

Views, Experiences and Best Practices as an example of possible options for the national implementation of Article 9 of the International Treaty Submitted by Contracting Parties and Relevant Organizations

Note by the Secretary

This document presents the views, experiences and best practices on the implementation of Farmers' Rights, as set up in Article 9 of the International Treaty submitted by Centro Internazionale Crocevia on 28 June 2018.

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

Regulatory provisions for the marketing of seeds, from the Italian regions to the European Union level

In compliance with the principle of subsidiarity provided by Article 18 of the Italian Constitution, the legislative implementation levels are three: regional, national and European; the law 1096/1971, entitled "Discipline of the seed activities" has laid the bases for the discipline about the trade of seeds and the biodiversity conservation, both at a regional and national level. Nowadays the discipline has been modified and supplemented by various legislative measures.

Good practice of implementation of Farmers' Rights is highlighted in **yellow**. The practice that is not implementing correctly Farmers' Rights is highlighted in **green**.

Regional laws (Law of Lazio region) – A good practice of implementation of Farmers' Rights.

As for the Lazio region, the reference law is the 15/2000, named "Protection of autochthonous genetic resources of agricultural interest"; Article 1 provides the scope of material application of the law, it refers to "native genetic resources of agricultural interest, including spontaneous plants related to the species cultivated, with regard to species, races, varieties, populations, cultivars, ecotypes and clones for which there are interests from an economic, scientific, environmental and cultural point of view and are threatened with genetic erosion".

Article 2 in the first paragraph provides, for protecting the existing genetic heritage as defined in the previous article, the establishment of a **Regional Voluntary Register**, subdivided according to the plant or animal origin of the genetic resource.

Article 3 provides instead for the establishment of a **Technical-Scientific Commissions** for the fulfilment of the obligations established by the law; an ad hoc scientific commission is foreseen for questions concerning plant genetic resources and resources derived from animals.

Article 4, entitled "Network of Conservation and Security" contains two particularly interesting provisions: in paragraph 4 it says: "Farmers included in the network can sell a small amount of seeds produced by them, established for each individual entity at the time of registration in the regional voluntary register. Farmers included in the network can also re-seed in their farm/factory"; in the legislative provision the concept of "moderate quantity" is not quantified, therefore a quantitative value is to be established which is expressed for each specific marketable species.

Then in paragraph 5 the law says: "Farmers, institutions, research centres, agricultural universities and associations of plant or animal material protected by this law, which do not belong to the network, are required to provide ARSIAL a part of the living material for multiplication purposes, to ensure the conservation of genetic information at another site". The mandatory nature of the forecast is vague, seems there is no compulsory obligation to provide living material, presence of guidelines or protocols that establish quantity and quality of the information obtained and archived would be desirable.

Comment: the Lazio regional law allows farmers to save, use, exchange and sell (in small amount of seeds) farm-saved seed/propagating material. There is no limitations, except the participation in the regional



network. Especially there is no need to register the seed in national register, thus it promotes the agricultural biodiversity within small-scale farmers.

Domestic Law 194/2015, "Provisions for the protection and enhancement of biodiversity of agricultural and food interest" – bad practice for implementation of Farmers' Rights

The law in question outlines a discipline based on four fundamental pillars provided by art. 1, paragraph 3, namely:

- the National Register of Biodiversity of Agricultural and Food Interest;
- the National Biodiversity Network;
- the National Portal;
- the Standing Committee on Biodiversity.

The regulation for the National Register of Biodiversity of Agricultural and Food Interest is provided for in Article 3 and states that will be registered "all the genetic resources of food and agricultural local interest of plant, animal and microbial origin that are subject to the risk of extinction or genetic erosion; the registration process includes an investigation aimed at ascertaining the requirements such as the correct characterization and identification of the resource, its proper conservation, the correct indication of the place of conservation and the possibility of generating propagation material ". To proceed with registration it is mandatory that all the information requested in the article be provided, otherwise the registration will not be accepted.

In Article. 4 is regulated the National Network of Biodiversity of Agricultural and Food Interest; it's coordinated by the Ministry of Agricultural Policies in collaboration with the regions and the autonomous provinces of Trento and Bolzano. This network will have the purpose of preserving genetic resources for agricultural or food purposes that are at risk of erosion or extinction.

Article. 5 provides for the establishment of the National Biodiversity Portal of agricultural and food interest; its institution aims the realization of three objectives: 1) to build a system of genetic resources databases of local food and agricultural interest; enhance the dissemination of information; monitoring the conservation status of biodiversity.

