

**DIRECTIVES
FROM THE MINISTRY OF AGRICULTURE AND RURAL AFFAIRS**

DIRECTIVE ON THE IMPLEMENTATION PRINCIPLES OF FARMERS' EXCEPTION

SECTION ONE

Goal, Content, Legal Basis and Descriptions

Goal

Article 1- On condition that the directive shall not be contrary to the capacity of the holder of right, this directive defines the rights and responsibilities of the plant breeder, farmer and the holder of right. The aim is to protect and support the agricultural production if the farmers utilize the multiplication material of a variety of the crops which is obtained from the land cultivated by the farmer himself and which shall be protected for the production to be materialized on the land cultivated by him.

Content

Article 2- This directive covers the rules on the plant species mentioned in Article 17 of the Law, and the rules which are necessary in order to make the farmers benefit from the exceptions provided within the framework of the Law.

Legal Basis

Article 3- This Directive is prepared according to the Article 17 of the Law on the Protection of Plant breeders' Rights for New Plant Varieties, 5042.

Descriptions

Article 4- In this Directive,

- a) **Ministry:** Ministry of Agriculture and Rural Affairs
- b) **General Directorate:** General Directorate of Protection and Control
- c) **Law:** Law on the Protection of Plant breeders' Rights for New Plant Varieties, 5042
- d) **Plant Breeder:** The person who breeds, finds and grow the new plant variety,
- e) **Holder of Right:** Plant breeder and his legal successors
- f) **Variety:** Irrespective of the fulfillment of the necessary conditions for the provision of the plant breeders' rights, the plant class that is in the smallest taxonomic section which is accepted as the unit in accordance with the conformity to the unchanging multiplication, and which differentiates between the other genotypes in the same species with at least one typical feature, and which is described with the emergence of some of the characteristics developed by one or more than one genotype.
- g) **Seed:** Vegetative and generative plant sections that are utilized for the multiplication of the plants.
- h) **Multiplication or propagation:** Acquisition of the next generation plants which have the same characteristics with the main or parent plants
- i) **Production and reproduction:** Plant cultivation to obtain product or multiplication material.
- j) **Multiplication material:** Whole plant or some parts of the plant that are utilized for the multiplication.
- k) **Registration:** Registration of the varieties within the framework of the Law concerned, in the register of the Plant Breeders' Rights.
- l) **Register:** Register of matters on the application of plant breeders' rights and the registry of the rights.
- m) **List:** The list prepared by the General Directorate covering the seed preparers
- n) **Seed Preparer:** The person who implements manipulation works on his crops and/ or the crops and the multiplication materials of the other farmers,
- o) **Farmer:** The person who deals with the crop production on behalf of himself on his property or on the land leased or the land provided by him via the concept of sharecropper.
- p) **Small scale farmer:** The farmer who cultivates the crop group or species mentioned in the Article 8 as much as the agricultural lands demonstrated in Annex 1 or the smaller land than those; or the farmer who meets the criteria which is comparable for the other species,
- q) **Organization for the holders of right:** The union which is established by the holders of right and which represents the holders of right,

- r) **Marketing year:** The period which starts on 1st of July and which ends on 30th of June of the following year,

SECTION TWO

Protection of Interest, Holder of Right, Farmers' Exception and Farmer

Protection of Interest

Article 5- The rules identified in this directive shall be implemented in such a way that the legal interests of the plant breeders and/ or holder of right and the farmer shall be protected on a mutual basis.

In line with the goals of the first paragraph, it is essential to establish a balance amongst the interests and balance between the goal of any rule identified in the Directive, and the real impact that may occur in the implementation of this rule. In case one or more than one interest would be influenced negatively because of the negligence of these principles, this shall not mean "the legal rights are protected".

Holder of right

Article 6- The rights and the responsibilities of the holder of right emanating from the provisions of the Article 14 of the Law shall not be able to be transferred to the other persons except for the right which he still receives a sum from.

The rights can be utilized by the holders of right by themselves or by the organization for holders of right collectively which are founded by the holders of right. The organization for the holders of right can only act on behalf of its members and the persons who have authorized it on written basis.

The holders of right or the organizations for holders of right or their representatives in the UPOV member countries within the framework of this Directive or in the other countries according to the principles of reciprocity shall reside within the boundaries of the country or an office or a facility shall be present in the country.

