



Food and Agriculture
Organization of the
United Nations



The International Treaty
ON PLANT GENETIC RESOURCES
FOR FOOD AND AGRICULTURE

**Views, Experiences and Best Practices as an example of possible options for
the national implementation of Article 9 of the International Treaty**

Note by the Secretary

At its [second meeting](#) of the Ad hoc Technical Expert Group on Farmers' Rights (AHTEG), the Expert Group agreed on a revised version of the [template](#) for collecting information on examples of national measures, best practices and lessons learned from the realization of Farmers' Rights

This document presents the updated information on best practices and measures of implementing Article 9 of the International Treaty submitted by ProSpecieRara on 8 July 2019.

The submission is presented in the form and language in which it was received.



Template for submission of

Measures, Best Practices and Lessons Learned from the Realization of Farmers' Rights as set out in Article 9 of the International Treaty

Basic information

- Title of measure/practice
Safeguarding Farmers Rights in Swiss IP law
(this template needs to be seen as a complement to the Swiss Submission, dated 28.06.2018)
- Date of submission
6.2.2019
- Name(s) of country/countries in which the measure/practice is taking place
Switzerland
- Responsible institution/organization (name, address, website (if applicable), e-mail address, telephone number(s) and contact person)
Federal Office for Agriculture, Swiss Federal Institute of Intellectual Property.
Information provided by ProSpecieRara, www.prospecierara.ch, contact person : François Meienberg, francois.meienberg@prospecierara.ch
- Type of institution/organization (categories)
Government; NGO
- Collaborating/supporting institutions/organizations/actors, if applicable (name, address, website (if applicable), e-mail address, telephone number(s))
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Description of the examples

Mandatory information:¹

- Short summary to be put in the inventory (max. 200 words) including:
 - Implementing entity and partners
 - Start year
 - Objective(s)
 - Summary of core components
 - Key outcomes
 - Lessons learned (if applicable)

[taken from the draft inventory, where the submissions by the Swiss Government and ProSpecieRara were merged]

In Switzerland, national measures concerning intellectual property rights that are relevant in the context of Article 9.3 of the ITPGRFA include the Federal Law of 20 March 1975 on the

¹ This mandatory information is required in order for the measure/practice to be included in the Inventory.



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Protection of New Varieties (status as of 1 January 2011) and the Federal Act of 25 June 1954 on Patents for Inventions (Patents Act, PatA, status as of 1 January 2019). These national measures are referred to in the submissions of Switzerland and of ProSpecieRara Switzerland. The so-called ‘farmers’ privilege’, allowing farmers to save and use seed and propagation materials from their own harvest, including of protected varieties, was introduced into both Acts in a similar way in 2008. Farmers who wish to make use of the farmers’ privilege do not have to pay any remuneration to the holder of the right, provided that they have previously acquired original seed or planting material placed on the market by the holder of the plant breeders’ right or patent, or with his consent. Moreover, the Patents Act specifies that any contractual agreements, which limit or revoke the farmers’ privilege in the area of food and feed production are null and void. So far, the Federal Council has determined 23 plant species to which the farmers’ privilege shall apply. Yet, in practical terms, the farmers’ privilege does not play a major role in Switzerland. Furthermore, Article 9.1 f. of the Patent Act is intended to protect farmers from excessive claims. This means that a farmer cannot be held responsible for alleged patent breaches in cases where the patented genetic information was bred into his or her planting material without his or her knowledge or against his or her will (e.g. by wind-pollination).

- Brief history (including starting year), as appropriate
Swiss federal patent and plant variety protection laws were revised in 2008 introducing the further down mentioned articles.
- Core components of the measure/practice (max 200 words)
Article 35a 4. of the Swiss federal patent law:
Contractual agreements which limit or revoke the farmer’s privilege in the area of food and feed production are invalid.
Article 8 of the Swiss federal plant variety protection law:
Any agreement which restricts or annuls the exceptions to the right to protection for the varieties referred to in Art. 6 and 7 shall be deemed to be null and void.
These articles safeguard the (limited) Farmer’s Right to use farm-saved seeds in Switzerland. They imply that the provisions in this regard, that are included in several private contracts in use on the international seed market, do not apply in Switzerland.

