

1. INTRODUCTION

1.1 What is the name of your organisation?

Fridtjof Nansen Institute

1.2 What stakeholder group does your organisation belong to?

Other

1.2.1 Please specify

Research institute engaged in research on the management of plant genetic resources for food and agriculture. See www.fni.no and www.farmersrights.org

1.3 Please write down the address (postal, e-mail, telephone, fax and web page if available) of your organisation

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2. PROBLEM IDENTIFICATION

2.1 Are the problems defined correctly in the context of S&PM marketing?

No

2.2 Have certain problems been overlooked?

Yes

2.2.1 Please state which one(s)

A central problem has been overlooked: how the legislation affect the diversity of plant genetic resources for food and agriculture. The future of farming and plant breeding depends on the diversity of plant genetic resources, as the EU and its member states have acknowledged by becoming parties to the International Treaty on Plant Genetic Resources for Food and Agriculture (Plant Treaty). Central objectives of the Treaty are the conservation and sustainable use of crop genetic resources, and there are several detailed provisions on in situ on-farm conservation and sustainable use of crop genetic diversity, as well as on farmers' rights in this regard. In our research on this topic over the last years, we have noted clear indications that the EU legislation on variety release and seed marketing represents a barrier to the conservation and sustainable use of crop genetic diversity and farmers' rights in this regard. The directives of conservation varieties and on traditional varieties of vegetables represented a relief from a legal framework that was directly counter productive to implementing the Plant Treaty. Nevertheless, these new directives still represent hurdles to farmers engaged in diversity farming. As for the conservation varieties directive, this is because (1) seed exchange and sale is still prohibited among farmers under the new directive, and thus this 10.000 year old customary practice, which brought us the diversity we have today, is being stopped; (2) only varieties deemed interesting for conservation and sustainable use by certain authorities can be covered by the system, which is limiting diversity more than necessary, as farmers may themselves wish to decide which varieties they deem interesting; (3) the variety release and certification criteria are still too strict, and thus many varieties can not be registered, therefore not marketed and will be lost; (4) the marketing and use of the varieties are limited to the regions of origin, which is against the historical principles of diversity development and also against the needs of farming, particularly in times of climate change; (5) only limited quanta can be used, and these are provisions which have no basis in questions of plant health or seed quality, and there is no valid reason to have such restrictions from a point of view of such objectives; and (6) the conservation varieties cannot be further developed by farmers, which is against the customary practices of farmers that brought us the diversity available today, and which is also against the interests of many diversity farmers, who wish to adapt the varieties to their needs as well as to environmental challenges such as climate change. Thus, these provisions pose serious barriers to the implementation of Articles 5, 6 and 9 of the Treaty. As for the directive on traditional varieties of vegetables, a main problem is that it

is only applicable if there is no commercial interest in the varieties, and that this has been interpreted to mean that farmers cannot use them if their produce is being sold in the market. This is counter-productive to the implementation of the Treaty, i. e. to increase the utilization of underutilized species and varieties and promote the conservation and sustainable use of plant genetic resources for food and agriculture.

2.3 Are certain problems underestimated or overly emphasized?

Overestimated

2.3.1 Please indicate the problems that have not been estimated rightly

The problem of administrative burden is certainly one of public authorities, but it is also a problem for farmers who have to establish authorized seed shops in order to continue their practice of supplying neighbours and other interested farmers with seed. For farmers in Norway, for example, this is not only important to expand diversity farming in the country, but also to produce enough of the varieties for which there is demand from the market. If the farmers cannot meet the market demand, bakeries and food shops are not interested in buying. Therefore, farmers feel they have to establish seed shops in order to distribute seed of the relevant varieties among themselves. Also farmers are burdened with the work of applying for the release of varieties they deem interesting, which involves a range of different requirements. Many farmers are doing valuable work in diversity farming, but feel overburdened with regard to the requirements of getting all the conservation varieties released, which they wish to share, and with establishing authorised seed shops. The need to harmonize regulations and their implementation across the EU may have been overestimated. Whereas this may be relevant for the management of "mainstream varieties", it may be useful to keep more flexibility when it comes to the management of conservation varieties and other varieties maintained with a view to increasing the diversity of crop genetic resources. Different practices in the countries may reflect different needs and framework conditions in this regard. Harmonization of legislation and practices across the EU may undermine achievements with regard to conservation and sustainable use and make further progress in this regard difficult.

