

EAPVP Workshop on farm-saved seeds under the 1991 Act of the UPOV Convention

Introduction



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February 26, 2024 (virtual means)

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Exceptions to the breeder's right (1991 Act)

Compulsory

Acts done:

- privately and for non-commercial purposes
- for experimental purposes
- breeding other varieties (breeder's exemption")

Optional

Farm-saved seed



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Optional Exception To The Breeder's Right Farm-saved seed – Article 15(2)

A Contracting Party may restrict the breeder's rights in order **to permit farmers to use:**

- for propagating purposes **on their own holdings the product of the harvest**
- **obtained on their own holdings** from the protected variety
- **within reasonable limits**
- subject to **safeguarding legitimate interests of the breeder**

[*Recommendation of the Diplomatic Conference on Article 15(2)*]

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Optional exception to the breeder's right

Product of the harvest can be used for propagating purposes

small grain cereals:



harvested product may = propagating material

Fruit, ornamentals and vegetables:



harvested product may ≠ propagating material

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Exceptions to the breeder's right – Explanatory Notes

(b) *Deciding on the inclusion of the optional exception*

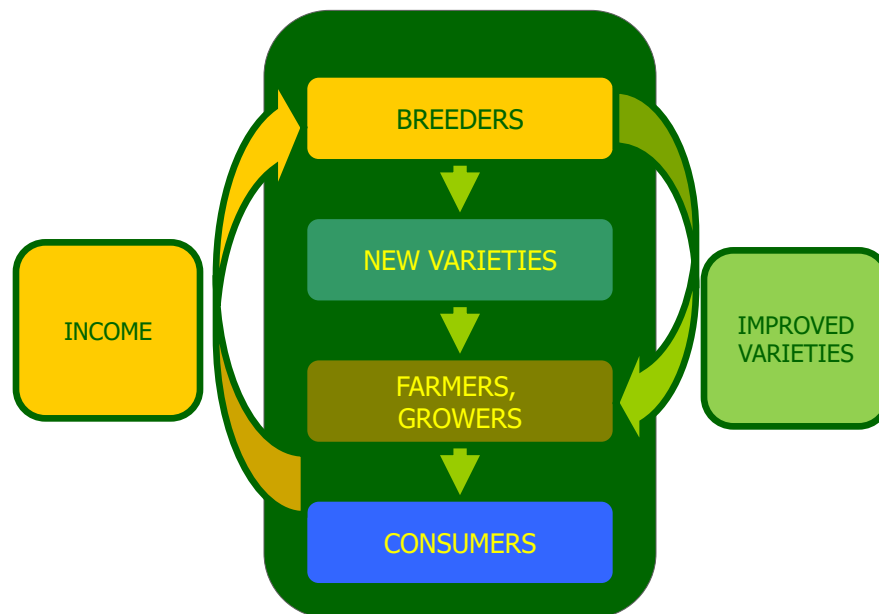
12. Article 15 (2) is an “optional” provision as clarified by the wording “ ... each contracting Party may ...”. Thus, it is a matter for each member to decide whether it would be appropriate to incorporate the option provided in Article 15 (2). The purpose of the following paragraphs is to provide guidance to those members of the Union which decide to incorporate the optional exception into their legislation.

14. The Diplomatic Conference recommendation indicates that the optional exception was aimed at those crops where, for the member of the Union concerned, there was a common practice of farmers saving harvested material for further propagation.

https://www.upov.int/edocs/expndocs/en/upov_exn_exc.pdf

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- There is considerable scope for relevant crops to **exempt small commercial farmers from paying remuneration on FSS** without significantly impacting the income to breeders
- It is important that **farmers that pay remuneration on FSS** have confidence in the benefits that will result for them in the form of new, improved varieties.
- Arrangements for **collecting remuneration** on FSS need to suit the particular situation of each country

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Experiences of UPOV members in implementing the provisions on FSS

Mr. Martin Ekvad, Director of Legal Affairs UPOV

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Optional exception to the breeder's right

Reasonable limits and safeguarding the legitimate interest of the breeder

Possible factors:

