

UNDROP in the future EU Seed Marketing Reform

Fulya BATUR, Consultant at Kybele & Associate Research Fellow at Geneva Academy



**GENEVA
ACADEMY**

Académie de droit international
humanitaire et de droits humains
Academy of International
Humanitarian Law and Human Rights

WHAT IS UNDROP?



United Nations

General Assembly

A/HRC/

Distr.: General
8 October 2018

Original: English

Right to save, use, exchange & sell their own seeds

Right to maintain, control & develop their own seeds

Right to have access to locally adapted seeds

Right to participate in decision-making

Right to the protection of TK & sharing of benefits

Human Rights Council

Thirty-ninth session
10–28 September 2018
Agenda item 3

**Resolution adopted by the Human Rights Council
on 28 September 2018**

**39/12. United Nations Declaration on the Rights of Peasants and
Working in Rural Areas**

STATE obligation to respect, protect and fulfil the right to seeds

Support peasant seed systems and to promote the use of peasant seeds and agrobiodiversity

Ensure participation of peasants in decision-making

EU Seed Marketing Rules in light of UNDROP

UNDROP Rights are affected by numerous laws



OWNERSHIP

Intellectual property rights : monopoly for inventions
Traditional Knowledge, access & benefit-sharing



FOOD SAFETY (genetically modified organisms, gene editing)

PLANT & SEED HEALTH (pests prevention)



SEED MARKETING (conditions for sale of seeds & quality)

EU Seed Marketing Rules in light of UNDROP

12 EU Directives transposed in
27 national seed marketing
regimes



WHEN? 1930's at national level & 1960's at EU level

WHY? Protecting farmers against bad quality & fraudulent seeds

Ensure identity, quality & productivity for industrial agriculture (context of under-production)

HOW? Mandatory pre-marketing registration, seed quality criteria & seed production rules, labelling & control by public authorities

Principle : ONLY CERTIFIED SEEDS OF REGISTERED DISTINCT, STABLE & UNIFORM VARIETIES ARE ALLOWED ON THE MARKET

EU Seed Marketing Rules in light of UNDROP

**12 EU Directives transposed in
27 national seed marketing
regimes**

**Peasant seed systems & rights under
UNDROP only in derogations !**

Exclusion from the scope of legislation & Conservation/amateur variety regime

**Are seed exchanges & sale between farmers
considered as seed marketing?
(then need registration, quality & labelling)**

Depends on national law & interpretation of 'marketing' & 'professional operator'
Denmark : non-commercial use is not marketing
Estonia : all exchanges are marketing (// EU Commission)

**Can farmers develop their own varieties and sell
them? Does the seed market cater to their needs? Is
marketing of locally adapted varieties for low-input
conditions (not just DUS) allowed?**

Two limited pathways to the market, with sizeable difference between States

- Conservation (genetic erosion, agri & veg) & amateur varieties (veg)
- Organic Heterogeneous Material

**Are there governance mechanisms that ensure that
they participate in decision-making & that their
seeds are protected against misappropriation?**

Depends on national seeds and private law : existence of appeals, stakeholder consultation...

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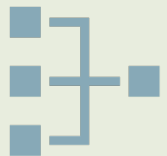
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Two limited
• Con

**Little margin of action for peasant seed
systems, no recognition farmers' knowledge,
most marketed varieties do not correspond to
their needs**

**Are there governance mechanisms that ensure that
they participate in decision-making & that their
seeds are protected against misappropriation?**

Depends on national seeds and private law : existence of appeals, stakeholder consultation...



EU SEED MARKETING REFORM : PROCESS



SEED MARKETING
(not NGT, UPOV, CAP...)



EUROPEAN COMMISSION

Publication of Commission proposal 2023/0227 (COD)
Soil Health Package (NGT, Soil strategy)
5 JULY 2023

Guardian of the EU Treaties

Tripartite Negotiations

To begin first half 2025, text adopted earliest 2026 ?



EUROPEAN PARLIAMENT

EU people (MEPs)



COUNCIL OF EU

EU governments

AGRICULTURE Committee (LEAD report 19/03/24)
Environment Committee (Opinion on 11/03/24)
PLENARY VOTE in April 2024

Agriculture & Fisheries (AGRIFISH) Council
'General Approach' expected Winter 2024



EU SEED MARKETING REFORM : CURRENT EU LEGISLATION

CURRENT LAW

12 Directives, slightly different rules per species.

Main principle : for regulated species, only certified seeds of registered varieties can be marketed

- Registration of Professional Operators OR Plant Varieties (DUS – VCU agri crops)
- Seed Lot Certification mandatory (except certain species: vegetable standard seeds, fruit CAC material...)

