

Access, benefit sharing and market admission

The legal framework of seed conservation

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Abstract

Seed is subject at the same time to four bodies of rules with different purposes: biodiversity law, the International Treaty on Plant Genetic Resources, market admission law and plant variety rights. They are not free of contradictions. This paper orders them according to the question each of them answers, shows the three fault lines and describes the situation following the trilogue agreement of 15 June 2026 on the new Regulation on plant reproductive material.

1. Four bodies of rules, four questions

Body of rules	Answers the question
Convention on Biological Diversity, Nagoya Protocol	May I use this material at all, and what do I owe the country of origin?
International Treaty on Plant Genetic Resources	Under what conditions do I obtain material from the common pool?
Market admission law (seed marketing)	May I place this material on the market?
Plant variety rights	May I make commercial use of material bred by someone else?

Anyone who takes an old variety from a genebank, propagates it and passes it on touches all four.

2. The access side

2.1 Sovereignty and due diligence obligation

The Convention on Biological Diversity of 1992 ended the notion of genetic resources as the common heritage of humankind and placed them under state sovereignty. The Nagoya Protocol of 2010, in force since 2014, links access to prior informed consent and mutually agreed terms. In the Union it is implemented through Regulation (EU) No 511/2014: anyone using genetic resources obtained after 12 October 2014 from a party with access rules — which may include member states of the Union — must verify the lawfulness of access, keep the

evidence for twenty years and, in the cases provided for, submit a due diligence declaration. Material obtained under the standard material transfer agreement of the International Treaty is deemed to have been acquired with due diligence.

For conservation operations this means: origin is not a detail of documentation but the condition of usability. A sample without traceable origin is legally difficult to exploit, even if it is biologically flawless.

2.2 The Multilateral System

The International Treaty on Plant Genetic Resources, adopted in 2001 and in force since 2004, takes a different path for the food and forage crops of its Annex I. Instead of bilateral negotiations, there is a common pool from which material is distributed under a standard material transfer agreement. Its conditions travel with the material: anyone who passes it on or develops something from it also remains bound, and where marketing takes place with restricted access, an obligation to share arises.

Article 9 of the Treaty enshrines farmers' rights: protection of traditional knowledge, participation in benefit sharing and participation in decisions. It does not create a right of its own to save, use, exchange and sell seed; Art. 9.3 merely clarifies that existing rights of this kind are not limited — expressly subject to national law. It is precisely in this qualification that the permanent conflict with market admission law lies.

2.3 The fault line of sequence data

Benefit sharing for the use of genetic resources was designed for physical material. When use shifts to digital sequence information, it comes to nothing: the sequence is freely accessible, the material remains in the country of origin.

The eleventh session of the Governing Body of the International Treaty in Lima, 24 to 29 November 2025, was unable to resolve this conflict. After twelve years of negotiation and fourteen working group sessions, no consensus was reached on the enhancement of the Multilateral System; the main points of contention were the expansion of Annex I and mandatory monetary benefit sharing from sequence data, including the payment structure. Decisions on farmers' rights and on conservation were adopted and guide the intersessional work up to the twelfth session.

In parallel, the Convention on Biological Diversity has created a multilateral mechanism of its own, together with the Cali Fund, intended to prompt companies benefiting from sequence data to make contributions. The fund is established, but its resource mobilisation remained far below expectations up to 2026. Two systems thus stand side by side whose relationship to each other is unclear: the Multilateral System of the International Treaty for food crops, the Cali Fund for everything else.

3. The market side

3.1 The principle

Seed of agricultural and vegetable species may be placed on the market in the Union only if the variety is registered and the seed is certified or admissible as standard seed. Registration is granted to what is distinct, uniform and stable; for agricultural species, value for cultivation and use is added. In Austria, the Federal Office for Food Safety (BAES) is competent for variety registration and seed certification under the Seed Act 1997; it decides on registration after consulting the variety registration commission, and AGES carries out the technical examinations.

This system is tailored to industrial varieties. A landrace is by its nature not uniform; its diversity within the population is its value and at the same time the reason why it fails the criterion. From this arose the separate track of conservation varieties: Directives 2008/62/EC and 2009/145/EC allow the marketing of old and local varieties: conservation varieties subject to quantity limits and limits on the region of origin, vegetable varieties without intrinsic value for commercial production subject to restrictions on package size.

