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COMMISSION IMPLEMENTING REGULATION (EU) .../...

of **XXX**

amending Implementing Regulation (EU) 2019/2072 as regards exemptions from the measures to prevent the presence of regulated non-quarantine pests on specific plants for planting

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amending Implementing Regulation (EU) 2019/2072 as regards exemptions from the measures to prevent the presence of regulated non-quarantine pests on specific plants for planting

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2016/2031 of the European Parliament and of the Council of 26 October 2016 on protective measures against pests of plants, amending Regulations (EU) No 228/2013, (EU) No 652/2014 and (EU) No 1143/2014 of the European Parliament and of the Council and repealing Council Directives 69/464/EEC, 74/647/EEC, 93/85/EEC, 98/57/EC, 2000/29/EC, 2006/91/EC and 2007/33/EC¹, and in particular Article 37(2) and (4) and Article 79(2) thereof,

Whereas:

- (1) Annex IV and Annex V to Commission Implementing Regulation (EU) 2019/2072² set out the list of Union regulated non-quarantine pests ('RNQPs') and specific plants for planting with categories, thresholds and measures for preventing the presence of RNQPs as regards the movement within and introduction into the Union of specific plants for planting.
- (2) Article 6(3) of that Implementing Regulation provides that the thresholds and measures set out in Annex IV and V to that Implementing Regulation thereto shall not affect the exceptions for plants for planting from the requirements for marketing set out in Council Directives 66/401/EEC³, 66/402/EEC⁴, 68/193/EEC⁵, 98/56/EC⁶, 1999/105/EC⁷, 2002/54/EC⁸, 2002/55/EC⁹, 2002/56/EC¹⁰, 2002/57/EC¹¹, 2008/72/EC¹² and 2008/90/EC¹³ ('specified Directives').

¹ OJ L 317, 23.11.2016, p. 4, ELI: <http://data.europa.eu/eli/reg/2016/2031/oj>.

² Commission Implementing Regulation (EU) 2019/2072 of 28 November 2019 establishing uniform conditions for the implementation of Regulation (EU) 2016/2031 of the European Parliament and of the Council, as regards protective measures against pests of plants, and repealing Commission Regulation (EC) No 690/2008 and amending Commission Implementing Regulation (EU) 2018/2019 (OJ L 319, 10.12.2019, p. 1, ELI: http://data.europa.eu/eli/reg_impl/2019/2072/oj).

³ Council Directive 66/401/EEC of 14 June 1966 on the marketing of fodder plant seed (OJ 125, 11.7.1966, p. 2298, ELI: <http://data.europa.eu/eli/dir/1966/401/oj>).

⁴ Council Directive 66/402/EEC of 14 June 1966 on the marketing of cereal seed (OJ 125, 11.7.1966, p. 2309, ELI: <http://data.europa.eu/eli/dir/1966/402/oj>).

⁵ Council Directive 68/193/EEC of 9 April 1968 on the marketing of material for the vegetative propagation of the vine (OJ L 93, 17.4.1968, p. 15, ELI: <http://data.europa.eu/eli/dir/1968/193/oj>).

⁶ Council Directive 98/56/EC of 20 July 1998 on the marketing of propagating material of ornamental plants (OJ L 226, 13.8.1998, p. 16, ELI: <http://data.europa.eu/eli/dir/1998/56/oj>).

⁷ Council Directive 1999/105/EC of 22 December 1999 on the marketing of forest reproductive material (OJ L 11, 15.1.2000, p. 17, ELI: <http://data.europa.eu/eli/dir/1999/105/oj>).

⁸ Council Directive 2002/54/EC of 13 June 2002 on the marketing of beet seed (OJ L 193, 20.7.2002, p. 12, ELI: <http://data.europa.eu/eli/dir/2002/54/oj>).

- (3) Experience with the application of Article 6(3) of Implementing Regulation (EU) 2019/2072 has proven that several amendments are needed to improve the clarity of the text and to ensure that the respective rules are applied more efficiently.
- (4) Article 6(3), point (b), of Implementing Regulation (EU) 2019/2072 sets out ‘exceptions concerning the supply of plants for planting as grown to providers of services for processing and packaging, under the condition that the provider of services does not acquire title to the plants thus supplied and the identity of the plants is ensured’. The term ‘as grown’ has been subject to different interpretations upon the application of that provision, leading to confusion as to its meaning. Therefore, it is appropriate to remove it from this point. The deletion of this term will not alter the scope of that exemption.
- (5) For reasons of consistency, clarity and effective checks by the competent authorities, it is necessary to set out that all plants for planting, that could benefit from the exemptions referred to in the points of Article 6(3) of Implementing Regulation (EU) 2019/2072, may only be moved within the Union if their identity and traceability is ensured.
- (6) Seed covered by Article 6(3), points (a), (b), (c), (d), (f) and (g) of Implementing Regulation (EU) 2019/2072, does not fall under the scope of the specified Directives. To the contrary, seed not finally certified, and officially labelled accordingly, pursuant to Directives 66/401/EEC, 66/402/EEC, 2002/54/EC, 2002/55/EC, and 2002/57/EC, falls under the scope of those Directives. Similarly, seed as grown, marketed for processing and packaging pursuant to Article 21 of Directive 2002/55/EC, falls within the scope of that Directive. However, that seed should still be subject to certain exemptions from the rules on RNQPs laid down in Annex IV and Annex V to Implementing Regulation 2019/2072, before they are eventually marketed beyond the stage of their processing and packaging.
- (7) Therefore, it is appropriate to set out separate rules as regards the exemptions from the rules on RNQPs laid down in Annex IV and Annex V to Implementing Regulation 2019/2072 for (i) seed covered by Article 6(3), points (a), (b), (c), (d), (f) and (g), on the one hand, and (ii) seed covered by Article 6(3), point (e), on the other hand. Moreover, and contrary to the case of Article 6(3), point (b), of Implementing Regulation (EU) 2019/2072, the use in this case of the term ‘seed as grown’ is not expected to cause interpretation problems, as it is used within the meaning of Article 21 of Directive 2002/55/EC.
- (8) Annexes IV and Annex V to Implementing Regulation (EU) 2019/2072 set out the thresholds and measures to prevent the presence of RNQPs on specific plants for planting. In certain cases, those measures offer different options to be applied. From

