



# The International Treaty

ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE



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## Views, Experiences and Best Practices on the Implementation of Farmers' Rights 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 Poland on 3 October 2012.*

*The submission is presented in the form and language in which it was received. Minor editorial changes include the full rendering of acronyms and the correction of spelling.*

## **CONTARCTING PARTIES**

### **Poland**

Implementation of Farmers' Rights in Poland, described in Article 9 of the International Treaty on Plant Genetic Resources for Food and Agriculture, results mainly from enforcing EU law and from national legislation.

Poland presently doesn't have any act of law concerning strictly genetic resources, and related to this issue - Farmers' Rights. Nevertheless, Farmers' Rights are being partially implemented in Poland through the other act, i.e. Seed Act, the Law on the Legal Protection of Plant Varieties and Community Programs, i.e. Agri - Environmental Plan.

*Article 9.2.a: What are the best measures to ensure that traditional knowledge can be shared without being misappropriated? How can formal science be used to protect and promote the sharing of traditional knowledge? How could other laws, such as cultural heritage laws and laws on the rights of indigenous peoples, be supportive in protecting traditional knowledge in relation to plant genetic resources?*

Traditional knowledge in Poland is protected, promoted and disseminated by diverse stakeholders:

1) Non-government organisation:

- Social Ecological Institute - <http://sie.org.pl/>
- Society "for Traditional Varieties and Breeds" - <http://www.ddoir.org.pl/site/>
- Society of Low Vistula Friends -<http://www.stareodmiany.pl/>
- Polish Chamber of Regional and Local Product - <http://www.produktyregionalne.pl/>

2) Government and government organisation:

Ministry of Agriculture and Rural Development – by participation in the EU food quality schemes - <http://www.minrol.gov.pl/pol/Jakosc-zywnosci/Produkty-regionalne-i-tradycyjne/Produkty-zarejestrowane-jako-Chronione-Nazwy-Pochodzenia-Chronione-Oznaczenia-Geograficzne-oraz-Gwarantowane-Tradycyjne-Specjalnosci>

#### *1. Geographical indications and traditional specialities*

Since accession to the EU in 2004 Poland participate in the following EU quality schemes: PDO (protected designation of origin), PGI (protected geographical indication) and TSG (traditional specialty guaranteed) promote and protect names of quality agricultural products and foodstuffs.

The following EU schemes encourage diverse agricultural production, protect product names from misuse and imitation and help consumers by giving them information concerning the specific character of the products:

**PDO** - covers agricultural products and foodstuffs which are produced, processed and prepared in a given geographical area using recognised know-how.

**PGI** - covers agricultural products and foodstuffs closely linked to the geographical area. At least one of the stages of production, processing or preparation takes place in the area.

**TSG** - highlights traditional character, either in the composition or means of production.

Until now has been registered 35 polish names: 9 PDO, 9 TSG, 17 PGI. DOOR database covers product names which are registered or have been applied for: <http://ec.europa.eu/agriculture/quality/door/list.html;jsessionid=4B1CLDQX5f2sF1JxGLTvTLv0s4njsjkthQMqrcY2Gj2n2LPRbFSm!152874623>. For more information visit: [http://ec.europa.eu/agriculture/quality/index\\_en.htm](http://ec.europa.eu/agriculture/quality/index_en.htm)

Moreover, a List of Traditional Products was created by virtue of the Act of 17 December 2004 on registration and protection of names and indications of agricultural products and foodstuffs and on traditional products. The List is a catalogue of traditional products and its main aim is to inform and to promote traditional products. It does not offer any protection or other privileges. It concerns only products as such, not producers. On the List may be inserted agricultural products or foodstuffs intended for human consumption as listed in the Annex I to the Treaty on the functioning of the European Union and in the annexes to the regulations of the Council No. 509/2006 and No. 510/2006 and spirit drinks as referred to in the regulation of the European Parliament and the Council No. 110/2008. Such products must have quality and characteristics, which result from using traditional methods of production and they have to be a part of cultural heritage of a region, in which they are produced. Moreover, they have to constitute an element of a local identity. Traditional methods of production are methods used for at least 25 years. For more information visit: <http://www.minrol.gov.pl/pol/Jakosc-zywnosci/Produkty-regionalne-i-tradycyjne/Lista-produktow-tradycyjnych/>

- Arboretum and Department of Physiography in Bolestraszyce – Cultural Institution of Podkarpackie Voivodeship.