Farmers and Responsibilities

Article 7- The responsibilities of farmers include the subjects mentioned below.

- a) The farmers' authorities and responsibilities originating from the principles in the Article 17 of the Law and in this Directive or from the principles concerning the implementation of this Directive cannot be transferred to the other persons except for the cases of transfer of his land by the farmer.
- b) Land owned or cultivated by the farmer: It is the land owned the farmer on which he deals with crop production under his responsibility on behalf of him or it is the land leased or cultivated by the farmer with the concept of sharecropper.
- c) Within the framework of the paragraph "a", it means the transfer of the whole or some part of the land to the other persons' utilization.
- d) In case of the demand for fulfillment of a responsibility, the person or persons who are the property owner/s of the land are considered as farmers. Aforesaid property owner shall have to prove that the farmer who is going to fulfill the responsibilities according to the paragraph "a", "b" and "c" of this Article is another person excluding the property owner of the land.

Farmers' Exception

Article 8- In order to protect and support the agricultural production, the holder of the right has the power to utilize the multiplication material of a protected variety for the new productions that the farmers shall make on the land they cultivate thanks to the product gained by them on the land they cultivate except for the hybrid and synthetic varieties on condition that it would not be against the authorities mentioned in the first paragraph of the Article 14 of the Law.

The provisions of this Directive are applied on the below-mentioned plant species.

- a) Cereals;
 1. Wheat (*Triticum* spp.)
 2. Barley (*Hordeum vulgare* L.)
 3. Paddy (*Oryza sativa* L.)

4. Oats (*Avena sativa* L.)
5. Rye (*Secale cereale* L.)
6. Triticale (*Triticosecale*)
- b) Edible Leguminosae**
 1. Dry bean (*Phaseolus vulgaris* L.)
 2. Chickpea (*Cicer arietinum* L.)
 3. Lentil (*Lens culinaris* Medik)
 4. Pea (*Pisum sativum* L.)
 5. Horsebean (*Vicia faba* L.)
- c) Forage Crops**
 1. Alfalfa (*Medicago sativa* L.)
 2. Sainfoin (*Onobrychis sativa* L.)
 3. Vetch (*Vicia sativa* L.)
 4. Clover (*Trifolium* spp.)
- d) Industrial Crops**
 1. Cotton (*Gossypium* spp.)
 2. Tobacco (*Nicotiana tabacum* L.)
 3. Potato (*Solanum tuberosum* L.)
 4. Colza (*Brassica napus* L.)
 5. Groundnut (*Arachis hypogaea* L.)
 6. Soybean (*Glycine Max* L.)

The first paragraph is implemented in such a way that the rights of the holder of the right and of the farmers shall be protected.

Small Scale Farmer

Article 9- The small scale farmers benefit from the farmers' exception. The small scale farmers are the ones who have the land which is smaller than the agricultural lands in Annex 1, that are calculated to produce a maximum of 92 tons of cereals from the plant groups or species mentioned in Article 8. Or these are the farmers who meet the comparable criteria for the other species. These farmers do not pay any sum to the holder of right.

The farmers or cultivators who are benefiting from the exception have to provide each and every type of information and document demanded by the holder of right. The requested information and documents must be evaluated within the framework of the principles related to the protection of personal information mentioned in Article 16 of this Directive. The holder of right may, if need be, ask for the help from the General Directorate. The information and documents related to the subject can be provided to the holder of right in return for the fee determined by the General Directorate. If the General Directorate rejects giving information and documents demanded the General Directorate shall notify the holder of right of its decision on rejection in black and white with the motives.

The land utilized for plant production is the land on which the plants are continuously produced. Especially the forestry lands, the pastures and permanent grasslands which are established for more than five years cannot be considered as the land for plant production.

If the land utilized by the farmer for production is temporarily or continuously provided with subsidy or compensation in the marketing year when the holder of right is going to be paid the sum, this land is considered as the plant production land.

In case of a conflict, the farmer who claims to be a small scale farmer shall prove that he has the characteristics of the farmers in this category.

Sum to Be Paid to the Holder of Right

Article 10- The farmers who utilize the protected variety and who are outside of the exception pay a certain amount of sum to the holder of right. The level of the sum to be paid to the holder of right is determined with a contract to be signed by the holder of right and the related farmer.

