

European Commission - DG Sante  
by email

November 25th, 2021

## **Evaluation of Article 79 (Plant Passport) of the Plant Health Regulation 2016/2031 / EU**

Dear Dorothee André, dear Roman Vagner,

We refer to our letter dated 6 May 2021 sent via JRC on the Evaluation of Article 79 (Plant Passport) of the Plant Health Regulation 2016/2031 / EU.

In that letter we argued that no operator registration should be required for seed savers who are working without employees.

We would like to specify, with regard to this group, who is currently concerned by the EU Plant Health Regulation, why this group should be exempted from operator registration, which approaches would not solve the problem for this specific group, and our suggestions for a solution. Despite of good intentions, i.e. to control the spread of plant pests, the Plant Health Regulation is likely to slash in situ/on farm conservation (that includes agricultural biodiversity in gardens) in the European Union.

A petition is currently open for signatures with regard to the evaluation of para 79 (Plant Passport) of the Plant Health Regulation 2016/2031/EU:

„Making seed savers register could slash the saving of seeds!“ This petition was started by our Umbrella Association for cultivated plant and breed diversity in German speaking countries. It so far received more than 6000 signatures, mainly from Germany. It is published in German and English. <https://www.openpetition.eu/petition/online/eine-meldepflicht-fuer-saatgut-engagierte-koennte-der-sortenvielfalt-betraechtlich-schaden-2#petition-main>

Please also note a second ongoing petition „Free seed exchange for savers of seed diversity“. This petition was started by Austrian smallholder farmers and seed savers, and so far received more than 2000 signatures, mainly from Austria, France, Germany, Spain and Luxembourg. It is published in English, German and Spanish. <https://www.openpetition.eu/petition/online/free-seed-exchange-for-savers-of-seed-diversity#petition-main>.

We share their concerns regarding an obligation of seed savers to register and issue plant passports in case of web shop sales to end users.

Some 2000 people signing the petitions also made an effort to add their own personal comment.

### **Who is concerned?**

- Seed savers, among others, are concerned who have to issue plant passports for each web shop sale of seeds or plant material belonging to a list of certain plant species. For

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this purpose, they have to register with plant health authorities. Please note that in this letter, the term „seed“ includes other plant propagation material. The listed species can host seed borne pests and -rightly – include tomato and bean. A large majority of seed savers grow tomato and bean varieties, among many other species. Therefore, most seed savers are concerned by the Plant Health Regulation.

- In addition to seed savers, hobby gardeners are concerned who are interested to grow rare varieties bought from seed savers.
- Very importantly, further people are concerned who presently have no garden but plan to have a garden in future to grow diversity varieties. They are worried that in future, diversity varieties will be expensive and difficult to come by, if seed saving is not exempted from the current regulation. They are also worried that the culture of seed saving may be lost, and not handed over to the next generation.

Thus, the number of signatures and comments on the above-mentioned petitions is not surprising.

### **Why should seed savers without employees be exempted from registration as operators?**

The Plant Health Regulation causes considerable fulfillment expenses to those citizens engaged in on-farm/in garden conservation. Examples are pest risk management plans for each pest, and traceability documentation, that goes far beyond existing documentation (e.g. for reporting to tax offices). Seed savers can also pay an authorized operator to do parts of it for them. Seed savers who usually work without staff, have neither the time nor the money for extra administration tasks.

Many seed savers, besides horticultural or agricultural work and conservation documentation, are engaged in teaching and communication. Sharing knowledge and know-how belongs to the sharing of seeds. This takes a lot of their time.

Seed savers working without employees usually harvest and sell only small amounts of seed of each variety. Due to the tiny size of the lots, extra administration costs would increase the price of diversity seeds, considerably more than for mass commercial seed varieties. This could deter many interested people from growing diversity varieties.

Artisanal, not industrial, methods are used by seed savers who separately grow, harvest and clean a large number of varieties, and pack and sell them in tiny lots. The amounts of seed an individual seed saver makes available in the market cannot be very large under such conditions.

