

COMMISSION IMPLEMENTING REGULATION (EU) 2021/1809**of 13 October 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 thereof,

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 (Official Controls Regulation) ⁽²⁾, and in particular Article 22(3) and Article 52 thereof,

Whereas:

- (1) Commission Implementing Regulation (EU) 2020/1191 ⁽³⁾ sets out measures on the introduction into, and movement within, the Union of plants for planting of *Solanum lycopersicum* L. and *Capsicum* spp. As experience with the implementation of that Regulation has shown, also the hybrids of *Solanum lycopersicum* L. should be included in the scope of those measures, because those hybrids are also susceptible to Tomato brown rugose fruit virus (ToBRFV) ('the specified pest').
- (2) In order to appropriately manage the plant health risk and apply the necessary measures to the most risky plant material, it is appropriate to replace the definition of 'specified plants for planting' with the definition of 'specified plants', covering all plants of *Solanum lycopersicum* L. and its hybrids and of *Capsicum* spp, also those which are not meant to be replanted, unless otherwise specified. That definition should exclude specified seeds and specified fruits, for which specific definitions exist. However, those definitions should be amended accordingly in order to include hybrids of *Solanum lycopersicum* L.
- (3) Since the adoption of Implementing Regulation (EU) 2020/1191, an audit series carried out by the Commission in 2020 and 2021 has shown that the implementation of eradication measures has been inconsistent. It is therefore necessary to introduce specific rules for the establishment of demarcated areas and the measures to be taken there. Those rules should also make a distinction between production sites with physical protection and other production sites, due to the different phytosanitary risk that they present.

⁽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).

- (4) It should be specified that the testing of mother plants should take place at the shortest possible time prior to the harvest of the fruits, because experience since the adoption of Implementing Regulation (EU) 2020/1191 has shown that this is necessary to ensure that fruits from which seeds are extracted, are free from the specified pest.
- (5) During plant health checks conducted on the basis of Implementing Regulation (EU) 2020/1191 Member States have detected a high number of infected consignments originating in China and Israel. For this reason, based on a different rate of interceptions recorded in the Trade Control and Expert System (TRACES) (*) since 2020, the testing frequency at import of those consignments should be increased to 50 % for seeds or plants for planting originating in Israel and to 100 % for seeds originating in China.
- (6) In order to have time to verify the implementation of the new measures and to ensure a continued protection of the Union territory from the introduction and spread of the specified pest, the application period of Implementing Regulation (EU) 2020/1191 should be extended until 31 May 2023.
- (7) Following the replacement of the definition of 'specified plants for planting' with 'specified plants', some consequential changes need to be made to the Annex to Implementing Regulation (EU) 2020/1191.
- (8) Implementing Regulation (EU) 2020/1191 should therefore be amended accordingly.
- (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) in Article 1, points (b), (c) and (d) are replaced by the following:
 - (b) "specified plants" means plants, other than specified seeds and specified fruits, of *Solanum lycopersicum* L. and its hybrids and of *Capsicum* spp.;
 - (c) "specified seeds" means seeds of *Solanum lycopersicum* L. and its hybrids and of *Capsicum* spp.;
 - (d) "specified fruits" means fruits of *Solanum lycopersicum* L. and its hybrids and of *Capsicum* spp.;
- (2) Article 4 is replaced by the following:

'Article 4

Measures concerning the confirmed presence of the specified pest

1. Where the presence or the suspected presence of the specified pest is officially confirmed in the territory of a Member State, the competent authority of the Member State concerned shall ensure that appropriate measures are taken to eradicate the specified pest in accordance with Article 17 of Regulation (EU) 2016/2031.

In addition, that competent authority shall take the measures laid down in paragraphs 2 and 3 of this Article, unless the conditions of Article 18(4) of Regulation (EU) 2016/2031 are fulfilled with regards to the specified pest.