In case such a contract and an agreement is not signed the sum is calculated for the contract based production of the same or similar variety in the same or similar region in such a way that it shall not exceed the price paid to the contract based production of the same or similar variety in the in the lowest certified seed class.

Personal Responsibility in the Payment

Article 11- When the farmer starts to use the seed out of the harvested crop of the protected

variety in order to make agricultural production in his land the sum he shall pay shall be determined with the contract to be made between the holder of right and the farmer. However if this is not provided, the personal responsibility of the farmer shall commence as of the harvest day of the seed planted.

The time and the form of the payment between the holder of right and the farmer can be determined. However if this is not provided the payment must be completed within six months following the harvest date for each and every crop.

SECTION THREE

Protection of Information and Personal Information

Information to Be Provided by the Farmer

Article 12- The information and the other subjects to be provided by the farmer within the framework of this Directive are mentioned below.

a) The information to be provided by the farmer to the holder of right shall be mentioned in the contract signed between the holder of right and the farmer.

b) In case there is not such a contract the farmer shall provide the text containing related information to the holder of right when it is demanded by the holder of right.

The information to be given by the farmer is mentioned below.

1- Name, place of residence of farmer and the address of land,

2- Whether the holder of right uses one or more than one variety as seed from the crop gained by the farmer on the land he cultivates,

3- The amount utilized by the farmer out of the crops of the related variety or varieties he obtained, if the farmer has made such utilization,

4- Under the same conditions, if present, name and addresses of the person or persons who prepare the material concerned for the farmer in order to plant,

5- If the information gained from the 2nd, 3rd and 4th sub-paragraphs of the paragraph “b” of this article is not verified according to the Article 18, the amount of production material of the utilized varieties in question, and name or addresses of the person or persons who procure these,

6- Whether the farmer has utilized the variety without paying any sum for the goals mentioned in the Article 14 of the Law; if he has, how long he has been using it,

c) The information mentioned in the 2nd, 3rd, 4th and 5th sub-paragraph of the paragraph “b” of this article is related to the present marketing year and the previous three marketing years. And upon the demand of the holder of right, it is going to cover the information belonging to these years in accordance with the provisions of the paragraph “d” and “e”.

Yet if the variety of which the information is demanded is planted for the first time in that region the information belonging to the previous years shall not be demanded.

d) In his demand, he holder of right shall mention his name and address, and the variety or varieties on which he requires information. Upon the demand of the farmer, this demand shall be in black and white and the proof mentioning he is the holder of right shall be attached.

e) If a demand which is not directly sent to the related farmer is sent to the below-mentioned institutions or persons in line with the contract signed beforehand the letter is considered to be sent to the farmer.

1- To the organizations or cooperatives which the farmer is member of,

2- To the ones who prepare seed concerning the farmers who receive seed preparation service,

3- To the ones who provide the varieties of the holder of right and the contract based production material,

f) It is not a must to identify every farmer one by one for a demand which is done according to the provisions of the paragraph “e”. If the farmers’ organizations, cooperatives, seed cultivators or sellers are authorized by the farmers they can send the information belonging to the related farmers.

Information Requested from the Seed Preparers

Article 13- The below-mentioned situations include the information and the subjects to be delivered by the seed preparers.

a) The information to be delivered by the seed preparer to the holder of right shall take place in the contract to be signed between the holder of right and seed preparer.

b) In case such a contract is not signed or cannot be implemented, upon the demand of the holder of right, the seed preparer has to provide the related information to the holder of right. The below-mentioned subjects shall be considered as the “related information”.

1) The name, place of residence of the seed processor, name and address of his workplace,

2) If the holder of right has prepared the harvest crop of one or a few of his varieties as seed, the information concerning these varieties

3) If the seed processor has fulfilled the above-mentioned service, the information with regard to the amount of the crop he processed, the amount of the processed material as a result, the name of the places and the dates of the processes,

4) Name of the person/s receiving these services mentioned in the third sub-paragraph, the amount of crop processed on the name of these persons,

c) The holder of right may ask for the information required in the 2nd, 3rd and 4th sub-paragraphs of the paragraph “b” of this article for the present marketing year or for the previous three marketing years.

d) The provisions of the paragraph “d” of the Article 12 shall be implemented for the information requested from the seed preparer.

e) If a demand which was not directly sent to the related seed preparer and if it is sent to the below-mentioned organizations or persons in accordance with the previously signed contract it shall be considered to be sent to the seed preparer.

