

**Administrative and Legal Committee**

**CAJ/80/4**

**Eightieth Session  
Geneva, October 25, 2023**

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**REVISION OF THE “EXPLANATORY NOTES ON EXCEPTIONS TO THE BREEDER’S RIGHT UNDER THE 1991 ACT OF THE UPOV CONVENTION”**

*Document prepared by the Office of the Union*

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**EXECUTIVE SUMMARY**

1. The purpose of this document is to report on developments concerning possible guidance on the implementation of the exception of acts done privately and for non-commercial purposes.

2. The structure of this document is as follows:

EXECUTIVE SUMMARY ..... 1

BACKGROUND ..... 1

DEVELOPMENTS SINCE THE SEVENTY-NINTH SESSION OF THE CAJ ..... 2

    Third meeting of the WG-SHF (March 24, 2023) ..... 2

    Fourth meeting of the WG-SHF (October 25, 2023) ..... 2

ANNEX TERMS OF REFERENCE AND COMPOSITION OF THE WORKING GROUP ON GUIDANCE CONCERNING SMALLHOLDER FARMERS IN RELATION TO PRIVATE AND NON-COMMERCIAL USE (WG-SHF)

**BACKGROUND**

3. The background to this matter is provided in document CAJ/79/9 “Revision of the ‘Explanatory Notes on Exceptions to the Breeder’s Right under the 1991 Act of the UPOV Convention”.

4. The terms of reference (ToRs) for the WG-SHF, are reproduced in the Annex to this document.

5. The Council at its fifty-sixth ordinary session, held on October 28, 2022, received the following report on the work of the Consultative Committee (see document C/56/13 “Report by the President on the work of the ninety-eighth session of the Consultative Committee; adoption of recommendations, if any, prepared by that Committee”, paragraphs 48, 51 and 52):

“48. The Consultative Committee noted the developments on possible guidance concerning smallholder farmers in relation to private and non-commercial use.

“51. The Consultative Committee considered the conclusions of the Chair of the WG SHF on the work of the WG-SHF and next steps. The Consultative Committee noted that the WG-SHF had not yet completed the objectives in its terms of reference (ToRs) and, therefore, agreed that the WG-SHF should continue its work in accordance with its ToRs and, in particular to seek to provide guidance for drafting the revision of document UPOV/EXN/EXC, to be prepared by the Administrative and Legal Committee, and the revision of the FAQs on exceptions to the breeder’s right, to be prepared by the Office of the Union (ToRs ‘Modus Operandi’ item (c)).

“52. The Consultative Committee agreed the following:

“(a) to invite the Office of the Union to prepare a document for the third meeting of the WG-SHF to assist the WG-SHF in providing the requested guidance, based on the discussions at the first and second meetings of the WG-SHF; and

“(b) to invite the WG-SHF, at its third meeting, on the basis of the discussions at the first and second meetings, to provide guidance for the Consultative Committee at its one hundred and first session on options to:

“(i) draft a revision of document UPOV/EXN/EXC, to be prepared by the Administrative and Legal Committee; and

“(ii) draft a revision of the FAQs on exceptions to the breeder’s right.”

## DEVELOPMENTS SINCE THE SEVENTY-NINTH SESSION OF THE CAJ

### Third meeting of the WG-SHF (March 24, 2023)

6. The WG-SHF, at its third meeting, held in Geneva on March 24, 2023, considered document WG-SHF/3/2 “Options to address matters discussed at the first and second meetings of the WG-SHF”.

7. The documents and report of the third meeting of the WG-SHF are available at: [https://www.upov.int/meetings/en/details.jsp?meeting\\_id=74772](https://www.upov.int/meetings/en/details.jsp?meeting_id=74772).

8. The report of the third meeting contains the following conclusions (see document WG-SHF/3/3 “Report”, paragraph 39 and 40):

“39. The WG-SHF agreed that, as a basis to proceed with its work, the Office of the Union would send a circular inviting the WG-SHF to:<sup>1</sup>

(a) consider all existing FAQs that relate to smallholder farmers and subsistence farmers, which would be listed in the circular; and

(b) consider whether the issues identified in document WG-SHF/3/2 and raised during the discussions in the WG-SHF were adequately covered in those FAQs and whether revisions and/or additional FAQ(s) would be required to address those issues.

“40. The WG-SHF further agreed that, for the purposes of clarity and transparency, the work of the WG-SHF would be reported to the Administrative and Legal Committee and the Consultative Committee, at its sessions in October, with a request that the Consultative Committee be invited to approve the work set out in paragraph 39, particularly in relation to enabling the WG-SHF to consider all existing FAQs that relate to smallholder farmers and subsistence farmers.<sup>2</sup>

1. The Delegation of Norway had reservation to changing the ToR and stressed that the revisions of the FAQs should be within the ToR of the WG-SHF ‘concerning smallholder farmers in relation to private and non-commercial use’.

