



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
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 Germany on 5 July 2018.

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



German report on views, experiences and best practices as examples of possible option for national implementation of Article 9 of the International Treaty on Plant Genetic Resources for Food and Agriculture

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In relation to Resolution 7/2017, 'Implementation of Article 9, Farmers' Rights', adopted by the Seventh Session of the Governing Body of the International Treaty in 2017 in Kigali, Rwanda, the Governing Body decided to establish an Ad Hoc Technical Expert Group on Farmers' Rights (AHTEG). The AHTEG shall produce an inventory of national measures that may be adopted, best practices and lessons learned from the realization of Farmers' Rights, as set out in Article 9 of the International Treaty. For this purpose, the Treaty Secretariat has invited Contracting Parties and all relevant stakeholders, including farmers' organizations, to submit views, experiences and best practices as an example of possible options for the national implementation of Article 9 of the International Treaty, as appropriate and subject to national legislation, in preparation for the above-mentioned inventory.

The German Government emphasises the sovereign rights of all countries with regard to their local genetic resources, their commitment to the protection of traditional knowledge relevant to these resources and the balanced and equitable sharing of benefits arising from the utilisation of these resources. The International Treaty states that the national governments are responsible for the realisation of Farmers' Rights with regard to plant genetic resources for food and agriculture. In accordance with Art. 9 of the International Treaty the Contracting Parties are urged, as appropriate, in accordance with their needs and priorities and subject to their national legislation to undertake measures to protect and promote Farmers' Rights. Art. 9.2 and 9.3 state the following areas:

- a) Protection of traditional knowledge relevant to plant genetic resources for food and agriculture;
- b) The right to equitably participate in sharing benefits arising from the utilisation of plant genetic resources for food and agriculture;
- c) The right to participate in making decisions, at the national level, on matters related to the conservation and sustainable use of plant genetic resources for food and agriculture;
- d) The farmers' right to save, use, exchange and sell farm-saved seed and propagating material, subject to national law and as appropriate.

In the following, we briefly describe the status and, where they exist, summarize measures and practices that relate to the implementation of Article 9 in these areas in Germany.

a) Protection of traditional knowledge relevant to plant genetic resources for food and agriculture

Germany has a long tradition of putting traditional knowledge into writing and making it available to the public. Retrospectively such knowledge cannot be attributed to individuals but is rather collective knowledge, which has developed over long periods of time in certain regions. If this knowledge is not protected by other legal standards (e.g. intellectual property or patent law) then the original carrier of knowledge, under German law, has no right to share the benefits that other users might possibly

reap from the utilisation of this knowledge. Traditional knowledge as it relates to plant genetic resources for food and agriculture and which fulfils the requirements for granting intellectual property rights is protected by the general legislation regulating this area. These rights result from Art. 14 of the German Basic Law and are also recognised in the 1. Additional Protocol of the European Human Rights Convention and the EU Charter of Fundamental Rights. The creation of a special system for the protection of traditional knowledge relevant to plant genetic resources for food and agriculture is not considered necessary in Germany.

There are many activities in Germany intended for the collection and documentation of current and traditional knowledge (in books, journals, internet, publically available databases and information resources) so that it can be assumed that hardly any traditional knowledge gets lost. Various NGOs, private and public associations play an active role in publishing knowledge about the cultivation and use of traditional plant varieties.

However, skills associated with traditional knowledge that cannot be documented in writing can get lost. These can only be preserved if they are exercised in practice and passed on to the next generations. But for the following reasons, traditional knowledge and skills have lost importance in agricultural practice: Many different services rendered by biodiversity for food and agriculture, the use of which requires traditional knowledge and skills, are being replaced by technological processes. The tradition of horticulture or the household and small-scale utilisation of many cultivated plants has declined.

Measures and projects that contribute to safeguarding the use of traditional knowledge and associated skills are for example:

- Traditional ways of living and working are being preserved via Chambers of Handicrafts and open-air museums.
- Many different organisations and initiatives such as SlowFood, ark farms and others devote themselves to the cultivation, use, and distribution of traditional varieties, and cultivation and gardening techniques.
- Within the context of the German National Programme on Plant Genetic Resources of Agricultural and Horticultural Crops, the first Centres of Competency have been set up, focussing on specific aspects of the utilization of local agrobiodiversity. One example is the center for fruit orcharding (Kompetenzzentrum Obstbau Bodensee), which offers a range of training and capacity building options or the centre of agricultural competency.
- Model and demonstration projects supported by BMEL that address the re-discovery, cultivation and production of old varieties

b) The right to equitably participate in sharing benefits arising from the utilisation of plant genetic resources for food and agriculture

Germany supports the development of an international regime for access and sharing of benefits as agreed on at the World Summit on Sustainable Development in Johannesburg in 2002 and by the 8th Conference of the Parties of the CBD. Germany is contracting party to the CBD, the Nagoya Protocol and the International Treaty.