*Article 9.2.b: How can sufficient participation of farmers be ensured in making decisions on the distribution of funds from the benefit-sharing fund under the Treaty, and in receiving such funds? How to ensure financial resources to national benefit-sharing funds? How to balance incentive structures to adjust the current emphasis on industrial agriculture, and to meet the needs of diversity farming? How can promising local benefit-sharing projects be upscaled to the national level? How can substantially more funds be channelled into benefit-sharing?*

*Article 9.2 b of the International Treaty, referring to the right to equitably participate in sharing benefits arising from the utilization of plant genetic resources for food and agriculture, is implemented on the way of Seed Act of 26 June 2003 (O.J. of 2007 No. 41, item. 271, with amendments). This act has been amended with the aim of adjust national legislation to directive 2008/62/EC - COMMISSION DIRECTIVE 2008/62/EC of 20 June 2008 providing for certain derogations for acceptance of agricultural landraces and varieties which are naturally adapted to the local and regional conditions and threatened by genetic erosion and for marketing of seed and seed potatoes of those landraces and varieties.*

This amendment makes farmers eligible to be maintainers of the varieties and to benefit from these activities.

The second formal legal basis is Agri-Environmental Plan as part of Rural Development Plan in years 2007 – 2013, which gives possibility for farmers to receive financial support for cultivation of landraces and relict species of crop plants (described in attached annex 1).

*Article 9.2.c: Who represents farmers, and which farmers are represented by formalized means of participation? How to ensure that farmers engaged in agricultural biodiversity participate effectively in decision-making processes, such as hearings, committees and media discussions? How can farmers be more adequately represented in the work of the Governing Body? What are the needs for awareness-raising and capacity-building as a basis for efficient participation?*

*Article 9.2 c of the International Treaty referring to the right to participation in making decisions*, at the national level, on matters related to the conservation and sustainable use of plant genetic resources for food and agriculture is implemented by formal conveying to the farmer's organizations acts of law regarding agricultural sector, as a public consultations.

*Article 9.3: How can the legal systems be developed to accommodate formal and informal seed systems? How to balance the need for legal space for farmers' practices with phyto-sanitary concerns in regulations on variety release and seed distribution? How to balance the need for farmers to continue conserving and sustainably using crop genetic resources with the needs of plant breeders for compensation and incentives to continue crop breeding? How does GM-contamination influence Farmer' Rights to save, use, exchange and sell farm-saved seed?*

*Article 9.3. of the International Treaty*, referring to the rights that farmers have to save, use, exchange and sell farm-saved seed/propagating material, is implemented through The Law of June 26th, 2003 on the Legal Protection of Plant Varieties (P.O.J. No 137/2003, item 1300; with amendments P.O.J No 126/2006, item 877, 2011.186.1099).

#### *Farmers' privilege (agricultural exemption)*

This exemption gives the farmers the right to use saved seed without the consent of the owner (right holder) of the variety in question (Art. 23).

However, the farmer (with the exception of small farmers) have to pay the holder an equitable remuneration (Art. 23.1, 3).

If the parties cannot agree upon the level of the remuneration, such remuneration should be 50% of the amounts charged for the licensed protection of propagating material (Art. 23.5).

A holder of agricultural land of up to 10 ha (in case of potato varieties) and 25 ha for rest species listed below (small farmer) - may use the harvested material of variety protected

by the exclusive right, being a plant variety mentioned above, as propagating material, *without the necessity to pay the remuneration to the breeder.*

*Species covered* (17): field bean, field pea, barley, maize, linseed, lucerne, narrow leaved lupin, yellow lupin, oat, durum wheat, wheat, triticale, oilseed rape, turnip rape, common vetch, rye, potato.