Even if an individual resells seed from other individuals to enlarge the diversity, that seed was also separately grown, harvested, cleaned and packed with artisanal methods by other individual seed savers.

It may be nearly impossible to find a seed saver who could provide the necessary amount of seed

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(3000 seeds) to carry out a PCR virus test, even if several varieties are pooled in a first test. In any case, whether a virus is found or not: Not enough seed may be left for either- if a virus is found in the pool - for further tests, or – if no virus is found - for diversity conservation.

There is hardly any evidence to assume that the sale via web shop is posing greater risks than the direct sale. The amounts that can be managed without staff and at artisanal level are and remain small, whether directly sold or via web shops.

Seed savers already have plants and possible pests under close scrutiny, since they don't want to lose any plant from which they have chosen to harvest seed.

It is in their interest to report quarantine pests to the authority as every citizen is obliged to do according to Article 15 of the Plant Health Regulation.

Modern varieties often have resistance genes. Such monogenic resistances have several times been overcome by pests. In contrast, diversity varieties can show long term resistances based in their vitality. The plants may be infested, while they are developing healthily. To eliminate such valuable plants in order to eliminate the pest would be questionable. A similar phenomenon is called "intermediate resistance" when it occurs with monogenetic resistance in the breeding industry.

Seed savers harvest seeds and sell seeds to others: this is a necessary prerequisite for the conservation of diversity in situ/on farm. Registering them is not possible, not desired and also not required. Only from a certain size and possibly with a commercial perspective they register a company for certain administrative purposes, e.g. tax payment or staff employment. Only then, they may be able to fulfill the large list of obligations defined in many articles of the Plant Health Regulation, which come along with registration as "Operator".

### **Internationally binding agreements regarding in situ/on-farm conservation**

Cultivated plants cannot be adequately conserved without people who grow and multiply them in fields and gardens, and make plant material and knowledge publicly accessible. With respect to this "in situ/on farm" conservation (that includes gardens), gene banks represent a fallback solution, where only a part of cultivated species and varieties are conserved in small amounts, without regeneration over as long periods as possible.

People have since the beginning of agriculture freely saved, selected, exchanged and/or sold seeds, as well as used and reused them to produce food. In recent decades, states affirmed these customary rights by adopting the Convention on Biological Diversity (CBD) and its Protocols, the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) and the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP).

- The promotion of in situ/on farm conservation has been internationally recognized since 1995 in the first FAO Global Plan of Action as a necessary basis for the conservation of cultivated plant diversity.

- The ITPGRFA obliges its signatory states to support favorable framework conditions for in situ/on farm conservation in gardens and fields.
- UNDROP is a specification of the Universal Declaration on Human Rights (UN Charter). Article 19 concerns the rights to seeds of peasants and other people working in rural areas. Their rights are described as well as the obligation of States to guarantee these rights.
- UNDROP has been adopted by the UN General Assembly with the necessary 2/3 majority of UN Member States. Although among them, there were only two EU Member States who voted for it, UNDROP was adopted.
- According to the UN Charter, all Member States have to implement in good faith international instruments adopted by the General Assembly, such as UNDROP. UN Member States have to prioritize human rights norms before any other interests, in both international and national law (UN Charter Article 103).
- The EU Parliament and the European Economic and Social Committee have asked the EU Member States in 2018 to support UNDROP and its implementation. (see para 8 in [www.eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C\\_.2020.118.01.0015.01.ENG](http://www.eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2020.118.01.0015.01.ENG) and [www.eesc.europa.eu/fr/documents/resolution/declaration-rights-peasants-and-other-persons-working-rural-areas](http://www.eesc.europa.eu/fr/documents/resolution/declaration-rights-peasants-and-other-persons-working-rural-areas))

In situ/on farm conservation is depending on the rights to save, use, sell and exchange seeds.

### **What would NOT solve the problems**

If seed savers withdrew from web shop sales, the challenges posed by the Regulation would not be solved. It would be hard to understand why in the 21<sup>st</sup> century, the sale of small amounts of seed of rare diversity varieties is not possible via web shop, but possible with extra personal trips, that may be time-consuming, costly and may contribute to global warming.

