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## Regulation on the use of seeds (ECPRD Request No. 4635)<sup>1</sup>

Regulacje dotyczące użycia nasion (wniosek ECPRD nr 4635)

The farmers are allowed, under certain conditions, to use seeds from harvest for sowing. Only the breeder who holds an exclusive right to a plant variety can reproduce it and offer for sale. The breeder can make an agreement with a seed company and sign a license contract. Commercial preparation for sowing or planting a variety protected by an exclusive right also requires breeder's consent.

**Keywords:** agriculture, seed production

Rolnicy mogą, pod pewnymi warunkami, wykorzystać do siewu nasiona ze zbiorów. Tylko hodowca posiadający wyłączne prawo do odmiany może ją rozmnażać i sprzedawać. Hodowca może zawrzeć umowę z firmą nasienną i podpisać umowę licencyjną. Komercyjne przygotowanie do siewu lub sadzenia odmiany chronionej wyłącznym prawem również wymaga zgody hodowcy.

**Słowa kluczowe:** rolnictwo, produkcja nasion

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### **1. May farmers produce seed for their own use themselves from the seed they have inherited or obtained through exchange with other producers? Also, are there any restrictions or exceptions that would apply to large, small and medium-sized agricultural producers in regulating this issue?**

The possibility of using seeds from harvest as seeds for sowing is provided for in Art. 23 of the Act of June 26, 2003, on the legal protection of plant varieties (consolidated text: Journal of Laws 2021, item 213):

Art. 23. [The right to use harvest material as seed of a variety protected by exclusive law]:

1. The holder of agricultural land may, after paying the fee to the breeder, use harvested material as seed of a variety protected by an exclusive right, if he obtained this material on his farm and uses it on the territory of that farm („ex-

<sup>1</sup> *Regulation on the use of seeds (ECPRD request no 4635)* prepared on August 10, 2021, as part of cooperation in The European Centre for Parliamentary Research and Documentation (Europejskie Centrum Badań Parlamentarnych i Dokumentacji); BAS-WAPL-1984/21.

clusive right” means the breeder’s right to protect a bred or discovered and introduced variety, as well as to use it for profit).

2. The right to use the material from the collection as the material referred to in sec. 1:

1) concerns the seeds of the following plants:

- a) horse bean,
- b) pea,
- c) barley,
- d) maize,
- e) common (oil) flax,
- f) alfalfa,
- g) narrow-leaved lupine,
- h) yellow lupine,
- i) oats,
- j) durum wheat,
- k) common wheat,
- l) triticale,
- m) rape,
- n) turnip rape,
- o) vetch,
- p) rye,
- q) potato,
- r) soybean;

2) does not apply to hybrid varieties and varieties resulting from the free crossing of lines of foreign pollen species (synthetic varieties).

3. Without paying the fee referred to in sec. 1, material from the harvest as seed of a variety protected by an exclusive right may be used by owners of agricultural land with an area of:

- 1) up to 10 ha – in the case of a variety protected by an exclusive right, which is a variety of plants referred to in sec. 2 point 1 lit. q;
- 2) up to 25 ha – in the case of a variety protected by an exclusive right, which is a variety of plants referred to in sec. 2 point 1 lit. a–p and r.

3a. A breeder who does not collect the fee referred to in sec. 1, announces on their website or on the website of breeders’ organizations information containing following indication:

- 1) a variety protected by an exclusive right, for which s/he does not charge this fee;
- 2) the period during which s/he does not charge this fee.

3b. The holder of agricultural land may use harvested material as seed of a variety protected by an exclusive right without paying the fee referred to in sec. 1, to the extent indicated in the information referred to in sec. 3a.

4. The amount of the fee referred to in sec. 1, the manner and date of its payment are determined in the contract concluded between:

- 1) a breeder and the owner of agricultural land or
  - 2) a breeder and an organization representing the owners of agricultural land, or
  - 3) the organization of breeders and the owner of agricultural land, or
  - 4) the organization of breeders and the organization representing the owners of agricultural land
- however the amount of the fee should not exceed the amount of the license fee for a given category of seed, determined by the breeder of this material.

4a. The breeder who charges the fee referred to in sec. 1, when purchasing seed material, announces this information only once on their website or on the website of breeders' organizations.

**2. Seed processing; i.e. is it mandatory that seeds be processed (dried, cleaned, calibrated, treated with plant protection products, packaged, sealed and marked) by a seed supplier registered for seed processing or may farmers process seeds on their farms?**

### **3. Obligations to be fulfilled by seed processors.**

The legal protection of plant varieties means that only the breeder who holds the exclusive right to a given variety is entitled to:

- produce or reproduce,
  - prepare for multiplication,
  - offer for sale (seeds offered for sale are usually dried, cleaned, calibrated, treated with plant protection products, packed, sealed and labeled),
  - sell or otherwise dispose of,
  - export,
  - import,
  - store
- seed of this protected variety.

Entities other than the breeder may perform the above-mentioned activities only with the consent of the authorized breeder, under the conditions specified in the written license agreement. Otherwise, an exclusive right is violated, which entails civil and criminal sanctions.

### **Licenses**

Only licensees (seed companies) are entitled to produce seed of protected varieties, acting on the basis of a written license agreement concluded with a breeder who owns a specific variety or plant varieties.

After the end of the sowing season, the licensee settles accounts with the breeder in accordance with the concluded contract, paying the breeder a license fee.

Licensees may establish cooperation with growers by granting them sub-licenses for the production of seeds or seed potatoes of a given variety.

All plantations and the seeds collected from them are subject to multi-stage control by the State Plant Health and Seed Inspection Service (Państwowa Inspekcja Ochrony Roślin i Nasiennictwa – PIORiN), from field evaluation, through laboratory tests, evaluation of varietal identity and purity, to the evaluation of external features.

Only if they successfully complete all the stages they will be admitted to the market by PIORiN as certified seed.

### **Processors**

The protection of the exclusive right also applies to the commercial preparation of material of a protected variety for sowing or planting. Such actions also require a written license from the breeder, who holds the exclusive right to the variety.

Processing of the material from the harvest of a protected variety should take place on site at the principal-farmer's farm, who is going to use this seed for sowing (within the framework of „the agricultural derogation” – see point 1).

The transfer of harvested material for processing (e.g. for treating with plant protection products – „dressing”) outside the farm of that farmer is not allowed without the consent of the relevant breeder, unless the processor is officially registered in the seed processing activity and both the farmer and the processor have taken all measures to enable the identification of the material subjected to processing with the material obtained after processing.

At the request of a breeder or breeders' organization, the processor is obliged to submit written information about the services provided for farmers to prepare the entrusted harvest material for re-sowing or planting.

**4. The issue of what we may call „farmer's seed”, i.e. are there provisions governing the use of seed produced on an agricultural holding and then used by the agricultural holding for its own needs?**

**5. The issue of the exchange of seed which is not certified and which is not intended for placing on the market yet which is exchanged between agricultural producers.**

The term „farmer's seed” does not exist in Polish regulations. However, the holder of agricultural land may, under certain conditions, use material from the harvest as seed of a variety protected by an exclusive right, if he obtained this material on his farm and uses it on the farm (see point 1).

## **Bibliografia**

### **Akty prawne**

Ustawa z 26 czerwca 2003 r. o ochronie prawnej odmian roślin, t.j. Dz.U. 2021, poz. 213.

### **Inne**

Dane z portalu internetowego Agencji Nasiennej, <https://agencjanasienna.pl>.