



GENERAL POSITIONING AND FRAMEWORK OF ECVC ON SEEDS

Small and often overlooked, seeds¹ are nonetheless at the base of our agriculture and food. In fact, the selected seeds determine the type of agrarian system, the quality of the food produced and the type of producer who will grow it. Indeed, industrial seeds have all been selected in artificialized and expensive environments. They work better for large-scale monocultures, they are dependent on fertilizers, pesticides and large machines. On the contrary, working with seeds adapted to local context makes it possible to develop a decentralized agricultural model that is sustainable and capable of supplying citizens with quality and quantity. Control over seeds allows control over the entire food chain. Access to peasant seeds, the collective rights to use, produce, preserve, exchange and sell them, as well as the autonomy of peasant seed systems, are major issues for peasant organizations and civil society activists for peasant agroecology and people's food sovereignty.

Without farmers' control over their seeds, no real food sovereignty!

Seeds are constantly changing and the struggle for their control is relentless and constantly renewed, reflecting the struggle between different visions of what agriculture should be. In opposition to industrial production with standardized seeds unable to adapt to local conditions without their technological package that consumes a lot of fossil energy (fertilizers, pesticides, large machinery), peasant agriculture is struggling to maintain its autonomy.

Peasant seeds are the result of long adaptations and constant interactions between peasants, plants and their environment while respecting and working with the dynamics of natural evolutions of living beings. This variability is at the heart of the resilience of peasant agroecology, which offers abundant and quality food, adapted to local natural conditions but also to food and cultural needs.

Today, in Europe, many farmers have lost their seed autonomy and their production system based on adapted peasant seeds. **However, peasant agroecology, allowing for a respectful and sustainable production, at the environmental, economic and social levels, will not be able to thrive without locally adapted peasant seeds.**

This is why it is essential that European farmers movements act quickly to strengthen existing peasant seed systems and build new ones.

However, without continuous field work and a change in the legal framework to ensure that farmers' collective rights to seed are respected, alternatives can not be built sustainably.

1 Seed means any plant propagating material: seeds, seedlings, cuttings, etc.



It is for these reasons, to defend the food and political sovereignty of the people, that ECVC positions itself in opposition to the political processes that affect farmers' rights to seeds and urges its members to act:

- **For the collective rights of peasants to use, conserve, exchange, develop and sell their own seeds, because without peasants' sovereignty over their seeds, no real food sovereignty.**

Europe adopted in the 1960s a series of directives asking the Member States to create official catalogs whose compilation makes up the European catalog. Only seeds belonging to one variety registered in this catalog are authorized for sale. To be part of this catalog, the variety must first undergo a series of tests to verify that it meets the three criteria of: Distinction, homogeneity and stability (DHS test). In addition, in the case of field crops, it is necessary to evaluate the improvement compared to existing varieties (VCU test): Value for Cultivation and Use). Only if the variety meets these standards can its seed be marketed.

The different EU member states are also part of the International Treaty on Plant Genetic Resources for Agriculture and Food (ITPGRFA). The ITPGRFA, approved in 2001 by 116 countries and more than 140 today, aims at the conservation and sustainable use of plant genetic resources of major crops for food and agriculture, as well as the equitable sharing of benefits, deriving from their use. The ITPGRFA is also the only treaty to recognize the rights of farmers (Preamble and Article 9 of the ITPGRFA²) and to put in place a Multilateral system of facilitated access (MLS) and benefit sharing from their use.

However, this treaty does not allow for any sharing of benefits and is only a tool facilitating the access of the seed industries to the peasant seeds that farmers passed down from generation to generation during human history and recently shelved in public seed banks.

Article 9 ITPGRFA- Farmers' Rights

9.1 The Contracting Parties recognize the enormous contribution that the local and indigenous communities and farmers of all regions of the world, particularly those in the centers of origin and crop diversity, have made and will continue to make for the conservation and development of plant genetic resources which constitute the basis of food and agricultural production throughout the world.