*Proposals for ways and means through which these views, experiences and best practices can be exchanged between and among Contracting Parties and relevant stakeholder groups*

This issues are disseminated in Poland on the forum of scientific conferences and on the web-sites of appropriate stakeholders.

### **Poland -Annex 1 (Summary of the agri-environmental Plan)**

#### ***AGRI-ENVIRONMENTAL PLAN AS PART OF RURAL DEVELOPMENT PLAN IN YEARS 2007 – 2013***

Main aims of Agri-Environmental Plan are preservation of the biodiversity in the agricultural systems, preservation of the cultural legacy and diversifying the agricultural production.

The purpose of the accomplishment of Agri-Environmental Plan is sustainable development of the rural areas and preservation of the biodiversity trough:

- Restoring advantages or keeping of valuable settlements used agriculturally and maintaining the biological diversity in the rural areas;
- Promotion of the sustainable farming practice;
- Proper usage of soil and protection of waters;
- Protection of endangered landraces of crop plants and local breeds of farm animals.

Agri-Environmental Plan consists of 9 packages and 41 variants:

Package 1. Sustainable farming.

Package 2. Organic farming.

Package 3. Extensive long-lasting grasslands.

Package 4. Protection of the endangered species of birds and natural settlements outside areas of Natura 2000.

Package 5. Protection of the endangered species of birds and natural settlements inside areas of Natura 2000.

## **Package 6 Conservation of endangered plant genetic resources in agriculture.**

Package 7. Conservation of endangered animal genetic resources in agriculture.

Package 8. Water and soil protection.

Package 9. Buffer zones.

Agri-Environmental Plan came into effect according to regulation of The Minister of Agriculture And Rural Development, dated 28 February 2008, regarding detailed conditions and granting the financial assistance within "Agri-Environmental Plan" covered by Rural Development Plan for years 2007-2013 (O.J. 2008, Nr 34, item 200).

The regulation exactly defines, who and on what conditions can apply for payment.

It is possible to grant the farmer the financial assistance, when:

- Farmer is the owner of the farm or farmer rents or uses the farm on territory of the Republic of Poland. Farmer means the physical, legal person or the group such persons irrespective of the status of the group, whose farm is located on territory EU and who conduct agricultural activity – as in direct payments. Agricultural activity means the production, breeding or the cultivation of agricultural products, involving harvest, milking, breeding of animals and keeping animals for economic purposes, or keeping the ground in the good agricultural culture in accordance with environmental protection;
- The total area of agricultural plots had by farmer comes to at least 1 ha, minimal area to the payment amounts to 0,1 ha. Date for applying in accordance with the one for direct payment was from 15 of March to 15 of May 2008. The programme started on 1 of March 2008. Beneficiaries are obliged to participate in the programme by 5 years;
- Preservation long-lasting grasslands and demand of not-used agriculturally elements of the landscape on the farm area is followed.

The aim of the 6 package of agri-environmental plan is conservation of endangered plant genetic resources in agriculture. In the frame of this package 4 variants are prepared. Two of them are dedicated for landraces and rare species of crop plants, 3<sup>rd</sup> variant is intended for vegetables, agricultural plants and species of weeds endangered by extinction, multiplied on gene bank order. 4<sup>th</sup> variant is designated for old orchards of fruits trees conservation.

**Table 1. Description of variants in package No 6 Agri-Environmental Plan.**

Package	Agri-environmental variants	Amount of the payment 2007-2013

6. Conservation of endangered plant genetic resources in agriculture	6.1. Trade production of local varieties of crop plants	570 PLN/ha
	6.2. Seed trade production of local varieties of crop plants	800 PLN/ha
	6.3. Seed production ordered through gene bank	4700 PLN/ha
	6.4. Traditional orchards	2100 PLN/ha

\* exchange rate in 2007 y. 1 EU =3,9 PLN

## Package 6

Package enables supporting farmers, who participate actively in the protection and improving local varieties, i.e. landraces or old varieties of crop plants, as well the species of crop plants currently in danger of extinction. According to Seed Act of 26 June 2003, a local variety shall mean a plant grouping within a species of crop plants, formed as a result of a long-term effect of the local natural and agricultural factors, but not as a result of breeding.

