



ARTEMISIA

ACCESS TO LAW, JUSTICE AND POLICY MAKERS
FOR NATURE AND HUMAN RIGHTS DEFENDERS

The recent French law on Biodiversity, Nature and Landscape

Consequences for seeds

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The context

e.g. Directive 2002/55 on vegetable species :

- Article 1

« This Directive shall apply to the production with a view to marketing, and to the marketing, of vegetable seed within the Community. »

- Article 2

“ 1. For the purpose of this Directive:

(a) ‘marketing’: shall mean the sale, holding with a view to sale, offer for sale and any disposal, supply or transfer aimed at commercial exploitation of seed to third parties, whether or not for consideration.”

The context

e.g. Directive 2002/55 on vegetable species :

- Article 1

« This Directive shall apply to the production with a view to marketing, and to the marketing, of vegetable seed within the Community. »

- Article 2

“ 1. For the purpose of this Directive:

*(a) ‘marketing’: shall mean the sale, holding with a view to sale, offer for sale and any disposal, supply or transfer **aimed at commercial exploitation** of seed to third parties, whether or not for consideration.”*

« Trade in seed not aimed at commercial exploitation of the variety, such as the following operations, shall not be regarded as marketing:

— the supply of seed to official testing and inspection bodies,

— the supply of seed to providers of services for processing or packaging, provided the provider of services does not acquire title to seed thus supplied. »

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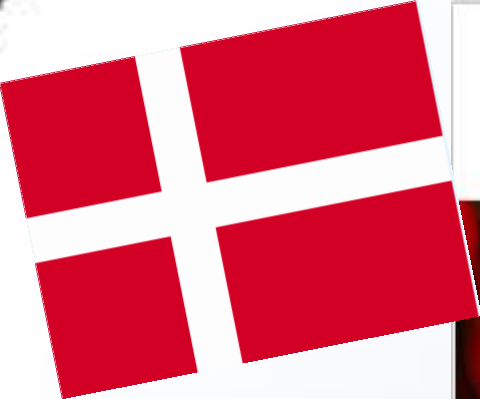
German version:

« Nicht als Inverkehrbringen gilt der Handel mit Saatgut, der nicht auf die kommerzielle Nutzung der Sorte abzielt, wie z. B. die nachstehenden Vorgänge:

- die Lieferung von Saatgut an amtliche Prüf- und Kontrollstellen;

- die Lieferung von Saatgut an Erbringer von Dienstleistungen zur Verarbeitung oder Verpackung, sofern der Erbringer der Dienstleistungen keinen Rechtsanspruch auf das gelieferte Saatgut erwirbt. »

„wie z. B.“ = „wie zum Beispiel“ → „like for example“



Miljø- og Fødevarerministeriet
NaturErhvervstyrelsen



Frø og sædekorn 2

Vejledning til hobbyavlere, frøsamlere og virksomheder om regler og praksis for handel og overdragelse af frø til ikke-kommerciel brug og bevaring

7 Handel og udveksling af frø til ikke-kommercielt brug

Du kan frit handle og udveksle frø, når det er til ikke-kommercielt brug. Frøsalg og udveksling af fx grønsagsfrø til privatpersoner er ikke omfattet af reglerne. Figuren i bilag 2 viser, hvornår frø frit kan handles, og hvornår der gælder krav til sortsregistrering og certificering som beskrevet i afsnit 6. Som frøsamler skal du følge det grønne spor i figuren.

Hvis du deler frø, skal du dog også være opmærksom på, at du ikke kommer til at bidrage til at udbrede uønskede plantesygdomme og skadedyr, se afsnit 12.3.

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7 Trade and exchange of seeds for non-commercial use

You are free to trade and exchange seeds, when it is for non-commercial use. The sale and exchange for example vegetable seed to private individuals are not covered by the rules. The figure in Annex 2 shows when seeds are freely traded, and when applicable requirements for variety registration and certification as described in Section 6. Seed savers follow the green trail in the figure. If you share seeds, you must also be aware that you are not going to help spreading unwanted plant diseases and pests, see Section 12.3.

samlere sine frø. Ikke-medlemmer er også velkomne. Flere af foreningens medlemmer har gennem årtier fremavlet forbedrede planter/frø. Frøene afleveres til NordGen. Frøene byttes indbyrdes mellem medlemmerne, evt. mod betaling af forsendelse, men sælges også på et stigende antal markeder rundt i landet.