2.4 Other suggestions or remarks

Actually, the two comments under 2.3.1 refers to one aspect of underestimating, and one aspect of overestimating, but it was not possible to tick both.

3. OBJECTIVES OF THE REVIEW

3.1 Are the objectives defined correctly in the context of S&PM marketing?

No

3.2 Have certain objectives been overlooked?

Yes

3.2.1 Please state which one(s)

The general policy objectives of empowering users and contributing to biodiversity represent useful points of departure from a Plant Treaty perspective. However, the mention of biodiversity is not very precise. It may be understood as the biodiversity surrounding farms, which is an important aspect of sustainable farming. It seems that this is the most usual interpretation of the term. However, the diversity of plant genetic resources for food and agriculture may also be meant. If this is meant, which we think is central, then it would be necessary to spell it out more clearly, in terms of the conservation and sustainable use of plant genetic resources for food and agriculture. As for the term 'empowering' in this context, something vital is missing. Farmers are the custodians of the on-farm diversity of plant genetic resources for food and agriculture. Therefore, it is not sufficient to empower them by informing them about seed and propagating material. Rather, they should be enabled to continue contributing to the conservation and sustainable use of plant genetic resources for food and agriculture. Based on the Plant Treaty (Art. 5.1.c; 6.2.a and g; and 9.1 and 9.3), we suggest to add a general policy objective to make these things clear: "Enable farmers to continue contributing to the conservation and sustainable

use of plant genetic resources for food and agriculture". To follow up on this, we suggest to include an additional specific objective: "Reduce legal barriers and administrative burden for farmers to conserve and sustainably use plant genetic resources for food and agriculture, and foster their innovation in this regard." Furthermore, we suggest to reflect the above in the operational objectives, by including one aspect in the fourth bullet point: "Ensure better consistency with the other EU policies: (...)the implementation of the International Treaty on Plant Genetic Resources for Food and Agriculture (...)"

3.3 Are certain objectives inappropriate?

Yes

3.3.1 Please state which one(s)

In light of the above, some of the objectives are inappropriate. The role of farmers in maintaining and developing crop genetic diversity on-farm has not been adequately reflected in the formulations. Also, without ensuring consistency with the Treaty, the objectives are unbalanced. If, however, the suggestions above are included, this problem will be solved.

3.4 Is it possible to have a regime whereby a variety is considered as being automatically registered in an EU catalogue as soon as a variety protection title is granted by CPVO?

No opinion

3.5 If there is a need to prioritise the objectives, which should be the most important ones? (Please rank 1 to 5, 1 being first priority)

Ensure availability of healthy high quality seed and propagating material

3

Secure the functioning of the internal market for seed and propagating material

5

Empower users by informing them about seed and propagating material

2

Contribute to improve biodiversity, sustainability and favour innovation

1

Promote plant health and support agriculture, horticulture and forestry

4

3.6 Other suggestions and remarks

Our suggestion above, "Enable farmers to continue contributing to the conservation and sustainable use of plant genetic resources for food and agriculture", would be the second priority, if adopted, after contributing to improve biodiversity, sustainability and favour innovation.

4. OPTIONS FOR CHANGE

4.1 Are the scenarios defined correctly in the context of S&PM marketing?

No opinion

4.2 Have certain scenarios been overlooked?

No opinion

4.2.1 Please state which one(s)

4.3 Are certain scenarios unrealistic?

No opinion

4.3.1 Please state which one(s) and why

4.4 Do you agree with the reasoning leading to the discard of the "no-changes" and the "abolishment" scenarios?

No opinion

4.5 Other suggestions and remarks

5. ASSESSMENT OF OPTIONS

5.1 Are the impacts correctly analysed in the context of S&PM marketing?

No

5.2 Have certain impacts been overlooked?

Yes

5.2.1 Please state which one(s)

The impact on the ability of farmers to continue contributing to the conservation and sustainable use of plant genetic resources for food and agriculture and the impact of administrative burden on farmers who are engaged in the conservation and sustainable use of these resources have not been dealt with in any of the scenarios, except for Scenario 4.