1- To the national, regional or local organizations which the seed preparer is the member of,

2- To all of the seed preparers who prepare seed for the farmers in the previous marketing years (In order to start in the present marketing year and the marketing year mentioned in paragraph (c))

f) There is no need to identify each and every seed preparer for a demand provided in line with the provisions of paragraph “e”. Farmers’ organizations shall be authorized by the seed preparers. And these organizations shall send the required information to the holder of right.

Information to be provided by the Holder of Right

Article 14- The below-mentioned situations include the information and the subjects to be delivered by the holder of right.

a) The information to be delivered by the holder of right to the farmer shall take place in the contract to be signed between the farmer and the holder of right.

b) In case such a contract is not signed or cannot be implemented, the holder of the right has to provide the related information to the farmer upon the demand of the farmer whom the holder of right wants the price to be paid by according to the Article 10. The below-mentioned subjects are considered as the related information:

1) The amount of price which is paid in the certified seeds of lowest class of the same variety which is produced on contractual basis in the area where the farmer's land is.

2) The amount which is identified for this price as to the production in the lowest certified seed class of the same variety in this area is accepted, if there is no production of the same variety in the area where the farmer's land is and if there is not a uniform implementation for the amount of this price in the other regions,

Information to be required from the Official Organizations

Article 15- The information to be required from the official organizations includes the below-mentioned documents and information.

a) The holder of right who demands the information on the amount of the planted species and varieties mentioned in this Directive, and the outcomes obtained from the utilization of those should provide this demand to the official organizations in black and white. The holder of right shall mention the name and address, the type of information and the name of the varieties he demands. And he shall attach the certificate indicating he is the holder of right.

b) The official organization may not provide the information demanded under the conditions mentioned below provided that this is not against the provisions of the Article 16.

1- If he is not in charge of monitoring the agricultural production,

2- If the privacy rules on the working principles of the official organizations prohibit the provision of this information to the holders of right,

3- If the disclosure of the information collected is not compatible with the confidentiality

principle mentioned the laws.

4- If the information required is not collected or is not present,

5- If this information is about the varieties that are not particularly owned by the holder of right,

c) The official organizations shall not make any discrimination among the holders of right when providing information. The official organization can permit the holder of right to have copy of the document containing information that the holder of right requires. Nevertheless it shall pay attention to preserve the record which would make the persons whose personal information is protected in line with the provisions of the Article 16 be known.

d) If the official organization decides not to give the demanded information it shall inform the holder of right on written basis with the motives.

Protection of Personal Information

Article 16- According to the provisions of the Article 12, 13, 14 and 15 of this Directive the persons who provide or receive information are under protection concerning the utilization of personal information or the free pass of the personal information to several hands.

If these persons have acquired this information within the framework of the provisions of the Article 12, 13, 14 and 15 of this Directive they cannot give this information to others or use it inconveniently to the purpose of the utilization of authority which is given in the Article 17 of the Law unless they get advance permission beforehand from the person providing information.

SECTION FOUR

Other Obligations and Seed Preparers

Obligations Concerning Seed Preparation Outside of Farmer's Land

Article 17- Except for the cases mentioned below, the farmer cannot take the crop he harvested of a protected variety outside his enterprise in order to process the crop as seed without getting the permission from the holder of right.

1) If the farmer has taken the measures which shall make sure that the material to be processed as seed and the material to be obtained as a result of the process are shall be the same,

2) If the farmer makes sure that the harvested crop shall be processed as seed by a seed preparer, the farmer shall be able to deal with the preparation of seed outside his land.

Seed Preparers and Processors

Article 18- The seed preparer is;

- the person who informs the authorized official offices, authorized farmers' organizations, organizations of holders of right and the organizations for seed preparers that he is dealing with seed preparation of varieties that are still registered or protected by the Law, and that he demands to be included in their list of seed preparers, or

- the person who shall implement the measures, on behalf of the farmer, which shall make sure that the crop to be processed as seed shall be the same product after this process.

The General Directorate defines the qualifications required for the inclusion into the seed processors' list.

The lists indicated shall be published or they are going to be open to the organizations for holders of right, seed processors, and to the farmers' organizations.

