

COMMISSION IMPLEMENTING REGULATION (EU) 2021/74**of 26 January 2021****amending Implementing Regulation (EU) 2020/1191 on measures to prevent the introduction into and the spread within the Union of Tomato brown rugose fruit virus (ToBRFV)**

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/EC ⁽¹⁾, and in particular Article 30,

Having regard to Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products, amending Regulations (EC) No 999/2001, (EC) No 396/2005, (EC) No 1069/2009, (EC) No 1107/2009, (EU) No 1151/2012, (EU) No 652/2014, (EU) 2016/429 and (EU) 2016/2031 of the European Parliament and of the Council, Council Regulations (EC) No 1/2005 and (EC) No 1099/2009 and Council Directives 98/58/EC, 1999/74/EC, 2007/43/EC, 2008/119/EC and 2008/120/EC, and repealing Regulations (EC) No 854/2004 and (EC) No 882/2004 of the European Parliament and of the Council, Council Directives 89/608/EEC, 89/662/EEC, 90/425/EEC, 91/496/EEC, 96/23/EC, 96/93/EC and 97/78/EC and Council Decision 92/438/EEC ⁽²⁾, and in particular Article 22(3) and Article 52 thereof,

Whereas:

- (1) Commission Implementing Regulation (EU) 2020/1191 ⁽³⁾ entered into force on 15 August 2020. Since that date, certain Member States and professional operators have interpreted and applied the term 'storage', contained in paragraph 2 of Article 7 of that Regulation, in a diverging manner.
- (2) For practical reasons and as the seeds of *Solanum lycopersicum* L. and *Capsicum* spp. ('the specified seeds') that have been harvested before 15 August 2020 cannot fulfil the requirement for their mother plants to be produced in a production site where the specified pest is known not to occur, on the basis of official inspections carried out at the appropriate time to detect the specified pest, such seeds should be exempted from the condition under Article 7(1)(a) of Implementing Regulation (EU) 2020/1191.
- (3) Paragraph 2 of Article 7 of Implementing Regulation (EU) 2020/1191 should be amended to clarify that the specified seeds that have been harvested prior to 15 August 2020 should be sampled and tested for the presence of the specified pest by the competent authority or by professional operators under official supervision of the competent authority before their first movement within the Union. Such derogation from paragraph 2 of Article 7 of that Regulation should allow seeds already accompanied by a plant passport to circulate in the Union territory without being further tested.
- (4) The specified seeds moved for the first time within the Union from 1 April 2021 onwards, and which have been tested before 30 September 2020 with the ELISA method, should be tested again with a testing method, other than ELISA, as referred to in point 3 of the Annex.

⁽¹⁾ OJ L 317, 23.11.2016, p. 4.

⁽²⁾ OJ L 95, 7.4.2017, p. 1.

⁽³⁾ Commission Implementing Regulation (EU) 2020/1191 of 11 August 2020 establishing measures to prevent the introduction into and the spread within the Union of Tomato brown rugose fruit virus (ToBRFV) and repealing Implementing Decision (EU) 2019/1615 (OJ L 262, 12.8.2020, p. 6).

- (5) As the specified seeds, originating from third countries and harvested before 15 August 2020 cannot fulfil the condition for their mother plants to be produced in a production site where the specified pest is known not to occur, on the basis of official inspections carried out at the appropriate time to detect the specified pest, such seeds to be introduced into the Union, should be exempted from the requirement under point (a)(i) of Article 9(1).
- (6) The Commission was informed by the seed industry sector and by the Member States that the requirement to include the name of the registered production site in the phytosanitary certificate in accordance with Article 9 of Implementing Regulation (EU) 2020/1191 is causing delays and practical difficulties to the exporters, as for them it is difficult to identify the concrete production site. For the purpose of facilitating the identification of the registered production site by the competent authorities and professional operators of third countries, that requirement should be replaced by a requirement for submitting information on the traceability of the production site of the mother plants.
- (7) The specified seeds originating from third countries should be tested using the sampling and testing methods as referred in the Annex of Implementing Regulation (EU) 2020/1191. To take into account that some specified seeds may have been tested months before they are actually certified for export, it is proportionate from 1 April 2021 onwards to require carrying out of mandatory molecular testing, and give third countries time to adapt to this requirement.
- (8) In order to avoid unnecessary trade restrictions for the specified seeds harvested before 15 August 2020, this Regulation should become applicable within the shortest possible time. Therefore, this Regulation should enter into force on the third day following that of its publication.
- (9) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS REGULATION:

Article 1

Amendment of Implementing Regulation (EU) 2020/1191

Implementing Regulation (EU) 2020/1191 is amended as follows:

(1) Article 7 is amended as follows:

(a) in paragraph 1, the following subparagraph is added:

‘Specified seeds that have been harvested before 15 August 2020 shall be exempted from the condition under point (a).’;

(b) paragraph 2 of Article 7 is replaced by the following:

‘2. By way of derogation from point (a) and from the first subparagraph of point (b) of paragraph 1, specified seeds that have been harvested prior to 15 August 2020 shall have been sampled and tested for the specified pest by the competent authority or by professional operators under official supervision of the competent authority and found free from that pest, before their first movement within the Union.

The specified seeds moved for the first time within the Union from 1 April 2021 on, and which have been tested before 30 September 2020 with Elisa method, shall be tested again with a testing method, other than ELISA, as referred to in point 3 of the Annex.’;

(2) Article 9 is amended as follows:

(a) in paragraph 1, point (a), the text of point (ii) is replaced by the following:

‘the specified seeds concerned or their mother plants have undergone official sampling and testing for the specified pest as set out in the Annex and have been found, according to those tests, to be free from the specified pest.’;

(b) in paragraph 1, point (b) is replaced by the following:

‘information ensuring the traceability of the production site of the mother plants.’;

(c) the following paragraph 3 is added:

‘3. By way of derogation from point (a)(i) of paragraph 1, for the specified seeds, which have been harvested prior to 15 August 2020, the Additional Declaration shall only state the fulfilment of the condition under point (a)(ii) of paragraph 1 and shall include the statement: “The seeds have been harvested before 15 August 2020.”’;

(d) the following paragraph 4 is added:

‘4. In phytosanitary certificates issued after 31 March 2021, the Additional Declaration shall confirm that specified seeds originating from third countries have been tested under one of the testing methods, other than ELISA, as referred to in point 3 of the Annex to Implementing Regulation (EU) 2020/1191.’

Article 2

Entry into force

This Regulation shall enter into force on the third 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, 26 January 2021.

For the Commission
The President
Ursula VON DER LEYEN
