



The International Treaty
ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE



E

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 European Seed Association on 5 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.

RELEVANT ORGANIZATIONS

European Seed Association

“Farmer’s Rights” have become an important subject on the international political agenda for farmers and the seed industry alike. Therefore, ESA, the representative organization of the European seed industry herewith makes its views known on this specific issue.

ESA appreciates the historic and valuable contribution of farmers to the development and conservation of genetic resources of food and feed crops as mentioned in Article 9(1) of the FAO International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA).

At the same time, ESA points out the important function of the European seed industry in contributing to better yields of food and feed crops by conservation and characterization of genetic resources in gene banks and further enhancing these genetic resources through breeding and development of improved varieties.

Therefore ESA, as a means of sustainable use, fully supports an open access to all genetic resources, including land races, gene bank accessions, wild relatives and protected varieties for breeding purposes by all breeders: farmers or companies alike. ESA is against any regulation which forbids or discourages farmers to breed or participate in plant breeding or to use other ways of improving the value of their crop.

For their continuous and substantial investment in the breeding work, breeders need a fair remuneration for the additional genetic value of their new varieties. Because plant varieties, especially the open pollinated types, can very easily be reproduced by anybody, breeders, whether companies or individuals, must have the opportunity to protect their new varieties through intellectual property rights. ESA is strongly in favour of Plant Breeder’s Rights based on the UPOV 1991 Convention as it provides an adequate protection of plant varieties against inappropriate exploitation by others. This protection is combined with free access and use for further breeding purposes¹ (breeder’s exemption) and the compulsory exception of acts done privately for non-commercial purposes¹ allowing subsistence farmers in developing countries to save and use seed from their own harvests.

Although the ITPGRFA - in general - recognizes the right of farmers to save, use, exchange and sell farm saved seed, its Article 9(3) clearly indicates that this right is subject to the national law in force in a given country, where such acts may be prohibited or subject to specific requirements and/or limitations. This paragraph thus does not give an unconditional right to farmers but merely states that Article 9 does not intend to limit any rights that farmers are granted at national level.

Under the UPOV 1991 Convention, national laws may allow farmers to replant on their own farm the seed produced on that same farm without the consent of the breeder of the protected variety. This exception however must remain within reasonable limits and is subject to the

¹ Article 15(1) of UPOV 1991 Convention

safeguarding of the legitimate interests of the breeder². This optional exception to Plant Breeder's Rights should be limited to food and feed crops where farm saved seed has been used traditionally and subject to the obligation that the farmer provides information concerning the use to the breeder and to the payment of an equitable remuneration. Free and unlimited use of farm saved seed undermines the financial return for breeders in important food and feed crops. Insufficient income for breeders will lead to less breeding efforts and eventually stop the release of new varieties to the detriment of farmers and society as a whole. However, farmers still have the opportunity to use seeds of varieties that are not or no longer protected, including landraces, independently of the consent of the breeder.

In the EU Member States, like in many countries, governments have implemented regulations for variety registration, variety listing and seed certification, in order to guarantee a good seed quality combined with objective and adequate information for farmers about the quality and potential value of the best varieties. ESA draws the attention to the fact that these regulations have contributed extensively to the successful development of agriculture in Europe.

For this purpose, like for Plant Breeders' Rights, varieties need to be tested for distinctness, sufficient uniformity and stability (DUS). ESA emphasizes that these requirements must be applied to all varieties entering such systems, irrespective of their origin and purpose, in order to avoid confusion about varietal identity and to prevent the registration of too heterogeneous varieties hampering the introduction of new and better varieties. However existing varieties not meeting these requirements (e.g. landraces) may still be allowed on a case by case basis and under adapted DUS requirements. In the EU, this approach is being followed by the specific conditions set for the marketing of seed of conservation varieties.

In conclusion, ESA fully supports farmer's rights as mentioned in Article 9 of the ITPGRFA, taking into account the contribution of farmers to the conservation of genetic resources and the mutual benefits of improved varieties for farmers and breeders by sustainable use of genetic resources for further breeding and safeguarding the legitimate interest of the breeder.

² Article 15(2) of UPOV 1991 Convention