- Et par haveentusiaster har startet en gruppe på facebook, hvor man bytter både frø og planter samt deler gode råd og erfaringer om dyrkningen. Frøene er overskud af både egenproducerede (fx på basis af mormors græskar, samt Frøsamliemes ærter og bønner) og købte frø. Det er kutyme, at man dækker forsendelsesudgifterne og i enkelte tilfælde også betaler noget for meget efterspurgte frø og planter.
- Et bibliotek har etableret en særlig ordning, hvor borgere kan låne og udveksle frø af bevaringsværdige og hobbysorter. Borgeren vil evt. ikke kunne levere frø tilbage og heller ikke i samme stand som det modtagne. Der er ikke penge indblandet. Biblioteket holder også plante- og frøbyttedage.
- Et museum har en særlig enhed for historiske sorter af blomster og grønsager. De udveksler frø og stiklinger med andre museer. De sælger frø til besøgende. Museet holder også plante- og frøbyttedage for besøgende.

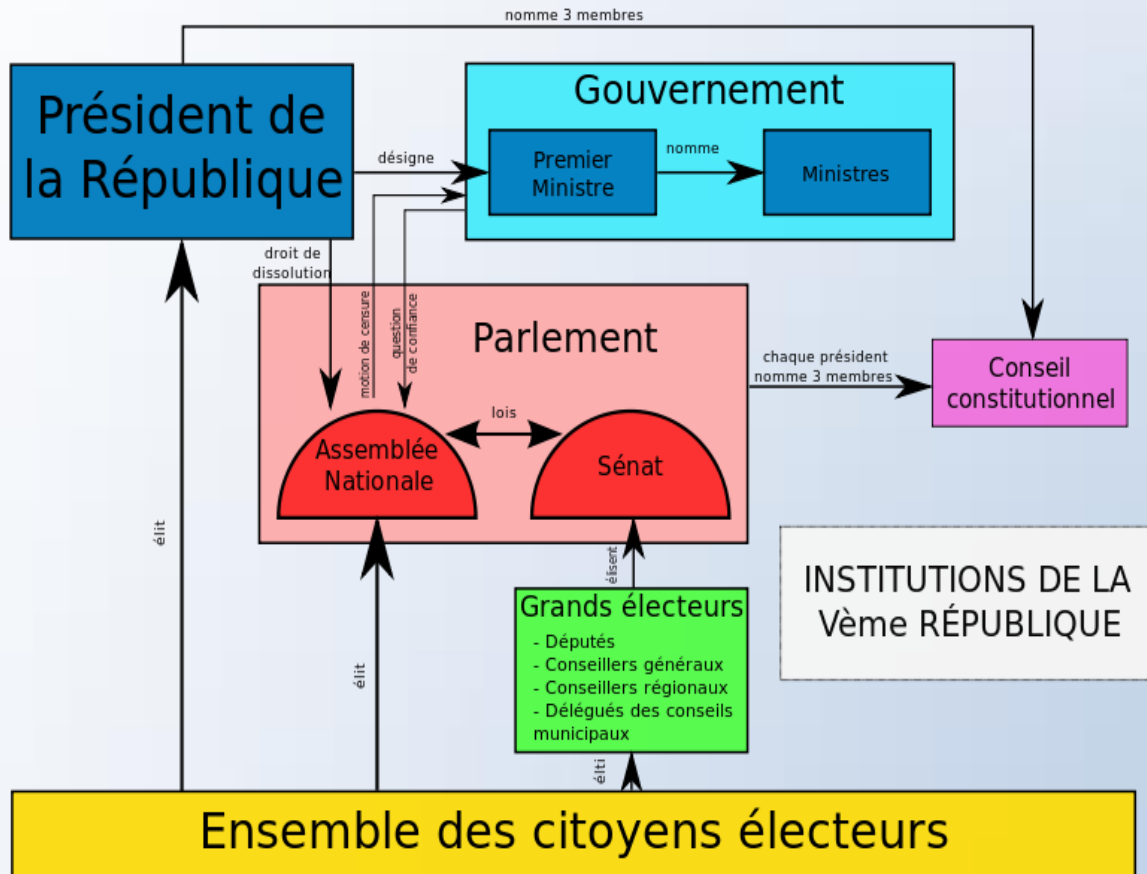


What is exempted according to the Danish practice?