5.3 Are certain impacts underestimated or overly emphasized?

No opinion

5.3.1 Please provide evidence or data to support your assessment:

5.4 How do you rate the proportionality of a generalised traceability/labelling and fit-for-purpose requirement (as set out in scenario 4)?

No opinion

5.5 How do you assess the possible impact of the various scenarios on your organisation or on the stakeholders that your organisation represents?

Scenario 1

Very negative

Scenario 2

Very negative

Scenario 3

Rather negative

Scenario 4

Very beneficial

Scenario 5

Very negative

5.5.1 Please state your reasons for your answers above, where possible providing evidence or data to support your assessment:

We have given the above answers as a research organization with many years of experience in research on the management of crop genetic diversity and the implementation of farmers' rights, as they are addressed in the Plant Treaty. We have carried out several comprehensive international surveys, facilitated global consultations and analysed results per region. We are also

starting up research to analyse the EU variety release and seed marketing legislation and have done comprehensive pre-work in this regard. Our answers are provided on the basis of the feedback so far from farmers and other stakeholders, analyzed with a view to the prospects for implementation of the Plant Treaty. From the point of view of promoting the conservation and sustainable use of crop genetic resources for food and agriculture, and improving farmers' rights in this regard (according the International Treaty), there is a need to change the technical provisions (see problem analysis above). Therefore the first two scenarios are very negative, as they provide for no changes of the technical provisions. The third scenario is slightly better, as it decreases the regulation level somewhat. Nevertheless, it does not help solving the problems that farmers encounter when seeking to contribute to the conservation and sustainable use of crop genetic resources. Scenario 4 is the option that best meets the needs of farmers engaged in the diversity of plant genetic resources for food and agriculture, even though there may still be a scope for improvement in this regard. The fifth scenario is detrimental to this objective, as it does not change the necessary technical provisions, and because the system is centralized, thereby undermining achievements at the national level due to the current flexibility, and making further progress in this regard more difficult.

6. ASSESSMENT OF SCENARIOS

6.1 Which scenario or combination of scenarios would best meet the objectives of the review of the legislation?

Scenario 4

6.1.1 What are your views with regards to combining elements from the various scenarios into a new scenario?

6.1.1 Please explain the new scenario in terms of key features

6.2 Do you agree with the comparison of the scenarios in the light of the potential to achieve the objectives?

No

6.2.1 Please explain:

There is too little emphasis on the objectives of biodiversity and sustainable environment, and on empowering the users in the analysis. We also miss the analysis of objectives regarding the conservation and sustainable use of plant genetic resources for food and agriculture, and of farmers' rights in this regard.

7. OTHER COMMENTS

7.1 Further written comments on the seeds and propagating material review:

The legislation on variety release and seed marketing have developed from a rationale of agricultural productivity, plant health and seed quality. In the meanwhile, more emphasis is being put on environmental aspects, as is also evident in the current evaluation process. However, it seems that the challenges with regard the diversity of plant genetic resources for food and agriculture has not yet been sufficiently reflected in this evaluation process. This is obvious from reading the problem analysis and the objectives, as well as the analysis of potential impacts of the various scenarios, except for Scenario 4. Sufficient attention to this dimension of the seeds issues is crucial for future food security and for the implementation of the Plant Treaty in the EU. The relevant Treaty objectives and provisions should be reflected in the evaluation and be a central part of the foundation of the analysis, given that the EU is a party to the Treaty and obliged to implement its provisions, and given their central relevance for this issue. Without such an emphasis, we fear that the resulting legislation will be unbalanced in this regard, and that it may continue providing major hurdles to the implementation of the Treaty. We recommend that conservation and sustainable use of plant genetic resources for food and agriculture is emphasised and mainstreamed as a central concern throughout all further evaluation and

decision making on variety release and seed marketing in the EU.