- Type of variety
- Size of holding/crop area/crop value
- Proportion/amount of harvested material
- Remuneration to the breeder

Review over time

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Example from EU legislation - list of agricultural crops for FSS

2. The provisions of paragraph 1 shall only apply to agricultural plant species of:

(a) Fodder plants:

Cicer arietinum L. — Chickpea milkvetch

Lupinus luteus L. — Yellow lupin

Medicago sativa L. — Lucerne

Pisum sativum L. (partim) — Field pea

Trifolium alexandrinum L. — Berseem/Egyptian clover

Trifolium resupinatum L. — Persian clover

Vicia faba — Field bean

Vicia sativa L. — Common vetch

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Cont. Example from EU legislation - list of agricultural crops for FSS

(b) Cereals:

Avena sativa — Oats

Hordeum vulgare L. — Barley

Oryza sativa L. — Rice

Phalaris canariensis L. — Canary grass

Secale cereale L. — Rye

X Triticosecale Wittm. — Triticale

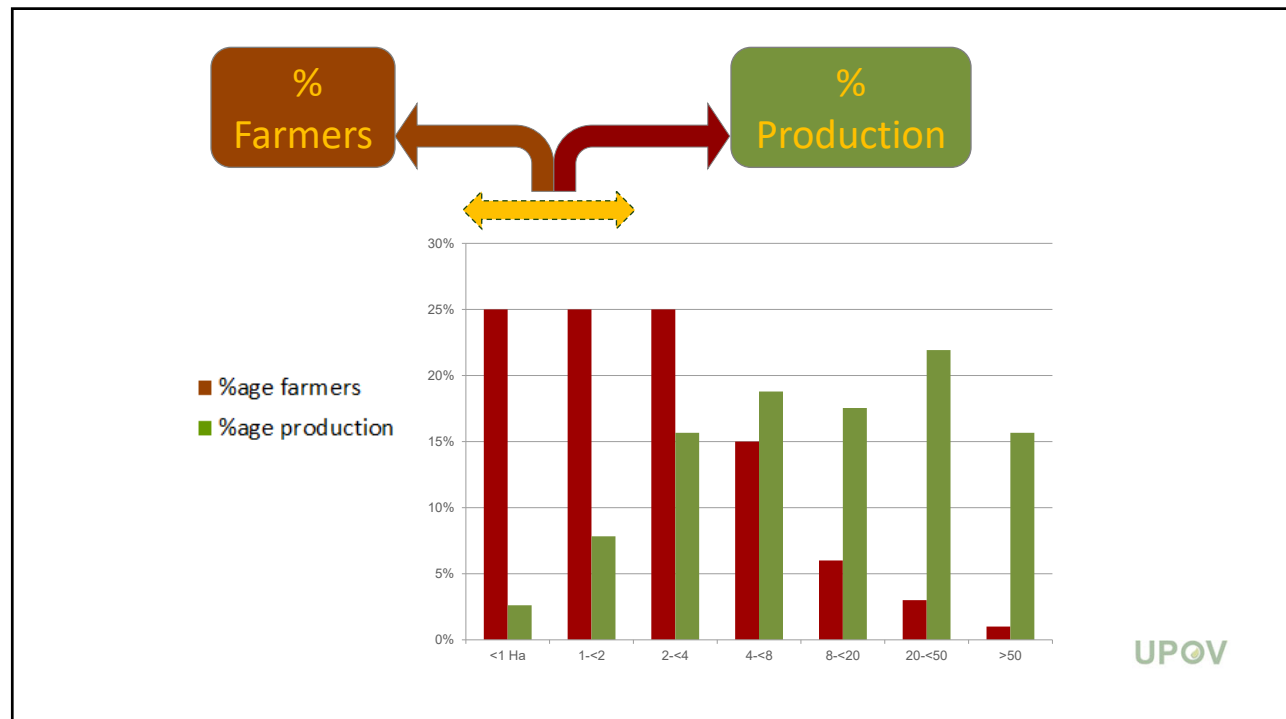
Triticum aestivum L. *emend.* Fiori et Paol. — Wheat

Triticum durum Desf. — Durum wheat

Triticum spelta L. — Spelt wheat

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