- Exchange and trade of seeds for non-commercial use, i.e. seed which is not used for agricultural and horticultural production:
 - Exchange and trade of seed considered for non-commercial use
 - private use (hobby gardeners),
 - test and trials (small amounts) and
 - gene banks

This includes also hobby varieties for non-commercial use.

French institutions



The bill steps

- Project presented by the Government at the National Assembly on 26 march 2014
- National Assembly – 1st reading : 24 March 2015
- Senate – 1st reading : 26 January 2016
- National Assembly – 2nd reading : 17 March 2016
- Senate – 2nd reading : 12 May 2016
- Joint Commission (disagreement) : 25 May 2016
- National Assembly – New reading : 23 June 2016
- Senate – New reading : 11 July 2016
- National Assembly – final reading : **20 July 2016**

However :

- Referral to the Constitutional Council by more than 60 senators and 60 deputies of the group Les Républicains : 20 July 2016
- Constitutional Council's Decision : **4 August 2016**

- Publication of the law in the Official Journal: 9 August 2016

The different versions of Article 4 quater along the process

- Senate – 1st reading : 26 January 2016

Article 4 quater (nouveau)

Le 3^o de l'article L. 623-2 du code de la propriété intellectuelle est complété par les mots : « , et dont sa semence est reproductible en milieu naturel ».

Article 4 quinquies (nouveau)

Au second alinéa de l'article L. 315-5 du code rural et de la pêche maritime, les mots : « membres d'un groupement d'intérêt économique et environnemental » sont supprimés.

→ *Article 4 quater*

“The third paragraph of Article L. 623-2 of the Intellectual Property Code is supplemented by the words: ", and whose seed is reproducible in a natural environment".”

- National Assembly – 2nd reading :
17 March 2016

Article 4 quater

Après l'article L. 412-1 du code de l'environnement, il est inséré un article L. 412-1-1 ainsi rédigé :

« Art. L. 412-1-1. - La vente, la détention en vue de la vente, l'offre de vente et toute cession, toute fourniture ou tout transfert, à titre gratuit ou onéreux, de semences ou de matériels de reproduction des végétaux d'espèces cultivées destinés à des utilisateurs non professionnels ne visant pas une exploitation commerciale de la variété ne sont pas soumis à autorisation préalable. »

→ Article 4 quater

"Art. L. 412-1-1. - The sale, holding for sale, offer for sale and any transfer, supply or transfer, free of charge or onerous, of seed or propagating material of plants of cultivated species intended to non-commercial end-users not aiming to make a commercial exploitation of the variety are not subject to prior authorization."

- Senate – 2nd reading : 12 May 2016

Article 4 quater

L'article L. 661-8 du code rural et de la pêche maritime est complété par un alinéa ainsi rédigé :

« La cession, la fourniture ou le transfert, réalisé à titre gratuit, de semences ou de matériels de reproduction des végétaux d'espèces cultivées à des utilisateurs finaux non professionnels ne visant pas une exploitation commerciale de la variété n'est pas soumis aux dispositions du présent article. »

→ *Article 4 quater*

Article L. 661-8 of the Rural Code and Maritime Fisheries is supplemented by a paragraph worded as follows:

“The transfer, supply or transfer, free of charge, of seed or propagating material of plants of cultivated species to non-commercial end-users not aiming to make a commercial exploitation of the variety shall not be subject to the provisions of this Article. ”

- Senate – 2nd reading : 12 May 2016

Article 4 quater

L'article L. 661-8 du code rural et de la pêche maritime est complété par un alinéa ainsi rédigé :