To not sell seeds of species that are listed as host plants susceptible to pests, will not solve the problem either. Rightly, tomato and bean are listed as host plants. But they also are easy to multiply, they look attractive, and their variety diversity is huge. For these reasons, tomato and bean can almost always be found in seed savers' catalogues. They are dubbed as „diversity diplomats“, because people get interested in many other species once they have started to grow and multiply tomato or bean varieties. The cultivation of numerous varieties and many other species not even listed as host plants for pests would sooner or later be reduced to a fraction of what is grown today in gardens and fields, if seed savers that work without employees had to register as operators and fulfil the plant health obligations accordingly.

Also, a lighter regulation would not help this group, as it would still require the registration of people engaged in the conservation of diversity. Registration is a major hurdle to people who want to start and try variety conservation, long before they may consider it as a profession or

enterprise, hire staff and take other official steps anyway. In situ/on farm conservation and related educational work is carried out by numerous individuals. It is a social movement whose actors are not institutionalized and for which a registration would not be appropriate.

A recovery scheme for costs, e.g. for services charged by the competent authorities or authorized operators, would NOT help, because it does not reduce the administration work associated to the Plant Health Regulation. It would even mean additional administration work to recover the costs incurred.

### **Our suggestions for solutions**

The following three rules would, together, provide an adequate and proportionate way to address the objectives of the Plant Health Regulation 2016/2031 without harming in situ/on farm conservation by seed savers without employees:

**An exemption of seed savers working without employees** from the obligation to register as operator with plant health authorities, and from using plant passports in case of distance sale to end users.

**The obligation applicable to every citizen under Article 15**, to report quarantine pests, naturally applies to seed savers as well. Our Umbrella Association is ready to forward relevant information to our network in German speaking countries.

**Reference to the Directive on Electronic Commerce:** It is necessary to clearly refer, regarding distance sale, in the Plant Health Regulation and when implementing it, to Directive 2000/31/EC (directive on electronic commerce). This would exempt each web shop sale below a certain sum (in Germany: 40€) from Plant Health obligations. Most seed savers hardly ever sell seed for more than this amount.

Dear Madam, dear Sir,

Our Umbrella association is currently working hard to convince seed savers not to give up their activities. Many feel they can no longer continue to make diversity varieties available in a legal manner, and they do not want to do it illegally. Kindly help biodiversity conservation by clearly exempting seed savers without employees from the obligation to register as operator and associated obligations.

In situ/on farm conservation is a necessity. Imposing the registration obligation on seed savers using web shops could deeply damage diversity conservation. This risk seems to be far larger

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than the risk that diversity varieties may be posing to commercial agriculture. In view of the small amounts of seeds involved, registering all seed savers would do little to help avoid plant health problems in the EU.

There is no sufficient reason to assume for seed savers the same pest spreading risks that are associated with industrial amounts or international seed trade or shuttle multiplication over different climate zones outside the EU. Also, as far as we know, scientific studies that would establish the necessity to regulate seed savers working without employees, do not exist.

Our work is today not only tolerated but valued by society. The benefits are priceless, while proof of any harm is rare. The conditions of our work may not have been known very well in the past, but nowadays we may have hopefully well communicated the situation most actors in on farm-conservation are dealing with. Registering individual actors and subsequent obligations, such as required by plant health in case of distance sale, would deter them, many of them would stop or not even start growing diversity.

We are looking forward to receive your report on the Evaluation with regard to several Articles of the Plant Health Regulation. We are ready to provide further details on the points mentioned in our feedback or any other questions you may have.

Kindly acknowledge receipt of both our letters (6 May via JRC, and 25 November 2021).

Our Umbrella Association would still very much appreciate an opportunity to discuss with you, in person or online, the points made as well as your approach to solve the problems, on a day and time of your preference. We also stand ready for further information and consultation. Thank you very much for your consideration.

Sincerely,



Dr. Susanne Gura  
Board Member, Dachverband Kulturpflanzen- und Nutztiervielfalt e.V.

**Members of the Dachverband Kulturpflanzen- und Nutztiervielfalt e.V.**

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