9.2 The Contracting Parties agree that responsibility for realizing Farmers' Rights, as they relate to plant genetic resources for food and agriculture, rests with national governments. In accordance with their needs and priorities, each Contracting Party should, as appropriate and subject to its national legislation, take measures to protect and promote Farmers' Rights, including:

- a)** protection of traditional knowledge relevant to plant genetic resources for food and agriculture;
- (b)** the right to equitably participate in sharing benefits arising from the utilization of plant genetic resources for food and agriculture; and
- (c)** the right to participate in making decisions, at national level, on matters related to the conservation and

² FAO, International Treaty on Plant Genetic Resources for Food and Agriculture, 2009: <http://www.fao.org/3/a-i0510e.pdf>



sustainable use of plant genetic resources for food and agriculture.

9.3 Nothing in this Article shall be interpreted to limit any rights that farmers to save, use, exchange and sell farmers-saved seed/propagating material, subject to national law and as appropriate.

If this treaty establishes and defines very clearly the rights of peasants, it leaves the responsibility for the realization of these rights to the states. Yet, after 10 years, these rights are still not enforced in most countries and the so-called fair benefit sharing has not generated any payments from the industry. Today, the industry even wants to go further by modifying the treaty to extend the multilateral system to all cultivated species that are still excluded. These changes will allow the industry to use the treaty to circumvent its obligations of prior consent and avoid sharing the benefits gained from their use.

ECVC is fighting for the real and unrestricted enforcement in each country of the peasant's rights as stipulated in Article 9 of the ITPGRFA Treaty.

ECVC requests that the genetic resources listed by the treaty and used by the industry cannot be confiscated by Intellectual Property Rights (IPRs) but remain public resources accessible to all.

ECVC calls for the industry to pay, through binding mechanisms, the equitable sharing of benefits as stipulated in the treaty.

ECVC invites the states to develop laws guaranteeing the implementation of farmers' rights on seeds such as the laws of Venezuela³ and Ecuador⁴.

• **Against transgenic GMOs and new GMOs**

GMOs (Genetically Modified Organisms) have been repeatedly rejected by the European population, aware of the risks and insecurity of these techniques for agriculture in general, for the health of consumers, for the rights of producers and for the environment. The opportunity to act collectively as an organized civil society has been proven effective and European legislation has turned down most GM crops in Europe, allowing member states' national legislations to go even further and to ban culture of GMOs authorized by the EU (MON810 maize). Today only Spain and Portugal still cultivate it.

If the cultivation is heavily regulated, imports are not. Here again, the reaction of civil society has led to stricter regulation of products intended for human consumption.

However, while imports for human consumption are low, the majority of animals reared in the conventional

3 See the Organic Biodiversity Management Act (Gaceta Oficial 39.070 del 1 of December 2008)

4 In particular, the articles 401, 402 and 403 of the Constitution prohibit: the granting of rights, including intellectual property rights, on derived or synthesized products obtained through collective knowledge of national biodiversity; OGMS; as well as state participation in international treaties that act against biodiversity and collective rights. The Constitution can be found on the website:
http://www.pichincha.gob.ec/phocadownload/leytransparencia/literal_a/normasderegulacion/constitucion_republica_ecuador_2008.pdf



system are fed with soybeans and other imported transgenic food, without the need for prior health and environmental assessment, without control or labeling of these animal products that are destined for human consumption.

Brief summary of EU legislation on GMOs

The basic laws regulating GMOs are **Directive 2001/18, Regulations 1829/2003 and 1830/2003** .

GMO legislation requires: Mandatory risk assessment, labeling, traceability and monitoring of genetically modified products and products obtained therefrom. The definition of an organism as a GMO is determined by Directive 2001/18.

These laws do not prohibit the release of GMOs into the environment or products derived from GMOs.

The stated purpose of the EU regulations on GMOs is to guarantee "a high level of protection of: human life and health, animal health and welfare, the environment and the interests of consumers "(Regulation 1829/2003).