Finally, the Standing Committee on Biodiversity of Agricultural and Food Interest is established to ensure coordination of actions at the state, regional and autonomous provinces level (Article 8).

Article 11 "Marketing of seed from conservation varieties" states that only farmers who produce seed varieties registered in the National register of conservation varieties have the right to direct sale, in the local area, seeds or propagation materials relating to these varieties and products in the company; they also have



the right to free trade within the national network". The article must be read in conjunction with the legislative decree n. 149 of 2009* (see it below) and the legislative decree n. 267 of 2010 that the Articles 6, 9 and 24 provide for the eligibility or exclusion requirements from the Register, without prejudice to phytosanitary provisions.

***Legislative Decree 29 October 2009, n. 149**

Another fundamental regulatory provision is provided by Legislative Decree no. 149/2009; the decree provides for a series of limitations and restrictions on in-situ conservation and the sustainable use of plant genetic resources through cultivation and marketing; the article refers to the UPOV criteria, namely: **Distinction, Uniformity and Stability (DUS)**. These three criteria clash with the two major limitations with which peasants and small agricultural producers must deal with: registers and certifications attesting to the varietal purity and the intellectual property rights over the use of resources.

The legislative provisions concerning the marketing of seeds and genetic resources is actually very large; Legislative Decree 204/2015 provides that the authorization for the production for marketing purposes of the seed products is issued by the Regional Plant Health Services, with the consequence that between the various regions and autonomous provinces there may be discrepancies in the discipline.

There is also the art. 3 of the decree of 15 March 2017 of the Ministry of Agriculture, Food and Forestry policies entitled "Registration of conservation varieties to the relevant national register" which provides, for some species defined in the annex to the law itself, precise limits: production of seeds, total area of cultivation and annual quantitative limits for the production of seeds determined on the basis of the unit investment typical of the cultivation area.

These are not general limits but constitute a juridical precedent that allows placing other and wider limitations also for other plant genetic resources.

Regarding the labelling obligations, the reference discipline is the decree 9 March 2017 which transposes the Commission Directive 2016/317 / EU of 3 March 2016 that amending the Council Directives 66/401 / EEC, 66/402 / EEC, 2002 / 54 / EC, 2002/55 / EC, 2002/56 / EC and 2002/57 / EC with regard to the official label of seed packaging.

The new information to be placed on the labels are divided between:

- Packaging marks:

- Official tags: there are 4 categories, namely: cereals, fodder seeds, beets and tubers - potato seeds;
- Small EC packaging labels - Official labels, divided between forage seeds and beets;
- Manufacturer's label (or written on the packaging) for seed mixtures;
- Label and document provided in the case of seeds not definitively certified and collected in another Member State.

- Official tag

For official new tags the information must be organized according to the type of seed:

- basic seed and certified seed excluding small packs;



- seeds of generations preceding the basic ones.
- Label and document provided in the case of seeds are not definitively certified and collected in another Member State: the information required for labeling is:
- the authority responsible for the inspection on the production field and Member State or initials of the same;
 - official number
 - species, indicated at least with its botanical name, which can be reported in abbreviated form, without the names of the authors, or with its common name;
 - variety indicated at least in Latin characters;
 - category;
 - field and match reference number;
 - declared net or gross weight;
 - the mention of 'seeds not definitively certified'.
 - As for the color of the labels, it must be gray.
- The indications required for the document are:
- authority issuing the document;
 - official order number;
 - species, indicated at least in Latin characters with its botanical name, which can be reported in abbreviated form, without the names of the authors, or with its common name or both;
 - variety, indicated at least in Latin characters;
 - category;
 - reference number of seeds used and name of the country or countries that have certified seeds;
 - field or match reference number;
 - area cultivated for the production of the lot covered by the document;
 - quantity of seeds collected and number of packages;
 - attested that the conditions prescribed for the crop from which the seeds come are met;
 - where appropriate, results of preliminary seed analyses.

Comment: the domestic law does not allow the save, use, exchange and sell (in small amount of seeds) farm-saved seed/propagating material to all farmers. In order to sell and exchange seeds, farmers need to register their seeds following NDUS criteria (coming from UPOV). In this way the development of agricultural biodiversity is just for those farmers that have resources to register the seeds. For this reason, the law does not implement correctly the Article 9 of the ITPGRFA.