Article 9.1 f. of the Swiss federal patent law:
The effects of the patent do not extend to biological material that is obtained in the field of agriculture by chance or because it is technically unavoidable.
Article 9.1 f. of the patent law is intended to protect farmers from excessive claims. This means that a farmer cannot be held responsible for alleged patent breaches in cases where the patented genetic information was bred into his or her planting material without his or her knowledge or against his or her will (e.g. by wind-pollination). The inclusion of this provision was a direct reaction to court cases between seed companies and farmers in the United States and Canada.
- Description of the context and the history of the measure/practice is taking place (political, legal and economic framework conditions for the measure/practice) (max 200 words)
The revisions of the swiss plant variety protection law was a serious drawback with regard to the implementation of Farmers’ Rights as laid down in Articles 9 and the Preamble of the Treaty. In



fact, the relevant provisions of the Treaty were not even considered in the discussions of the revision process.

Nevertheless, and particularly if compared to the current European patent and plant variety protection law landscape, the revised Swiss federal patent and plant variety protection laws also provide for a number of progressive provisions in specific areas. The provisions have the potential to reduce the adverse impacts of intellectual property laws and contractual agreements on the enjoyment of Farmers' Rights.

- To which provision(s) of Article 9 of the International Treaty does this measure relate

- Art. 9.1
- Art. 9.2a
- Art. 9.2b
- Art. 9.2c
- Art. 9.3

Other information, if applicable

- Please indicate which category of the Inventory is most relevant for the proposed measure, and which other categories are also relevant (if any):

-

No.	Category	Most relevant ²	Also relevant ³
1	Recognition of local and indigenous communities', farmers' contributions to conservation and sustainable use of PGRFA, such as awards and recognition of custodian/guardian farmers		
2	Financial contributions to support farmers conservation and sustainable use of PGRFA such as contributions to benefit-sharing funds		
3	Approaches to encourage income-generating activities to support farmers' conservation and sustainable use of PGRFA		
4	Catalogues, registries and other forms of documentation of PGRFA and protection of traditional knowledge		
5	In-situ/on-farm conservation and management of PGRFA, such as social and cultural measures, community biodiversity management and conservation sites		

² Please select only one category that is most relevant, under which the measure will be listed.

³ Please select one or several categories that may also be relevant (if applicable).



6	Facilitation of farmers' access to a diversity of PGRFA through community seed banks ⁴ , seed networks and other measures improving farmers' choices of a wider diversity of PGRFA.		
7	Participatory approaches to research on PGRFA, including characterization and evaluation, participatory plant breeding and variety selection		
8	Farmers' participation in decision-making at local, national and sub-regional, regional and international levels		
9	Training, capacity development and public awareness creation		
10	Legal measures for the implementation of Farmers' Rights, such as legislative measures related to PGRFA.		X
11	Other measures / practices	X	

- In case you selected 'other measures', would you like to suggest a description of this measure, e.g. as a possible new category? Safeguarding Farmer's Rights in PVP laws.
- Objective(s)
 - Safeguard the (limited) Farmer's Right to use farm-saved seeds against contrary clauses in agreements.
 - Safeguard farmers against alleged patent breaches in cases where the patented genetic information was bred into his or her planting material without his or her knowledge or against his or her will.
- Target group(s) and numbers of involved and affected farmers⁵
Farmers, Seed Companies
- Location(s) and geographical outreach
Switzerland
- Resources used for implementation of the measure/practice
not applicable
- How has the measure/practice affected the conservation and sustainable use of plant genetic resources for food and agriculture?
Farmers using farm-saved seed have the legal certainty that they have the right to do so
- Please describe the achievements of the measure/ practice so far (including quantification) (max 200 words)
see above

⁴ Including seed houses.

⁵ Any classification, e.g. of the types of farmer addressed, may be country-specific.



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- Other national level instruments that are linked to the measure/practice
-
- Are you aware of any other international agreements or programs that are relevant for this measure/practice?
-
- Other issues you wish to address, that have not yet been covered, to describe the measure/practice
-

Lessons learned

- Describe lessons learned which may be relevant for others who wish to do the same or similar measures/practices (max 250 words).
For the acceptance of the above mentioned articles in Parliament, it was helpful to present specific examples of Farmers Right violations.
- What challenges encountered along the way (if applicable) (max 200 words)
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- What would you consider conditions for success, if others should seek to carry out such a measure or organize such an activity? (max 100 words)
Balanced results need a participative process, including Farmer Organisations and NGOs, for the development of IP law.

Further information

- Link(s) to further information about the measure/practice
Swiss federal patent law (revised 2008):
<https://www.admin.ch/opc/en/classified-compilation/19540108/index.html>

Swiss federal plant variety protection law (revised 2008):
<https://www.wipo.int/edocs/lexdocs/laws/en/ch/ch154en.pdf>