No measures specifically related to farmers' rights are in place or deem necessary. The general approach in Germany is to not restrict access and promote benefit sharing in general across society. The current status of access to PGRFA and benefit sharing related to PGRFA is briefly described.

I. Access to PGRFA

Germany is a Contracting Party to the Nagoya Protocol since 20 July 2016. As EU Member State, Germany is bound to the EU Regulation 511/2014 that entered into force at the same day as the Nagoya Protocol (12 October 2014), all of its provisions apply since 12 October 2015. The EU ABS Regulation implements within the EU those rules contained in the Nagoya Protocol, which govern user compliance – i.e. what users of genetic resources have to do in order to comply with the rules on access and benefit sharing established by the countries providing genetic resources. In Germany, the EU-legislation is supplemented from 1 July 2016 with the entry into force of the Act Implementing the Obligations under the Nagoya Protocol and Transposing Regulation (EU) No 511/2014.

Access to genetic resources collected in situ within the national jurisdiction of the Federal Republic of Germany is generally free, except respecting potential property rights. There is neither a constitutional norm nor a principle that assigns property rights over natural or biological resources to the state. However, biological and genetic resources may be owned privately as well as by the state. As a rule, the owner of the land or water area on which the biological or genetic resource is found is deemed the owner of the resource. Besides, some sectoral legislation, such as the forestry law of the Länder, for example, specify the possible forms of ownership. If plant genetic resources (in situ or ex situ) are privately owned then the access to these is in general at the discretion of the owner. Otherwise everybody is allowed to collect in situ growing plants with due regard to nature and species protection, other specific protection rights and phytosanitary regulation. Ex situ access to genetic resources via a collection located in Germany may, on the other hand, be linked to rights of the provider country if they were collected in situ outside Germany.

As party of the International Treaty Germany makes PGRFA available within the framework of the Treaty's Multilateral System. Thus farmers as well as plant breeders, scientists and other persons have access to seed and planting stock in the genebanks according to their needs. Facilitated access is further enhanced through the European collection AEGIS. Germany is member of AEGIS and has placed a significant amount of accessions into the European collection. All AEGIS accessions, including those that do not belong to Annex I, are shared under the conditions of the Treaty's Multilateral System and hence provide facilitated access to users.

II. Sharing of benefits arising from the utilisation

If plant genetic resources are privately owned then the access and any potential sharing of benefits is in general at the discretion of the owner. If plant genetic resources are under public control then the utilisation is open to everybody with due regard to nature and species protection and other specific protection rights, property rights and phytosanitary regulation and such regulation resulting from the International Treaty. A participation of the public sector in the sharing of benefits from the utilisation of plant genetic resources is not provided for. In order to realise possible benefits arising from the utilisation of plant genetic resources those involved can make use of the whole set of tools of the relevant intellectual property rights available in Germany.

In the area of plant breeding, in particular, the protection of varieties has to be mentioned. This can be applied for by individuals, e.g. plant breeders or farmers. The protection of varieties is designed as legal system in its own right (*sui generis*) for intellectual property in harmony with the International Convention for the Protection of New Varieties of Plants (International Union for the Protection of New Varieties and Plants (UPOV)). It enables everybody to use the material of protected varieties for research purposes and for the breeding of new varieties without consent of the owner of the variety protection. It also enables a farmer - whilst safeguarding the legitimate interests of the owner of variety protection and without his or her previous consent - to use farm-saved seeds harvested from

a protected variety for further reproduction. Farmers who make use of the farm-saved seed possibility have to pay an adequate remuneration (farm-saved seed remuneration) to the owner of the plant variety right. The farm-saved seed remuneration has to be considerably lower than the usually collected licensing fee for the utilisation of the material of a protected variety. The exact amount of the farm-saved seed remuneration is subject to private law agreements.

Farmers benefit in particular from the utilisation of plant genetic resources by means of seeds from efficient, site-adapted varieties with a high yield potential and improved quality and resistance properties, which offer good income opportunities.