3.2 The new Regulation

In 2023 the Commission proposed replacing ten marketing directives, some dating from the 1960s, with a single regulation. Negotiations between Council and Parliament began in February 2026; after three political trilogues on 3 February, 21 April and 15 June 2026 and 32 technical meetings, agreement on all outstanding points was reached on 15 June 2026.

The lines of dispute were the same throughout:

- **Scope of the exemptions for conservation.** Parliament wanted certain dynamic conservation activities below quantity thresholds to be taken entirely out of the scope of application. Commission and Council rejected this as deregulation; the compromise amounts to a targeted extension of existing exemptions.
- **Supply to non-professionals.** The Council mandate provided for fruit and vegetable material to be supplied to non-professionals without full variety registration.
- **Exchange among farmers.** Under the Council mandate, exchange was to be permissible only within local limits.
- **Genebanks and heterogeneous material.** Under the Council mandate, genebanks and organic heterogeneous material do not fall under the Regulation.
- **Assessment of value for cultivation and use under sustainability aspects,** the rules for imports and the conservation of plant genetic resources were the three points that remained open until the second trilogue.

The Regulation on forest reproductive material has already been published as Regulation (EU) 2026/1392 in the Official Journal of 26 June 2026; it repeals Directive 1999/105/EC and applies from 17 July 2031. Until then, the Austrian Forest Reproductive Material Act 2002 remains authoritative.

According to the Council's communication of 15 June 2026, lighter rules are retained for conservation varieties, locally adapted varieties and organic reproductive material. Examination of value for sustainable cultivation and use remains mandatory for agricultural species, potato and vine; turf grasses are exempted. The provisional agreement still has to be formally adopted by Parliament and Council; Council document 12839/26 of 7 September 2026 sets out the text in view of adoption. Under this text:

- **Supply to non-professionals** is to be possible without full variety registration and certification, except for hemp, opium poppy, potato and turf grasses; a variety description based on private documentation and an annual notification to the authority are required (recitals 34 to 34aa).
- **Conservation organisations and networks** are to be allowed to exchange reproductive material produced without profit under lighter requirements; they notify their activity to the authority and keep a register (recital 35).
- **Exchange among farmers** is to be permitted in small quantities, at local level and in kind without monetary payment; protected varieties as well as hemp, poppy, potato, citrus and vine are excluded (recital 36).
- **Date of application:** 48 months after entry into force; requirements on value for cultivation and use for vegetables and fruit apply after five years (recital 91).

Until then, the existing framework remains authoritative. Anyone planning today plans on two tracks: under the law in force and with a view to the text to be expected — and, unlike what was assumed when negotiations concluded, has several years to do so.

3.3 Plant variety rights

Plant variety rights under UPOV 1991 and Regulation (EC) No 2100/94 give the breeder an exclusive right over the production, conditioning, offering and supply of reproductive material. Three exemptions are essential for conservation: the private, non-commercial sphere, experimental purposes and the breeding of new varieties. The farmer's privilege allows, for certain species, the use of farm-saved seed on one's own holding against equitable remuneration, from which small farmers are exempt; the transfer of reproductive material to third parties remains prohibited. Details and the relation to patent law are covered in paper P10.

4. Three fault lines

First: conservation requires circulation. A variety that is not passed on and grown loses its cultivation knowledge and ages in storage. Market law restricts precisely this transfer. The balance struck through exemptions works only as long as the quantity thresholds cover actual conservation operations.

Second: uniformity as a registration criterion. What registration demands is the opposite of what constitutes diversity. The separate tracks mitigate this; they do not abolish it.

Third: benefit sharing hangs on the material. As long as benefit sharing is tied to physical handover while use shifts to data, the gap between the contribution and the benefit of the countries of origin continues to grow.

5. What follows from this for practice

For a conservation operation, an association or a small propagation business, five points can be recorded:

1. Document origin completely, from the first collection onwards. Without proof of origin, no facilitation can be obtained later.
2. For material obtained after 12 October 2014 from a state with access rules, meet the due diligence obligation under Regulation (EU) No 511/2014 and keep the evidence for twenty years.
3. For material from genebanks, carry the conditions of the material transfer agreement with it and pass them on to the next recipient.
4. Before every supply, clarify whether it counts as placing on the market, and choose the applicable track — registration, conservation variety, supply to non-professionals, network exchange, experimental purpose.
5. Do not apply the quantity thresholds from memory, but check them against the text in force.