The package 6 (variants 6.1 and 6.2) refers also to the species, which have been included into the list on endangered cultivated species, according to the annex to the regulation of the minister of agriculture.

### Variant 6.1. “Trade production of local varieties of crop plants” requires:

- minimal total area of agricultural cultivation 0,3 ha and minimal total area of vegetable cultivation 0,15 ha;
- cultivation of plants from the category of certified seed material (C1) of varieties registered with the National Register during first generation and the exchange of the seed material every 2 years;
- cultivation of other plants species, which don't require the registration, according to the annex to the Regulation of the Minister of Agriculture and Rural Development dated 28 February 2008, regarding detailed conditions and granting the financial assistance within “Agri-environmental Plan” covered by Rural Development Plan for years 2007-2013.

### List of the species listed in above mentioned annex:

- *Triticum dicoccum* Schrank (emmer)
- *Triticum monococcum* L. (small spelt, einkorn)
- *Panicum miliaceum* L. (true millet, French millet)

- *Avena strigosa* Schreb. (lopsided oat, bristle oat, black oat)
- *Secale cereale var. multicaule* Metzg. ex Alef. (fodder rye)
- *Camelina sativa* L. (false flax)
- *Lotus uliginosus* Schkuhr (greater birdsfoot-trefoil)
- *Melilotus albus* Medik. (melilot)
- *Lactuca sativa var. angustana* Hort.
- *Lathyrus sativus* L. (chickling pea, chickling vetch)
- *Lens culinaris* Medik. (lentil)
- *Pastinaca sativa* L. (common parsnip)

**Variant 6.2. “Seed trade production of local varieties of crop plants” requires:**

- maintenance the identity and purity of varieties;
- record-keeping of the data of plantation and data of treatments carried out. Making available it to inspection (Plant Health and Seed Inspection Service);
- having the certificate of the laboratory assessment;
- in the production of the seed material of category certified - area of seed plantations of crop plants (according to the Seed Law).

**Variant 6.3. Seed production ordered through gene bank**

Description: the realization of this variant will concern propagating and keeping:

- landraces of crop plants;
- species of crop plants endangered by extinction;
- weeds of crop plants endangered by extinction, in places of their natural appearing, in order to keeping their primitive traits;
- old varieties of fruit trees.

**Variant 6.3. requires:**

- agreement with the gene bank for seed multiplication;
- preparing the plan of the realization of the variant;
- minimal total area of cultivation contracted by gene bank - 0,1 ha;
- maximal area - 0,3 ha;
- the seed production on small areas requires special principles of the isolation. At least 50% areas are cultivations, rest should be a lag;
- record-keeping of the plantation and making them available to supervising worker of the gene bank;
- the quality of seeds confirmed by the gene bank.

**Variant 6.4. Traditional orchards:**

Agri-environmental payment is determined on the basis of the areas of orchards- not smaller than 0, 1 ha with the amount of trees reaching quantitative and qualitative criteria.

**Variant 6.4. requires:**

- varieties of fruit trees from a list being the annex to the regulation of the minister of agriculture, which are at least 60% of the total number of trees;
- traditional orchard contains at least 12 trees in age over 15 years, representing no less than 4 varieties or species, in addition crowns of trees are at the height 120 cm and above and circumference of their trunks at the about 1 m level is at least 47 cm;
- when orchard meets above conditions can be supplemented to 40% of all trees planting. Supplementation requires increasing the number of variety or species by at least three variety or species. Trees are propagated on vigorous rootstock, (e.g. apple-tree on the Antonovka seedlings, pear tree on seedlings of Caucasian pear tree, plum tree on cherry plum seedlings, sweet cherry tree on wild cherry seedlings, cherry tree on rock cherry or wild cherry seedlings) led as high-trunk trees about the minimal height of the trunk 1,20 m, in the distance not smaller than 4 x 6 m and not bigger than 10 x 10 m.