, the conditions for importation must at least be equivalent to those applicable to production in Malta.

(2) Propagation material and fruit trees imported by Malta in accordance with a decision taken by the same country pursuant to subregulation (2) shall be subject to no marketing restrictions in the other Member States as regards the matters referred to in subregulation (1).

Community monitoring.

17. (1) Trials, or, where appropriate, tests shall be carried out at European Union level on samples to check that propagation material or fruit trees comply with the requirements and conditions laid down in these regulations, including those relating to plant health.

(2) Community comparative trials and trials may be carried out within the Community for the post-control of samples of propagation material or fruit trees placed on the market under the provisions of these regulations whether mandatory or discretionary, including those relating to plant health.

Transitional measures.

18. Malta may, until 31st December 2018, allow the marketing in its territory of propagation material and fruit trees taken from parent plants that existed before 30th September 2012 and have been officially certified or meet the conditions to be qualified as CAC material before 31st December 2018.

When marketed, such propagation material and fruit trees shall be identified by a reference to this regulation on the label and/or document. Beyond 31st December 2018, propagation material and fruit trees may be marketed if the requirements of this subsidiary legislation are fulfilled.

Revokes L.N. 271 of 2004.

19. The Fruit Trees Propagation Material Regulations, 2004 are hereby revoked.

Schedule I

List of genera and species

The following table lists the genera and species to which these regulations apply:

Table 1.1:

Latin Name	Common Name
Castanea sativa Mill.	European chestnut
Citrus L.	Orange, lemon, grapefruit, mandarin, lime, etc.
Corylus avellana L.	Hazel
Cydonia oblonga Mill.	Quince
Ficus carica L.	Fig
Fortunella Swingle	Kumquat
Fragaria L.	Strawberry
Juglans regia L.	Walnut
Malus Mill.	Apple
Olea europaea L.	Olive
Pistacia vera L.	Pistachio
Poncirus Raf.	Hardy/Bitter Orange
Prunus amygdalus Batsch.	Almond
Prunus armeniaca L.	Apricot
Prunus avium (L.) L.	Sweet cherry
Prunus cerasus L.	Sour cherry
Prunus domestica L.	Plum
Prunus persica (L.) Batsch.	Peach
Prunus salicina Lindley	Japanese plum
Pyrus L.	Pear
Ribes L.	Redcurrant
Rubus L.	Blackberry
Vaccinium L.	Blueberry/Bilberry/Cranberry

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