The *Seed Law Check* tool in the package works through this examination along six questions and outputs the finding together with the evidence.

Figures

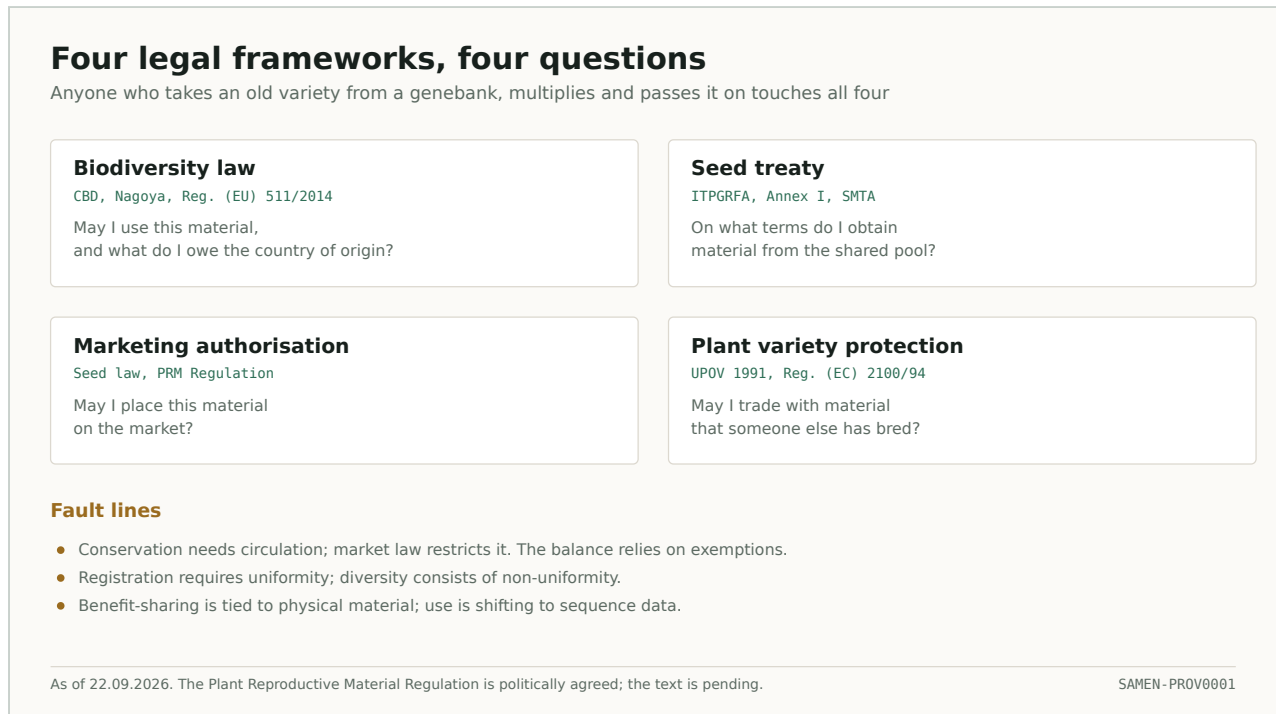


Figure 1. Four legal frameworks and the questions they answer. Source: data layer of the strand, see figure footer.

Limits of this paper

The paper reflects the situation as of 23 September 2026. The Regulation on plant reproductive material has been provisionally agreed but not yet formally adopted or published in the Official Journal; specific threshold values and annexes are therefore not settled. According to the Council's communication, it applies four years after entry into force. The account of the trilogue positions rests on the Council document of 18 June 2026, the Parliament's communication and specialist reporting; statements on the compromise text rest on the recitals of Council document 12839/26 of 7 September 2026, not on an analysis of the articles. Version 1.2 corrects, following an independent review, among other things the competent authority in Austria (BAES), the number of directives replaced, Art. 9 of the International Treaty and the scope of Regulation (EU) No 511/2014. The paper provides orientation and does not replace legal advice; the text in force and the information given by the competent authority are authoritative.

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