SECTION FIVE

Monitoring by Holder of Right and Method of Monitoring

Monitoring of Farmers

Article 19- As described by this Directive, the below-mentioned subjects are valid for the monitoring of the farmers concerning the convenience to the provisions of the Article 17 of the Law.

a) In order to make the farmer fulfill his responsibilities, the holder of right may require that the farmer provides,

1- invoices, labels used which support the information he submits according to the Article 12; and with regard to the activity in the first paragraph of the Article 18:

The holder of right may require the farmers to provide;

- the evidence on the service if a third person prepares the harvested crop of the variety belonging to the holder of right as seed

- the evidence on the provision method of production material of a variety belonging to the holder of right within the framework of Article 12, paragraph (b), and sub-paragraph 5 of this Directive

2) Within the scope of the Article 7 this Directive, the holder of right may require the farmer to provide the necessary evidence or make them ready.

b) If it is recommended to preserve the used labels belonging to the production material which is mentioned in Article 12 and the labels of this material, the documents and evidences mentioned in paragraph "a" of this article shall have to be preserved for at least three marketing years mentioned in Article 12.

Monitoring of Seed Preparers

Article 20- The subjects related to the monitoring of the seed preparers are mentioned below.

a) The seed preparers can be monitored by the holder of right concerning the convenience to the Article 18 of the Law. Upon the demand of the holder of right, the seed preparer opens the information within the framework of Article 13, invoices, evidences utilized in the identification of the material, the evidence like the samples from the processed crop to the examination of the holder of right.

b) The seed preparers shall preserve the documents and evidences mentioned in paragraph "a" for a period indicated in paragraph (c) of Article 13.

Monitoring Method

Article 21- The monitoring is fulfilled by the holder of right or the holder of right makes someone monitor. He can ask for assistance from the farmers' unions, cooperatives, from the unions of seed preparers or from the other agricultural organizations.

Within framework of agreements signed between the nationally, regionally or locally established organizations for farmers, seed preparers or holders of right, the conditions with regard to the monitoring methods shall be established. And if the General Directorate is informed by the officers in the related organization of these conditions and if these conditions are published, they shall be utilized as guidelines.

SECTION SIX

Violation and Special Provisions

Violation

Article 22- As described in this Directive holder of right can utilize his right against a person who is disobeying the conditions and the limits which are bound by the limitations within the framework of the Article 17 of the Law.

Special Provisions

Article 23- In case any person mentioned in the Article 22 of this Directive does not fulfill the responsibilities assumed in line with the Article 17 of the Law the holder of right can bring a suit against this person.

Validity

Article 24- This Directive shall come into force when it is published.

Executive function

Article 25- The Minister of Agriculture and Rural Affairs executes the provisions of this Directive.

Table 1: The criteria which can be compared for the plant species within the content of the farmers' exception

| Crop Group | Regions | Production Land (da) | Coefficient* |
|-------------------|---|-----------------------------|---------------------|
| Cereals | | | |
| Wheat | -Central and Eastern Anatolian Regions | 300 | 1.00 |
| | -Southeastern Anatolian Region and Passage Regions | 225 | 1.00 |
| | -Mediterranean, Marmara, Black Sea and Aegean Regions | 160 | 1.00 |
| Barley | -Central and Eastern Anatolian Regions | 290 | 0.97 |
| | -Southeastern Anatolian Region and Passage Regions | 220 | 0.96 |
| | -Mediterranean, Marmara, Black Sea and Aegean Regions | 164 | 1.02 |
| Paddy | | 114 | 0.50 |
| Oats | -Central and Eastern Anatolian Region | 280 | 0.93 |
| | -Southeastern Anatolian Region and Passage Regions | 224 | 0.98 |
| | -Mediterranean, Marmara, Black Sea and Aegean Regions | 186 | 1.16 |