FARMER SEED SYSTEMS – AGROBIODIVERSITY CONSERVATION



EXCHANGE/SALE that is NOT MARKETING

- Depends on Member States: definition & interpretation of ‘marketing’, linked to the ‘commercial exploitation’ of seeds (DK, FR, AT...)
- No express recognition of in situ conservation efforts

FORMAL SEED MARKET



DEROGATION REGIME FOR NON-DUS VARIETIES

- Since 2008. Conservation Varieties: genetic erosion, only agri/veg species, quantity & regional limits for marketing
- Since 2018, Organic Heterogeneous Material (in Organic regulation): notification based on description



EU SEED MARKETING REFORM : EU COMMISSION PROPOSAL

COMMISSION PROPOSAL

One Regulation for all species (except forest material & ornamentals).

2 Pillar system for REGULATED SPECIES (same list as today) :

- Registration of Professional Operators & Plant Varieties : DUS & VsCU tests for all crop species
- Seed Lot Certification : Mandatory for agri crops, standard seed/material possible as exception, certification can be done by operators under official supervision

FARMER SEED SYSTEMS – AGROBIODIVERSITY CONSERVATION



EXCHANGE/SALE that is NOT MARKETING

- **All transfers in principle are marketing**, except for research
- Special rules for **Gene Banks (Art. 29)** : non-profit purposes, prior notification of gene bank, description & list available, quality/sanitary
- Special rules for **Farmers' Exchange (Art. 30)** : only seeds, not for money, not protected varieties (UPOV), quality & sanitary rules, quantities limited by States

FORMAL SEED MARKET



DEROGATION REGIME FOR NON-DUS VARIETIES

- **Conservation Varieties**: **old & new locally adapted** varieties, in **all species**, registered with 'officially recognized description' (no DUS) & sold as standard seed/material (not agri crops)
- **Heterogeneous Material** : notification based on description, like OHM (Organic Reg.)



EU SEED MARKETING REFORM : EU PARLIAMENT POSITION

EU PARLIAMENT POSITION

- Longer list of regulated species
- VsCU optional for vegetable and fruit species
- standard seed/material for all conservation varieties

FARMER SEED SYSTEMS – AGROBIODIVERSITY CONSERVATION



EXCHANGE/SALE that is NOT MARKETING

- Exchanges between private users, on-farm research, dynamic conservation of agrobiodiversity (quantity limits per variety/year)
- Relaxed rules for Gene Banks (Art. 29) : also include ‘conservation networks’, all types of movement, including farmers
- Expanded rules for Farmers’ Exchange (Art. 30) : all PRM, also for money, quantities limited by Commission based on needs of small farmers

FORMAL SEED MARKET



DEROGATION REGIME FOR NON-DUS VARIETIES

- Conservation Varieties: Better definition CV & lighter rules for standard seed/material production
- Heterogeneous Material : No NGT/GMO, more aligned to OHM but not fodder species

DENOMINATION & DISTINCTIVENESS VARIETIES : stakeholder consultation



EU SEED MARKETING REFORM : EU PARLIAMENT POSITION

COUNCIL OF EU POSITION (draft)

Longer list of regulated species (conservation varieties & heterogeneous material only in certain species?)
Alleviate burden of national authorities (exceptions), but still 2 pillars of registration/certification

FARMER SEED SYSTEMS – AGROBIODIVERSITY CONSERVATION



EXCHANGE/SALE that is NOT MARKETING

- **Gene Banks & conservation networks (Art. 29)** : all types of movement, including farmers, light traceability rules
- **Farmers' Exchange (Art. 30)** : no monetary compensation, no dynamic agrobiodiversity management, only 'local exchange' (defined by State)

FORMAL SEED MARKET



DEROGATION REGIME FOR NON-DUS VARIETIES

- **Conservation Varieties**: Contentious point (old & new varieties, limit market)
- **Heterogeneous Material** : Not clear how to link with Organic Regulation

EU Seed Marketing Reform in light of UNDROP



Preliminary Conclusions

STATE obligation to respect, protect and fulfil the right to seeds

Support peasant seed systems and to promote the use of peasant seeds and agrobiodiversity

Ensure participation of peasants in decision-making

Right to save, use, exchange & sell their own seeds

Attempts of recognition through Article 30, but all exchanges still marketing & restrictions, especially on quality criteria
(is this support & promotion?)

Right to maintain, control & develop their own seeds

Diversification of EU seed market (pathways to market non-DUS)

Right to have access to locally adapted seeds

Not much on right to maintain & control (except EP amendments on participation in registration process)

Right to participate in decision-making

Not much present at EU level

Right to the protection of TK & sharing of benefits

Codification of peasant knowledge first step towards protection or misappropriation?

Thank you for your
attention