⁹ Council Directive 2002/55/EC of 13 June 2002 on the marketing of vegetable seed (OJ L 193, 20.7.2002, p. 33, ELI: <http://data.europa.eu/eli/dir/2002/55/oj>).

¹⁰ Council Directive 2002/56/EC of 13 June 2002 on the marketing of seed potatoes (OJ L 193, 20.7.2002, p. 60, ELI: <http://data.europa.eu/eli/dir/2002/56/oj>).

¹¹ Council Directive 2002/57/EC of 13 June 2002 on the marketing of seed of oil and fibre plants (OJ L 193, 20.7.2002, p. 74, ELI: <http://data.europa.eu/eli/dir/2002/57/oj>).

¹² Council Directive 2008/72/EC of 15 July 2008 on the marketing of vegetable propagating and planting material, other than seed (OJ L 205, 1.8.2008, p. 28, ELI: <http://data.europa.eu/eli/dir/2008/72/oj>).

¹³ Council Directive 2008/90/EC of 29 September 2008 on the marketing of fruit plant propagating material and fruit plants intended for fruit production (OJ L 267, 8.10.2008, p. 8, ELI: <http://data.europa.eu/eli/dir/2008/90/oj>).

those options, measures such as field inspections or freedom of an area or a place of production from the RNQP, can only be applied in the place of origin. Therefore, compliance with the thresholds and measures set out in Annex IV and V is necessary before introduction into or movement within the Union takes place. However, as regards seed, testing and treatment of that seed can also be applied in the Union territory outside their place of production or area, in order to make that seed compliant with the rules on RNQPs laid down in Annex IV and Annex V to Implementing Regulation 2019/2072 for their movement within the Union after their processing and packaging. Therefore, the exemptions as regards seed not finally certified and seed as grown should only apply if the option of testing or treatment is used, as only these two options can be applied outside the place of production and within the Union territory. In addition, and for reasons of clarity, the species of seed in relation to the respective RNQP, for which the respective option for testing or treatment of the respective seed can be used, should be listed explicitly.

- (9) In order to ensure clarity and effective checks by the competent authorities, where those plants for planting are introduced into the Union from a third country, the phytosanitary certificate, under the heading ‘Additional Declaration’, should include:
(i) the indication ‘Subject to the exemption laid down in Article 6(3) of Commission Implementing Regulation (EU) 2019/2072’ and a reference to the respective point, or
(ii) the indication ‘Subject to the exemption laid down in Article 6a(1) of Commission Implementing Regulation (EU) 2019/2072’ and a reference to the respective point.
- (10) For reasons of transparency, clarity and traceability, rules should also be set out in order to ensure the handling of the respective seed not finally certified and the seed as grown by a single professional operator, and identification and traceability of the respective plant for planting during introduction into, and movement within the Union of that seed.
- (11) Article 13(2) of Implementing Regulation (EU) 2019/2072 should also be amended, in order to clarify the cases for which a plant passport is not needed.
- (12) For reasons of consistency and clarity, it is appropriate to replace the term ‘exceptions’, as used in Article 6(3) of Implementing Regulation (EU) 2019/2072, by the term ‘exemptions’.
- (13) Implementing Regulation (EU) 2019/2072 should therefore be amended accordingly.
- (14) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee for Plants, Animals, Food and Feed,

HAS ADOPTED THIS REGULATION:

Article 1

Implementing Regulation (EU) 2019/2072 is amended as follows:

- (1) Article 6 is amended as follows:
 - (a) paragraph 3 is replaced by the following:

‘3. In addition, the list set out in Annex IV to this Regulation and Annex V thereto shall not affect the exemptions for plants for planting, adopted pursuant to Directives 66/401/EEC, 66/402/EEC, 68/193/EEC, 98/56/EC, 1999/105/EC, 2002/54/EC, 2002/55/EC, 2002/56/EC, 2002/57/EC, 2008/72/EC and

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2008/90/EC, from the requirements for marketing set out by those Directives, including:

- (a) exemptions concerning the supply of plants for planting to official testing and inspection bodies;
- (b) exemptions concerning the supply of plants for planting to providers of services for processing and packaging, under the condition that the provider of services does not acquire title to the plants thus supplied;
- (c) exemptions concerning the supply of plants for planting under certain conditions to providers of services for the production of certain agricultural raw materials, intended for industrial purposes, or seed propagation for that purpose;
- (d) exemptions for plants for planting intended for scientific purposes, selection work, other test or trial purposes;
- (e) exemptions from marketing requirements set out in the provisions of Implementing Decision (EU) 2017/478;
- (f) exemptions from marketing requirements for plants for planting shown to be intended for export to third countries.