« La cession, la fourniture ou le transfert, réalisé à titre gratuit, de semences ou de matériels de reproduction des végétaux d'espèces cultivées à des utilisateurs finaux non professionnels ne visant pas une exploitation commerciale de la variété n'est pas soumis aux dispositions du présent article. »

→ *Article 4 quater*

Article L. 661-8 of the Rural Code and Maritime Fisheries is supplemented by a paragraph worded as follows:

*“The transfer, supply or transfer, **free of charge**, of seed or propagating material of plants of cultivated species to non-commercial end-users not aiming to make a commercial exploitation of the variety shall not be subject to the provisions of this Article. ”*

- Joint Commission (disagreement) : 25 May 2016
- **National Assembly – New reading :
23 June 2016**

Article 4 quater

Le code rural et de la pêche maritime est ainsi modifié :

1° L'article L. 661-8 est complété par un alinéa ainsi rédigé :

« La cession, la fourniture ou le transfert, réalisé à titre gratuit ou, s'il est réalisé par une association régie par la loi du 1^{er} janvier 1901 relative au contrat d'association, à titre onéreux de semences ou de matériels de reproduction des végétaux d'espèces cultivées de variétés appartenant au domaine public à des utilisateurs finaux non professionnels ne visant pas une exploitation commerciale de la variété n'est pas soumis aux dispositions du présent article, à l'exception des règles sanitaires relatives à la sélection et à la production. » ;

→ Article 4 quater

Article L. 661-8 is supplemented by a paragraph worded as follows:

"Assignment, supply or transfer, carried out free of charge or, if carried out by an association governed by the law of 1 January 1901 on the contract of association, for consideration of seed or reproductive material of cultivated species of varieties belonging to the public domain to non-professional end-users not not aiming to make a commercial exploitation of the variety of the variety shall not be subject to the provisions of this Article, with the exception of health rules relating to the selection and the production. ";

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*"Assignment, supply or transfer, carried out free of charge **or, if carried out by an association governed by the law of 1 January 1901 on the contract of association, for consideration** of seed or reproductive material of cultivated species of **varieties belonging to the public domain** to non-professional end-users not not aiming to make a commercial exploitation of the variety of the variety shall not be subject to the provisions of this Article, with the exception of health rules relating to the selection and the production. "*

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- Senate – New reading : 11 July 2016

Article 4 quater
(Conforme)

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Article L. 661-8 is supplemented by a paragraph worded as follows:

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TEXTE ADOPTÉ n° **803**

« Petite loi »

—

ASSEMBLÉE NATIONALE

CONSTITUTION DU 4 OCTOBRE 1958

QUATORZIÈME LÉGISLATURE

SESSION EXTRAORDINAIRE DE 2015-2016

20 juillet 2016

PROJET DE LOI

pour la reconquête de la biodiversité, de la nature et des paysages.

(Texte définitif)

