



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 Switzerland on 31 July 2019.

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



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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

National IPR tools and measures supporting Article 9 of the ITPGRFA : the farmers' privilege

- Date of submission
31.07.2019

- 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 of Agriculture (FOAG)

Federal Institute of Intellectual Property (IPI)

- Type of institution/organization (categories)
Government

- Collaborating/supporting institutions/organizations/actors, if applicable (name, address, website (if applicable), e-mail address, telephone number(s))

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)

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



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In Switzerland, a number of intellectual property right tools and measures are mutually supportive to Article 9 of the Treaty. Among the tools that offer protection for farmers' products based on genetic resources are geographical indications, trademarks, as well as the farmers' privilege. The latter was introduced in 2008, in the Federal Law on the Protection of New Varieties, which is under the lead of the Federal Office for Agriculture (FOAG). The Federal Council has determined 23 plant species to which the farmers' privilege shall apply. Farmers who make use of the farmers' privilege do not have to pay any remuneration to the holder of the plant breeders rights.

In parallel, the farmers' privilege was also introduced in 2008 in the *Federal Act of 25 June 1954 on Patents for Inventions*, which is under the lead of the Swiss Federal Institute of Intellectual Property (IPI). Farmers who have acquired plant reproduction material placed on the market by the proprietor of the patent or with his consent may reproduce, on their own farm, the product from this material cultivated on their own farm. The farmers' privilege has been developed based on UPOV'91 and other relevant international IPR agreements but not on provisions of the ITPGRFA. Yet, Switzerland considers that the farmers' privilege in Switzerland is mutually supportive to Article 9 of the ITPGRFA.

- Brief history (including starting year), as appropriate

The farmers' privilege is regulated for plant breeders rights (PBR) since 2008. Under the Federal Act on plant breeder's rights of 20 March 1975 (PBA), Art. 7 "*Farmers who have acquired plant reproduction material placed on the market by the proprietor of the plant breeders right or with his consent may reproduce, on their own farm, the product from this material cultivated on their own farm.*" According to this Acts, the Federal Council has determined 23 plant species to which the farmers' privilege shall apply. Farmers which make use of the farmers' privilege do not have to pay any remuneration to the holder of the PBR. Moreover, the PBA specifies that any contractual agreements, which limit or revoke the farmers' privilege in the area of food and feed production are null and void.

- Core components of the measure/practice (max 200 words)

Article 35a of the Federal Act on Patents for Inventions (PatA) specifies that farmers who have acquired plant reproduction material placed on the market by the proprietor of the patent or with his consent may reproduce, on their own farm, the product from this material cultivated on their own farm. However, farmers are required to obtain the consent of the proprietor of the patent when they wish to give the product of their harvest to third parties for reproduction purposes. Article 35b states that the Federal Council determines the plant species covered by the farmers' privilege; in so doing, it shall in particular take into consideration their importance as raw materials for food and feed.

Moreover, the PatA specifies that any contractual agreements, which limit or revoke the farmers' privilege in the area of food and feed production are null and void.

In addition, according to Article 9 of the PatA, the effects of the patent do neither extend to the use of biological material for the purpose of the production or the discovery and development of a plant variety (breeders' exemption, Art. 9.1.e), nor to biological material that is obtained in the field of agriculture due to chance or is technically unavoidable (e.g., a random, unavoidable result of outcrossing of a patented trait, Art. 9.1.f).

- 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 farmers' privilege was introduced into the *Federal Law of 20 March 1975 on the Protection of New Varieties* based on UPOV'91 and entered into force in 2008. In parallel, the farmers' privilege was also introduced in the *Federal Act of 25 June 1954 on Patents for Inventions* (Patents Act, PatA,) in 2008.

- 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	x	
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		

- In case you selected 'other measures', would you like to suggest a description of this measure, e.g. as a possible new category? _____

- Objective(s)
- Target group(s) and numbers of involved and affected farmers⁵

This rule applies to farmers in Switzerland

- Location(s) and geographical outreach

- Resources used for implementation of the measure/practice
- How has the measure/practice affected the conservation and sustainable use of plant genetic resources for food and agriculture?
- Please describe the achievements of the measure/ practice so far (including quantification) (max 200 words)
- 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?

UPOV

- 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).
- What challenges encountered along the way (if applicable) (max 200 words)

⁴ Including seed houses.

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



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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)

In practical terms, the farmers' privilege does not play a major role in Switzerland

Further information

- Link(s) to further information about the measure/practice

Submitted by Switzerland

<https://www.admin.ch/opc/fr/classified-compilation/19750063/index.htm>

Federal Act on Patents for Inventions <https://www.admin.ch/opc/en/classified-compilation/19540108/index.html>

<https://www.admin.ch/opc/en/classified-compilation/19540108/index.html#a35a>