Plants for planting referred to in this paragraph may only be moved within the Union if their identity and traceability is ensured.’;

(b) the following paragraph is added:

‘4. Where the plants for planting referred to in paragraph 3 are introduced into the Union from a third country, the phytosanitary certificate shall include under the heading ‘Additional Declaration’ the indication ‘Subject to the exemption laid down in Article 6(3) of Commission Implementing Regulation (EU) 2019/2072’ and a reference to the respective point (a) to (f).’

(2) the following Article is inserted:

‘Article 6a

Exemptions from the requirements for RNQPs for specific seed

1. By way of derogation from Article 5 and Article 6(1), the following seed may be exempted from compliance with the thresholds and measures set out in Annexes IV and V to this Regulation:

- (a) seed not finally certified, and officially labelled accordingly, pursuant to Directives 66/401/EEC, 66/402/EEC, 2002/54/EC, 2002/55/EC, and 2002/57/EC; or
- (b) seed as grown, marketed for processing and packaging pursuant to Directive 2002/55/EC.

That exemption shall only apply if any of the options concerning testing or treatment are to be applied before the final marketing in the EU pursuant to the thresholds and measures set out in Annexes IV and V, for the following seed:

- (a) *Oryza sativa* L. in relation to the pest *Aphelenchoides besseyi*, as referred to in Part B of Annex V;

- (b) *Helianthus annuus* L. in relation to the pest *Botrytis cinerea* de Bary, as referred to in Part G of Annex V and the pest *Sclerotinia sclerotiorum* (Libert) de Bary as referred to in Part H of Annex IV;
 - (c) *Linum usitatissimum* L. in relation to the pests *Alternaria linicola* Groves & Skolko, *Boeremia exigua* var. *linicola* (Naumov & Vassiljevsky) Aveskamp, Gruyter & Verkley, *Botrytis cinerea* de Bary, *Colletotrichum lini* Westerdijk and *Fusarium* (anamorphic genus), other than *Fusarium oxysporum* f. sp. *albedinis* (Kill. & Maire) W.L. Gordon and *Fusarium circinatum* Nirenberg & O'Donnell, as referred to in Part G of Annex V;
 - (d) *Glycine max* (L.) Merr. in relation to the pests *Diaporthe caulivora* (Athow & Caldwell) J.M. Santos, Vrandecic & A.J.L. Phillips and *Diaporthe phaseolorum* var. *sojae* Lehman, as referred to in Part G of Annex V;
 - (e) vegetable seed, in relation to the respective pests, as referred to in Part E of Annex V;
 - (f) *Brassica napus* L. in relation to the pest *Sclerotinia sclerotiorum* de Bary as referred to in Part H of Annex IV;
 - (g) *Brassica rapa* L. var. *silvestris* in relation to the pest *Sclerotinia sclerotiorum* de Bary as referred to in Part H of Annex IV;
 - (h) *Sinapis alba* L. in relation to the pest *Sclerotinia sclerotiorum* de Bary as referred to in Part H of Annex IV.
2. The exempted seed originating in third countries shall only be introduced into the Union if all of the following conditions are fulfilled:
- (a) they are introduced by the professional operator who is to carry out the processing and packaging;
 - (b) the phytosanitary certificate includes under the heading 'Additional Declaration', the indication 'Subject to the exemption laid down in Article 6a(1) of Commission Implementing Regulation (EU) 2019/2072' and a reference to the respective point (a) or (b);
 - (c) their identity and traceability are ensured in accordance with Article 94(2) of Regulation (EU) 2016/2031.
3. The exempted seed produced in the Union shall only be moved within the Union if both of the following conditions are fulfilled:
- (a) they are moved from the professional operator who has produced them to the professional operator who is to carry out the processing and packaging;
 - (b) the identity and traceability of the respective plants for planting are ensured.';
- (3) in Article 13, paragraph 2 is replaced by the following:
- ‘2. By way of derogation from paragraph 1, a plant passport shall not be required for the movement within the Union of seed which fulfil both of the following conditions:
- (a) they are subject to the exemptions referred to in Article 6(3) or to the exemptions referred to in Article 6a; and

- (b) they are not subject to the special requirements of Annex VIII or Annex X to this Regulation or to those provided for by the implementing acts adopted pursuant to Articles 28(1), 30(1) or 49(1) of Regulation (EU) 2016/2031.’

Article 2

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

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

Done at Brussels,

For the Commission
The President
Ursula VON DER LEYEN