Efforts made

- Kokopelli movies + Fb and mailing campaign

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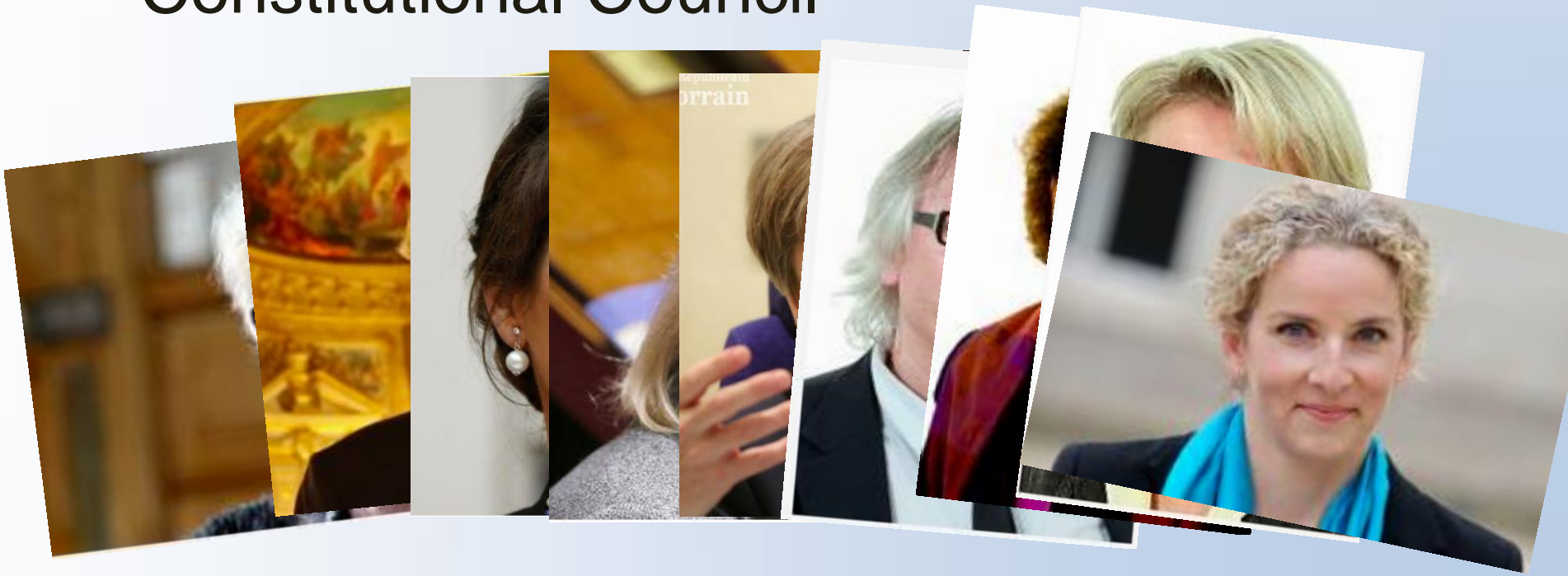
Efforts made

- Pierre Rabhi movie + Fb and mailing campaign



Efforts made

- Thousands of meetings, telephone calls, e-mails...
- Statements of defence before the Constitutional Council



Extract from article 11 as voted by the National Assembly on July 20 :

« The cession, supply or transfer, carried out free of charge or, if carried out by an association governed by the law of 1 January 1901 on the contract of association, against payment of seeds or plant propagating materials of cultivated species from varieties belonging to the public domain to non-professional end-users not aiming to make a commercial exploitation of the variety is not subject to the provisions of this Article (article L.661-8 of the Rural Code – rules on registration of varieties, production and marketing of seeds), with the exception of health rules relating to the selection and production. »

(Rmk: this is not an official translation)

The Government Statement of Defence for Article 11:

« 2/ The fact that the legislator opened this derogation to non-profit-making associations does not infringe the principle of equality.

As indicated, this choice is explained by the objective of ensuring the spreading of rare varieties without destabilizing the seed market.

About twenty associations work to preserve and spread these rare varieties. To ensure their economic viability, they must be able to cover the management and production costs of these seeds by marketing them within the framework of their statutory purpose.

Since they pursue a non-profit-making aim, these associations (...) will not destabilize the seed market. »

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Since they pursue a non-profit-making aim, these associations (...) will not destabilize the seed market. »

Decision of the Constitutional Council

- « 22. However, in the light of that objective, associations are not placed in a different position from other legal or natural persons who may, by sale or exchange of these same seeds or reproductive materials, for commercial purpose or not, also promote this circulation of plant varieties among the same users. The difference in treatment thus established being irrelevant to the object of the law, it disregards the principle of equality before the law.
- 23. Consequently, in paragraph 1 of Article 11, the words "or, if carried out by an association governed by the law of 1 January 1901 on contracts of association, against payment" are contrary to the Constitution. »(Rmk: this is not an official translation)

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of seeds or plant propagating materials of cultivated species from varieties belonging to the public domain to non-professional end-users not aiming at a commercial exploitation of the variety is not subject to the provisions of this Article, with the exception of health rules relating to the selection and production. »

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Next steps...

- Lessons we've learned
- Opportunities for the future
 - Dialogue with the Ministry of Agriculture and the Cabinet of Stéphane Le Foll
 - If possible, the « Mountain » law
 - Presidential and Legislative Elections
 - Continue the work at the European level



Energy and persistence conquer all things.

(Benjamin Franklin)



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Thank you for your attention !

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