Since the entry of the current framework, more than 60 genetically modified crops have been authorized for import and one type of genetically modified crop (BASF's Amflora potato) is authorized for cultivation (authorization has been granted subsequently canceled.) The only GM crop currently authorized, Monsanto MON810 maize, was authorized in 1998 under the previous rules.

No genetically modified animals have been authorized within the European Union, neither for breeding nor for import.

Following the mobilization of European civil society against transgenic plants, the industry tries to circumvent the refusal of the population and the legislation regulating GMOs by proposing "*New Selection Techniques*" (NBT⁵). Differently named in order to mislead consumers, these new techniques that artificially modify (*in vitro*) the genetic sequences of plants, bring the same risks as transgenesis for health, for the environment, for biodiversity as well as for the autonomy and for the rights of peasants. In addition, these genetic changes hidden by the industry open the door to biopiracy⁶ and allow the industry to claim the intellectual property of already existing seeds if they carry genetic information similar to that described in the patents.

5 You can consult the ECVC summary document on new GMOs here: <http://www.eurovia.org/wp-content/uploads/2017/09/2017-09-EN-ECVC-STOP-New-OGM-1.pdf>

6 Biopiracy is : the use of a genetic resource and / or traditional knowledge associated with that resource without the consent of the State, community or indigenous people who holds that resource and / or knowledge, and without compensation for this use. On INFO OGM.org



Do New Genetic Modification Techniques Produce GMOs?

GMOs are "organisms, with the exception of humans, whose genetic material has been modified in a way that does not occur naturally by multiplication and/or natural recombination"⁷

The biotechnology industry uses the term "New Selection Techniques" or NBT to refer to a set of techniques that do not produce GMOs.

However, when we look in detail at these new techniques, they do intervene at the level of genes.

The new techniques currently developed consist of:

1. Artificially insert into plant cells biological material (genetic sequences and/or protein), causing genetic changes;
2. Insert into plant cells a transgene from the same plant family;
3. Insert into a plant cell a transgene intended to modify some of their genes, then to eliminate this transgene while keeping the new intentional and unintentional genetic traits that it has enabled to acquire ;
4. To transplant another plant to a transgenic plant that is not, but which will receive the whole genetic and chemical components transported by the sap developed by the GMO rootstock.
5. Artificially cause multiple mutations of cells or isolated tissues of the plant and grown *in vitro* before regenerating them in the whole plant

In addition, like the transgenic GMOs, the first plants thus modified are tolerant to herbicides. Their cultivation necessarily increases the presence of residues of these pesticides in soils, in water and in our food.

ECVC calls for a move towards a total ban on GMOs and new GMOs for both cultivation and for human and animal consumption.

In addition, in the European Union legislation and national legislation framework, ECVC claims for:

- **the full application of the GMO regulation to all new GMOs, in particular those resulting from the so-called "NBT", in order to have a risk assessment and, if they are disseminated, labeling, traceability and monitoring of all products resulting from these techniques;**
- **strengthening scientific assessments of the impacts of *new genetic modification techniques* and guaranteeing their independence by completely avoiding industry-related scientists;**
- **labeling animal products from animals that have consumed GMOs;**

⁷ Definition of GMOs in Article 2 of the European Directive 2001/18 which regulates GMOs.



- **Against patents on living organisms and more particularly the patents on the dematerialized genetic information allowing the confiscation of the seeds present in the fields or gene banks**

The European Union has recently declared a ban on patents on plants and animals derived exclusively from biological processes⁸.

However, the law does not stipulate that the elements that make up plants and animals, as well as the genetic information they contain, are also prohibited from patent. Nor does the law specify that the scope of a patent on genetic information obtained by a patentable process must be restricted, and not extend to plants and animals that naturally contain the same genetic information. Industries, in agreement with the European Patent Office, take advantage of this legal loophole to patent plants derived from essentially biological processes.

European patent rules are made in such a way that when the industry files a patent on plants or animals, that patent only relates to some of their genetic characteristics or "feature" and not on the whole plant or animal. Yet the protection of patents extends to *all* plants and *all* animals that contain or express the patented trait.