2. The Delegation of Norway had reservation to this decision.”

### Fourth meeting of the WG-SHF (October 25, 2023)

9. The fourth meeting of the WG-SHF will be held in hybrid format, on the evening of October 25, 2023.

10. The documents of the fourth meeting of the WG-SHF are available at: [https://www.upov.int/meetings/en/details.jsp?meeting\\_id=77810](https://www.upov.int/meetings/en/details.jsp?meeting_id=77810)

*11. The CAJ is invited to note the developments on possible guidance concerning smallholder farmers in relation to private and non-commercial use, as reported in this document.*

[Annex follows]

TERMS OF REFERENCE AND COMPOSITION OF THE WORKING GROUP ON GUIDANCE  
CONCERNING SMALLHOLDER FARMERS IN RELATION TO PRIVATE AND NON-COMMERCIAL USE  
(WG-SHF)

The Consultative Committee, at its ninety-eighth session, held via electronic means on October 28, 2021, decided to establish a Working Group to develop guidance concerning smallholder farmers in relation to private and non-commercial use (WG-SHF) and agreed that the terms of reference of the Working Group be approved by the Consultative Committee by correspondence (see document [C/55/18](#) "Report", paragraph 19). The Consultative Committee approved on December 19, 2021, by correspondence, the terms of reference (ToRs) for the WG-SHF (see "Terms of Reference" below).

The Consultative Committee, at its ninety-eighth session, agreed that the WG-SHF be composed of those members of the Union and observers to the Council that reply to a Circular expressing an interest to be part to the WG-SHF (see document [C/55/18](#) "Report", paragraph 19). Circular E-21/230 of November 19, 2021, invited members of the Union and observers in the Council to express an interest to be members of the WG-SHF by December 19, 2021 (see "Composition" below).

TERMS OF REFERENCE AND COMPOSITION OF THE WG-SHF

PURPOSE:

The purpose of the WG-SHF is to develop guidance concerning smallholder farmers in relation to private and non-commercial use, which would be the basis for a revision of the "Explanatory Notes on Exceptions to the Breeder's Right under the 1991 Act of the UPOV Convention" (document UPOV/EXN/EXC) and a revision of the Frequently asked questions (FAQs) on exceptions to the breeder's right.

COMPOSITION:

(a) members of the Union and observers to the Council that expressed an interest to be part of the WG-SHF in reply to Circular E-21/230 of November 19, 2021:

Argentina, Austria, Belgium, Canada, Chile, Colombia, Czech Republic, European Union, France, Ghana, Japan, Mexico, Netherlands, Norway, Switzerland, Tunisia, United Kingdom, United States of America, Zimbabwe, South Centre, African Seed Trade Association (AFSTA), Asia and Pacific Seed Association (APSA), Association for Plant Breeding for the Benefit of Society (APBRES), CropLife International, European Coordination Via Campesina (ECVC), Euroseeds, International Community of Breeders of Asexually Reproduced Horticultural Plants (CIOFORA), International Seed Federation (ISF) and Seed Association of the Americas (SAA).

(b) other members of the Union would be free to participate at any meeting of the WG-SHF;

(c) the members of the Project "Options to interpret the notion of private and non-commercial use as included in Article 15. 1. I of the UPOV 1991 Convention" (Euroseeds, Plantum and Oxfam: "Project Team") would be invited to participate in the first meeting of the WG-SHF. Ad hoc invitations might be issued to the Project Team to attend other meetings of the WG-SHF, where considered appropriate by the WG-SHF; and

(d) meetings to be chaired by the President of the Council.

MODUS OPERANDI:

(a) the analysis of the contributions in the compendium with the replies to UPOV Circular E-20/246 and a report with suggestions prepared by the Project Team, in conjunction with the Office of the Union, will be used as the initial basis for the discussions on developing guidance concerning smallholder farmers in relation to private and non-commercial use;

(b) the WG-SHF to meet at a time and frequency to address its mandate, by physical and/or virtual means, as agreed by the WG-SHF;

(c) the WG-SHF to provide guidance for drafting the revision of document UPOV/EXN/EXC, to be prepared by the Administrative and Legal Committee, and the revision of the FAQs on exceptions to the breeder's right, to be prepared by the Office of the Union;

(d) the WG-SHF to report to the Consultative Committee on progress of its work and to seek further guidance from the Consultative Committee, as appropriate; and

(e) WG-SHF documents to be made available to members of the Union and observers to the Council.

[End of Annex and of document]