(*) https://ec.europa.eu/food/animals/traces_en

2. The competent authority shall without delay establish a demarcated area as follows:
 - (a) in the case of the presence of the specified pest in production sites with physical protection, the demarcated area shall consist of at least the production site where the specified pest has been found;
 - (b) in the case of the presence of the specified pest in production sites other than those referred to in point (a), the demarcated area shall consist of:
 - (i) an infested zone including at least the production site where the presence of the specified pest has been found;
 - (ii) a buffer zone of at least 30 m surrounding the infested zone.
3. In the demarcated area, the competent authority, or the professional operator under the official supervision of the competent authority, shall:
 - (a) for production sites intended for the production of specified plants for planting or for the production of specified seeds:
 - (i) immediately remove and destroy all infected lots of the specified plants for planting and, where applicable, the specified seeds originating from those lots. The removal and destruction shall be carried out in such a way that there is no risk of spreading the specified pest;
 - (ii) apply specific hygiene measures on personnel, production site structures, tools and machinery, materials and means of transport, to prevent the spread of the specified pest to the other lots present in the production site and to the successive crops of the specified plants or to other production sites;
 - (iii) destroy or treat the growing medium at least at the end of the cropping season such that there is no identifiable risk of spreading the specified pest;
 - (b) for production sites intended for the production of specified fruits:
 - (i) remove and destroy all specified plants from the production site, at least at the end of the cropping season. The removal shall be carried out in such a way that there is no identifiable risk of spreading the specified pest;
 - (ii) apply specific hygiene measures on personnel, production site structures, tools and machinery, materials and means of packing and transport of the fruits, to prevent the spread of the specified pest to successive crops of the specified plants or to other production sites;
 - (iii) destroy or treat the growing medium at least at the end of the cropping season such that there is no identifiable risk of spreading the specified pest.
4. The competent authorities may abolish a demarcated area and terminate the respective eradication measures, where following sampling and testing of the specified plants of a successive crop, the site has been found free from the specified pest for a period of at least 6 months after the planting of those plants.;

(3) in Article 7(1), first subparagraph, point (b) is replaced by the following:

- (b) they or their mother plants have undergone sampling and testing for the specified pest by the competent authority, or have been subjected to sampling and testing by professional operators under official supervision of the competent authority, and have been found, according to those tests, to be free from the specified pest. When mother plants are tested, the sampling shall take place within the shortest possible time prior to the first harvest of the fruits.

In case of suspicion of the presence of the specified pest, that sampling and testing shall only be carried out by the competent authorities in accordance with Article 87(3), point (c), of Regulation (EU) 2016/2031.;

(4) in Article 9(1), point (a), point (ii) is replaced by the following:

'(ii) the specified seeds concerned or the mother plants of the specified seeds concerned 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.

When mother plants are tested, the sampling shall take place within the shortest possible time prior to the first harvest of the fruits;';

(5) Article 10 is replaced by the following:

'Article 10

Official checks on introduction into the Union

No less than 20 % of the consignments of specified seeds and specified plants for planting shall be sampled and tested by the competent authority at the border control posts of first arrival into the Union, or at a control point as referred to in Commission Delegated Regulation (EU) 2019/2123 (*), as set out in the Annex to this Regulation.

For consignments of specified seeds and specified plants for planting originating in Israel that sampling and testing rate shall be 50 % and for consignments of specified seeds originating in China it shall be 100 %.

(*) Commission Delegated Regulation (EU) 2019/2123 of 10 October 2019 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council as regards rules for the cases where and the conditions under which identity checks and physical checks on certain goods may be performed at control points and documentary checks may be performed at distance from border control posts (OJ L 321, 12.12.2019, p. 64).';

(6) in Article 12, the date '31 May 2022' is replaced by '31 May 2023';

(7) the Annex is amended in accordance with the Annex of this Regulation.

Article 2

Entry into force

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, 13 October 2021.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

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

(1) point 2 is replaced by the following:

2. Sampling schemes of specified plants, other than those of *Capsicum* spp. varieties which are known to be resistant to the specified pest

In the case of specified plants, other than those of *Capsicum* spp. varieties which are known to be resistant to the specified pest, 200 leaves shall be collected per site of production and cultivar, preferably young leaves on the top of the plants.

In case of symptomatic plants, sampling for testing shall be performed on at least 3 symptomatic leaves.’;

(2) in point 4, the heading and the introductory phrase are replaced by the following:

4. Testing methods for detecting and identifying the specified pest on the specified plants, other than those of *Capsicum* spp. varieties which are known to be resistant to the specified pest, and on the specified fruits

One of the following testing methods shall be carried out for the detection of the specified pest on the specified plants, other than those of *Capsicum* spp. varieties which are known to be resistant to the specified pest, and on the specified fruits.’