7.2 Please make reference here to any available data/documents that support your answer, or indicate sources where such data/documents can be found:

Andersen, Regine and Tone Winge, with contributions from Bell Batta Torheim (2011): Global Consultations on Farmers' Rights in 2010 FNI Report 1/2011 (Lysaker, Norway: Fridtjof Nansen Institute) Available at: http://www.farmersrights.org/resources/global_works_18.htm This report presents the results and proceedings of the Global Consultations on Farmers' Rights carried out in 2010. Consisting of both an e-mail based survey and an international consultation conference with regional components held in Addis Ababa, Ethiopia, the consultations were organized as a response to Resolution 6/2009 of the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture, which called for regional workshops on Farmers' Rights. In the two phases of the consultations, a total of 171 experts and stakeholders from 46 countries in Africa, Asia, the Near East, Latin America and the Caribbean, North America and Europe, and from farmer organizations, government institutions, the seed industry, NGOs, IGOs, research institutions and other relevant groups participated. United Nations (2009): The right to food. Seed policies and the right to food: enhancing agrobiodiversity and encouraging innovation (New York: The United Nations) Available at:

http://www.farmersrights.org/resources/global_articles_22.html This report explores how States could implement seed policies that contribute to the full realization of human rights. It identifies how research and development could best serve the poorest farmers in developing countries, and how commercial seed systems could be regulated to serve the right to food and ensure the right of all to enjoy the benefits of scientific progress. Finally, it examines how farmers' seed systems could be best supported, in order to serve the interest of all in the preservation of agrobiodiversity. Andersen, Regine (2009): Information paper on Farmers' Rights submitted by the Fridtjof Nansen Institute, Norway, based on the Farmers' Rights Project. Input paper submitted to the Secretariat of the Plant Treaty 19 May 2009 (IT/GB-3/09/Inf. 6 Add. 3) Available at: http://www.farmersrights.org/resources/global_articles_19.html Resolution 2/2007 of the Governing Body of the International Treaty encourages Contracting Parties and relevant organizations to submit their views and experiences on the implementation of Farmers' Rights, as set out in Article 9. In response to this, the Fridtjof Nansen Institute has prepared an information paper based on the research findings of the Farmers' Rights Project. This input paper is a contribution to the negotiations on Farmers' Rights during the Third Session of the Governing Body of the International Treaty in Tunisia. The information paper summarizes the knowledge of the project to date on views and experiences with the implementation of Farmers' Rights globally, noting existing gaps and needs. After a brief introduction to the research and other activities of the Farmers' Rights Project, the paper proceeds to views on the contents of Farmers' Rights and experiences with their realization. It further outlines various avenues towards systemic implementation of Farmers' Rights according to needs and priorities at the national level. Finally, remaining gaps and needs are identified and recommendations for the Governing Body are presented. Regine Andersen and Gunnvor Berge, (2007): Informal International Consultation on Farmers' Rights, 18 - 20 September 2007, Lusaka, Zambia Report M-0737 E (Oslo, Norway: Norwegian Ministry of Agriculture and Food). Available at:

http://www.farmersrights.org/resources/global_works_11.html The informal international consultation in Lusaka gathered 27 participants from 20 countries and most regions of the world. They all participated in their personal capacities, coming from various backgrounds, including ministries of agriculture, gene banks, research institutions, farmers' organizations and nongovernmental organizations. The consultation consisted of six sessions, each starting with brief introductions by some of the participants, with the main emphasis on the discussions. One aim of the consultation was to identify key-issues of importance for the implementation of Farmers' Rights and to facilitate a process towards the realization of Farmer' Rights by the national governments, while acknowledging Farmers' Rights as vital for food security and the future of our agricultural plant genetic heritage. On the basis of the discussions and by taking account of comments from the participants, Norway and Zambia prepared an input paper to be submitted to the Governing Body for consideration at its Second Session. See also the webpage of the Farmers' Rights Project at the Fridtjof Nansen Institute, which has been developed as a

tool for decision makers, practitioners, and others involved in the realization of Farmers' Rights. The Farmers' Rights Project is aimed at supporting the implementation of Farmers' Rights as they are recognized in the International Treaty on Plant Genetic Resources for Food and Agriculture with research based guidance. More reports, documentation and resources are available there. See: www.farmersrights.org