Indeed, new genetic modification techniques make it possible to describe traits that they modify in a way that does not distinguish them from similar native traits (which naturally exist in other plants or animals and have not been genetically modified).

Therefore, the industry can extend the protection of its patent to seeds, plants and animals that naturally contain the same trait.

Farmers cultivating a plant with some native traits patented would be prohibited from marketing their crops unless they are able to buy a license from the patent holder.

ECVC requests an interpretation of Directive 98/44/EC on the legal protection of biotechnological inventions⁹ which would be based on the intentions of the legislators at the time of the adoption of this law (in 1998), so that it can prohibit any patent whose protection can extend to native seeds as well as plants derived from processes essentially organic.

ECVC urges European states to amend their national patent laws¹⁰ to fill this legal loophole and to protect farmers growing plants with native traits that may fall under the NBT patent.

In addition, the ITPGRFA (International Treaty on Plant Genetic Resources for Agriculture and Food) recognizes the rights of farmers and considers them as a stakeholder in the conservation of biodiversity, so **ECVC also invites the ITPGRFA and States to prohibit the patentability of genetic information contained in the plant genetic resources of the Multilateral System and any other rights that limit the rights of farmers to retain, use, trade and sell them.**

⁸ Indeed, " *plant or animal varieties and essentially biological processes for the production of plants or animals* ". Essentially biological processes are processes that " *consist entirely of natural phenomena such as cropping or selection* ". See Articles 2.2 and 4 (b) of Directive 98/44 / EC and Article 53 (b) of the European Patent Convention.

⁹ <http://eur-lex.europa.eu/legal-content/FR/TXT/?uri=CELEX:31998L0044>

¹⁰ You will find more details on the national patent laws in the appendix.



- **Against the UPOV laws and the French proposal of the UPOV 2021 reform which further restricts the rights of farmers as well as breeders' access to genetic variability**

UPOV (Union for the Protection of Plant Varieties¹¹) is an intergovernmental organization that aims to protect the intellectual property rights of the industry on seeds, through the introduction of New Variety Certificate (COV). Commercial varieties protected under the UPOV system aim to adapt the harvests to the needs of the world market, requiring standardized products, and must therefore meet the criteria of distinction, homogeneity and stability. Their cultivation requires the same standardization of environmental conditions that can only be achieved with chemical fertilizers and pesticides, irrigation, heated greenhouses. Commercial varieties of the UPOV system were selected using the varieties grown by millions of farmers - collected free of charge in all fields of the world - which constitute almost all plant genetic resources stored in germplasm banks.

Many countries are adopting legislation that follow the UPOV convention under the pressure of the Free Trade Agreements and then criminalises the exchange of seeds between farmers that are not certified to meet the criteria of distinction, homogeneity and stability.

UPOV, which is already providing legal tools to the industry for seed grabbing, goes even further with the proposal for the UPOV 2021 reform. Indeed, this reform proposes to bring the new variety certificate (COV) closer to the industrial patent, by eliminating during the first five years the right to use a protected variety to select another, which is called the exception of the selector. Farmers will thus lose the right to adapt these varieties to their own local growing conditions.

In addition, it plans to identify the varieties protected by dematerialized genetic information - in addition to the visible characteristics of the plant - thus making it possible to identify them easily in the fields, but also in the harvests, the processed products, in the field and in the consumer's plate. This will lead to increased repression against peasants who use their farm seeds without paying royalties.

In addition, with UPOV, there is no obligation to describe the invention. It is not obligatory to give information on the procedure for obtaining the seed - which in this context is an industrial secret. Unlike the patent which makes it mandatory to describe the invention, UPOV facilitates the commercialization of GMOs by keeping them hidden.

If COV become as effective in 2021 as the patent, to limit the rights of farmers and the breeder's exception, it will quickly replace the patent. That is why we must not listen to the sirens of industrial seed companies who claim to oppose the patent even as they strengthen UPOV to become more restrictive than the patent.