| | | | |
|---------------------------|---|-----|------|
| Rye | -Central and Eastern Anatolian Region | 321 | 1.07 |
| | -Southeastern Anatolian Region and Passage Regions | 265 | 1.16 |
| | -Mediterranean, Marmara, Black Sea and Aegean Regions | 225 | 1.41 |
| Triticale | -Central and Eastern Anatolian Region | 281 | 0.94 |
| | -Southeastern Anatolian Region and Passage Regions | 209 | 0.91 |
| | -Mediterranean, Marmara, Black Sea and Aegean Regions | 161 | 1.00 |
| Edible Leguminosae | | | |
| Dry Bean | -Central and Eastern Anatolian Region | 240 | 0.80 |
| | -Southeastern Anatolian Region and Passage Regions | 189 | 0.83 |
| | -Mediterranean, Marmara, Black Sea and Aegean Regions | 150 | 0.94 |
| Chickpea | -Central and Eastern Anatolian Region | 250 | 0.83 |
| | -Southeastern Anatolian Region and Passage Regions | 200 | 0.87 |
| | -Mediterranean, Marmara, Black Sea and Aegean Regions | 157 | 0.98 |
| Lentil | -Central and Eastern Anatolian Region | 271 | 0.90 |
| | -Southeastern Anatolian Region and Passage Regions | 237 | 1.03 |
| | -Mediterranean, Marmara, Black Sea and Aegean Regions | 211 | 1.32 |
| Pea | -Central and Eastern Anatolian Region | 150 | 0.50 |
| | -Southeastern Anatolian Region and Passage Regions | 136 | 0.60 |
| | -Mediterranean, Marmara, Black Sea and Aegean Regions | 125 | 0.78 |

| | | | |
|------------------|---|-----|------|
| Horsebean | -Central and Eastern Anatolian Region | 114 | 0.38 |
| | -Southeastern Anatolian Region and Passage Regions | 104 | 0.46 |
| | -Mediterranean, Marmara, Black Sea and Aegean Regions | 96 | 0.60 |
| Forage Crops | | | |
| Alfalfa | -Central and Eastern Anatolian Region | 171 | 0.57 |
| | -Southeastern Anatolian Region and Passage Regions | 143 | 0.62 |
| | -Mediterranean, Marmara, Black Sea and Aegean Regions | 112 | 0.70 |
| Sainfoin | -Central and Eastern Anatolian Region | 240 | 0.80 |
| | -Southeastern Anatolian Region and Passage Regions | 200 | 0.87 |
| | -Mediterranean, Marmara, Black Sea and Aegean Regions | 160 | 1.00 |
| Vetch | -Central and Eastern Anatolian Region | 240 | 0.80 |
| | -Southeastern Anatolian Region and Passage Regions | 200 | 0.87 |
| | -Mediterranean, Marmara, Black Sea and Aegean Regions | 160 | 1.00 |
| Clover | -Central and Eastern Anatolian Region | 171 | 0.57 |
| | -Southeastern Anatolian Region and Passage Regions | 143 | 0.62 |
| | -Mediterranean, Marmara, Black Sea and Aegean Regions | 112 | 0.70 |
| Industrial Crops | | | |
| Cotton | -Southeastern Anatolian Region and Passage Regions | 171 | 0.75 |
| | -Mediterranean, Marmara, Black Sea and Aegean Regions | 129 | 0.80 |

| | | | |
|-----------|---|-----|------|
| Tobacco | -Central and Eastern Anatolian Region | 74 | 0.25 |
| | -Southeastern Anatolian Region and Passage Regions | 61 | 0.26 |
| | -Mediterranean, Marmara, Black Sea and Aegean Regions | 58 | 0.36 |
| Potato | -Central and Eastern Anatolian Region | 41 | 0.14 |
| | -Southeastern Anatolian Region and Passage Regions | 36 | 0.16 |
| | -Mediterranean, Marmara, Black Sea and Aegean Regions | 32 | 0.20 |
| Colza | -Central and Eastern Anatolian Region | 267 | 0.89 |
| | -Southeastern Anatolian Region and Passage Regions | 232 | 1.01 |
| | -Mediterranean, Marmara, Black Sea and Aegean Regions | 218 | 1.36 |
| Groundnut | -Central and Eastern Anatolian Region | 144 | 0.48 |
| | -Southeastern Anatolian Region and Passage Regions | 120 | 0.52 |
| | -Mediterranean, Marmara, Black Sea and Aegean Regions | 109 | 0.68 |
| Soybean | -Southeastern Anatolian Region and Passage Regions | 281 | 1.23 |
| | -Mediterranean, Marmara, Black Sea and Aegean Regions | 243 | 1.52 |

*The coefficient stands for the land which is equal to 1 decar of wheat.