There are no legal restrictions in place in Germany that govern the start of work as a plant breeder. A large part of the plant breeding companies that are active today have developed from the agricultural sector. Many companies still have an agricultural branch of business today. The professional representation of plant breeders' interests, the Federal Association of German Plant Breeders, is a member of the professional representation of farmers' interests, the German Farmers' Union. Consequently, there is close cooperation and interdependence between seed industry and agriculture.

c) The right to participate in making decisions, at the national level, on matters related to the conservation and sustainable use of plant genetic resources for food and agriculture

The participation of farmers in the decision-making process concerning conservation and sustainable use of PGRFA is well developed and working in line with generally established participation principles. According to the joint rules of procedure of the Federal Government, the federations and general associations and experts groups at federal level have to be involved timely in the drawing up of bills. This also includes the relevant agricultural associations.

The principles for German activities on the conservation and sustainable use of PGRFA are generally put down in BMEL's agrobiodiversity strategy "Conservation of Agricultural Biodiversity, Development and Sustainable Use of its Potentials in Agriculture, Forestry and Fisheries". They are detailed in the "National Programme on Plant Genetic Resources of Agricultural and Horticultural Crops". The development and implementation of the national programme is overseen by the Consultation and Coordination Committee for Genetic Resources of Agricultural and Horticultural Crops. The committee consists of 17 members, which are named by federal and Länder authorities, and organisations from science and industry. These include representatives of agriculture.

d) The farmers' right to save, use, exchange and sell farm-saved seed and propagating material, subject to national law and as appropriate.

When marketing seed and planting stock, for certain species the Seed Trade Act (short form: "SaatG") must be taken into account. Based on EU Directives the Seed Trade Act, together with the regulations issued in that regard, regulate the marketing of seed and planting stock and the authorization of plant varieties. For all species not listed in the directory of species associated with the Seed Trade Act (SaatG), no authorization of the varieties is necessary for the seed to be traded. The seed trade regulations are important to farmers and gardeners, as they serve to guarantee availability of efficient, site-adapted varieties with a high yield potential and improved quality and resistance properties, which offer good income opportunities. Especially they serve to guarantee the necessary quality standards for seed and propagating material used by farmers and gardeners.

The implementation in 2009 and 2011 of EU directives on conservation varieties and seed mixtures facilitates the production and marketing of seed and planting material of farmers' varieties, old

varieties and landraces, which are of interest for the conservation of PGRFA. So-called “conservation varieties” can be registered in a simplified procedure if they are significant for conservation as a genetic resource. An official recognition of the seed is not necessary as a prerequisite for marketing it; however, the seed must fulfil the same quality requirements as other certified seed (or respectively standard seed in the case of vegetable species). The same applies to so-called “amateur varieties”, which are vegetable varieties without value for large-scale horticulture, but due to particular characteristics are interesting for cultivation at regional scale and home gardens. The regulation on “seed mixtures” facilitates the commercialization of mixtures used in the ambit of nature protection for pastures, grassland etc.

The respective EU and national laws are listed below.

EU regulations:

- Commission Directive 2008/62/EC for the Acceptance of Agricultural Landraces and Varieties
- Commission Directive 2008/90/EC of 29 September 2008 on the marketing of fruit plant propagating material and fruit plants intended for fruit production
- Commission Directive 2009/145/EC of 26 November 2009 providing for certain derogations, for acceptance of vegetable landraces and varieties
- Commission Directive 2010/60/EU of 30 August 2010 providing for certain derogations for marketing of fodder plant seed mixtures intended for use in the preservation of the natural environment

German legal framework:

- Verordnung für das Inverkehrbringen von Saatgut von Erhaltungsmischungen vom 6. Dezember 2011 (BGBl. I S. 2641) (Regulation on marketing seed from conservation mixes, 6 December 2011 (Federal Law Gazette I, p. 2641).
- Verordnung über die Zulassung von Erhaltungssorten und das Inverkehrbringen von Saat- und Pflanzgut von Erhaltungssorten vom 21. Juli 2009 (BGBl. I S. 2107) (Regulation on the authorisation of conservation varieties and the marketing of conservation varieties of seed and planting stock, 21 July 2009 (Federal Law Gazette I, p. 2107).
- Vierzehnte Verordnung zur Änderung saatgutrechtlicher Verordnungen vom 17. Dezember 2010 (BGBl. I S. 2128) (Fourteenth Regulation, amending seed-law regulations, 17 December 2010 (Federal Law Gazette I, p. 2128))