11 The UPOV Convention entered into force on 10 August 1968, and was revised on 10 November 1972, 23 October 1978 and 19 March 1991. States and certain intergovernmental organizations that wish to accede to the UPOV Convention must have laws on the protection of plant varieties which correspond to the 1991 Act of the Convention. On the UPOV website, <http://www.upov.int/upovlex/en/#notified> , you can find the legislation of the members of the Union that has been notified in accordance with the UPOV Convention, the notifications according to the Convention UPOV concerning the different members of the Union (eg accessions, ratifications), and the text of the UPOV Convention and its acts.



Why the current UPOV legislation hampers peasants' rights

The current UPOV Convention criminalizes and penalizes producers who sow or exchange seed from their own crop, grown from a variety protected by COV.

Knowing that for more than half of the world's farmers, seed self-production is a tradition and a financial necessity as well as for adapting commercial varieties to their local growing conditions, criminalizing informal seed systems comes down to threatening global food security¹².

Finally, UPOV varieties were all selected from the millions of peasant varieties collected free of charge in all fields of the planet, it would seem logical and equitable that peasants could also reuse freely commercial seeds that they bought.

ECVC calls for fighting within national legislative frameworks against the adoption of UPOV (current and draft 2021) which restricts farmers' rights, prohibits farmers from reseeding and exchanging their own production and which criminalises peasants.

ECVC calls for the fight against any intellectual property right (COV or patent) relating to dematerialized genetic information of plants and animals.

- **Against the de-materialisation of seeds and knowledge of peasants and their reduction to patentable numerical data.**

The dematerialization of seeds means that seeds are no longer physically preserved within "seed banks" but are replaced by data centers that store only digitized genetic sequences. Dematerialization leads to a process in which it is easier to privatize and impose intellectual property rights. Large-scale projects are underway to sequence all the ITPGRFA plant genetic resources, such as the DIVSEEK program¹³. At the same time, "open source" initiatives are sprouting which are aiming at making freely accessible as much information as possible on the new farmers' or breeders' seeds on the internet.

All of these initiatives are ultimately aiming at putting in place a standardized system of global database management. The problem coming along is that the seed industry will then be able to easily benefit from the interconnection of databases in order to identify and patent even more genetic traits and information without respecting patent prohibitions arising from easier access to databases resources of the ITPGRFA and without paying anything back to the farmers who selected these traits or to the Treaty's Benefit-sharing Fund. These initiatives, whether open source or not, may therefore lead to the privatization of all plant

12 " Informal seed systems that mostly use part of the crop as breeding material now provide more than 70% of the world's available food using only 25% of the cultivated land. ". Detailed CVIA article on UPOV:

<http://www.eurovia.org/en/lupov-and-treatment-on-the-seeds/>

13 Detailed GMO info article on the DIVSEEK program <https://www.infogm.org/6278-divseek-chronique-biopiraterie-legalisee>



genetic resources through patents!

ECVC invites to become aware of the dangers of de-materialization, which under the pretext of progress leaves the door open to biopiracy.

- **Finally, ECVC is for the development of peasant seeds, of peasant-to-farmer exchanges.**

The development of peasant seeds, as well as the rights of peasants to produce, conserve, use, exchange and sell their seeds without restrictions is a pillar of the peasant economy and food sovereignty. Despite the marginalization or even criminalization by industries of farmers who reproduce and sell their seeds, many initiatives are active, such as the International Planning Committee for Food Sovereignty (IPC)¹⁴, to protect and develop these networks as much as possible.

The hundreds of millions of farmers who produce new seeds each year create immense diversity, constantly renewed and adaptable, much more than any researcher in the laboratory could do. This renewal is essential for the resilience of peasant farming systems, especially in the face of climate change, as well as for replenishing the reservoir of plant genetic resources.

ECVC therefore proposes to promote as much as possible the creation of the many local houses of farmers' seeds and their sustainable networking which alone will allow peoples' food sovereignty.

ECVC is committed to supporting its members to develop peasant seed production systems with peasant-to-peasant training.

¹⁴ IPC is a platform that brings together small-scale food producers, rural workers' organizations, grassroots movements and advances food sovereignty at the regional and global levels.