

Administrative and Legal Committee

CAJ/81/6

**Eighty-First Session
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REPORT ON THE WORKING GROUP ON GUIDANCE CONCERNING SMALLHOLDER FARMERS IN RELATION TO PRIVATE AND NON-COMMERCIAL USE (WG-SHF)

Document prepared by the Office of the Union

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EXECUTIVE SUMMARY

1. This report summarizes the developments concerning the work of the Working Group on Guidance concerning Smallholder Farmers in relation to private and non-commercial use (WG-SHF), including its fourth and fifth meetings.
2. The WG-SHF agreed in its fourth meeting to gather information to provide a basis for developing guidance concerning smallholder farmers in relation to private and non-commercial use. The Office of the Union was tasked with issuing a circular to the members of the WG-SHF to identify questions and to whom they should be addressed. In its fifth meeting the WG-SHF agreed that the Office of the Union would send four questions to all UPOV members relating to the exception on acts done privately and for non-commercial purposes (Article 15(1)(i) of the 1991-Act of the UPOV Convention).
3. The CAJ is invited to note the developments concerning the work of the WG-SHF, as reported in this document.

4. The structure of this document is as follows:

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BACKGROUND

5. The WG-SHF agreed, at its third meeting, for the purposes of clarity and transparency, that the work of the WG-SHF would be reported to the Administrative and Legal Committee (see document CAJ/80/4 “Revision of the ‘Explanatory Notes on Exceptions to the Breeder’s Right under the 1991 Act of the UPOV Convention’”) 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 10 of document CC/101/10, particularly in relation to enabling the WG-SHF to consider all existing FAQs that relate to smallholder farmers and subsistence farmers.

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

FOURTH MEETING OF THE WG-SHF (OCTOBER 25, 2023)

7. The WG-SHF, at its fourth meeting, held in Geneva on October 25, 2023, considered document WG-SHF/4/2 “Possible revision of the FAQs”.

8. 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=77810.

9. The report of the fourth meeting contains the following conclusions (see document WG-SHF/4/3 "Report", paragraph 11 to 15):

"11. The WG-SHF concluded that gathering information would be useful to provide the basis for developing guidance concerning smallholder farmers in relation to private and non-commercial use.

12. The WG-SHF agreed that the Office of the Union should issue a circular to the members of the WG-SHF with a request to identify questions and to whom they should be addressed, in order to collect information for the WG-SHF to continue its work. Based on the replies to the Circular, the Office of the Union would prepare a questionnaire for consideration by the WG-SHF at its next meeting.

14. The WG-SHF agreed to ask the Consultative Committee to welcome the proposal to gather further information and to invite the WG-SHF to finalize the work that it has been tasked to carry out.

15. The WG-SHF noted that the Chair of the WG-SHF will make a report to the Consultative Committee on the work of the WG-SHF, with a request for the Consultative Committee to approve the work of the WG-SHF."

FIFTH MEETING OF THE WG-SHF (MARCH 22, 2024)

10. The WG-SHF, at its fifth meeting, held in Geneva on March 22, 2024, considered document WG-SHF/5/2 Rev. "Proposals by members of the WG-SHF on questions to collect information for the WG-SHF to continue its work and to whom the questions should be addressed".

11. The documents of the fifth meeting of the WG-SHF are available at: https://www.upov.int/meetings/en/details.jsp?meeting_id=80844.

12. The report of the fifth meeting contains the following conclusions (see document WG-SHF/5/3 "Report", paragraph 32 and 33):

"32. The members of the WG-SHF exchanged views on the addressees and the questions to be posed. The WG-SHF agreed that the following questions should be sent to all UPOV members:

1. *Is your country/intergovernmental organization implementing the exception "acts done privately and for non-commercial purposes"? If so, how is it implemented?*
2. *Concerning this exception, are there definitions for the following term: "acts done privately and for non-commercial purposes"?*
3. *Please specify legislation/regulation and jurisprudence concerning this exception.*
4. *Are there any challenges and/or opportunities in implementing this exception in your jurisdiction? Please explain.*

"33. The WG-SHF agreed that the summary of the interventions by members of the WG-SHF made during the meeting on the possible organisation of a seminar relating to the matters discussed, would be reflected in the report. The WG-SHF further agreed that the Office of the Union would prepare a document for the sixth meeting of the WG-SHF with the summary of those interventions and it will be up to the WG-SHF to decide if any recommendations on a seminar should be made to the Consultative Committee."

SIXTH MEETING OF THE WG-SHF (OCTOBER 23, 2024)

13. The sixth meeting of the WG-SHF will be held in hybrid format, on October 23, 2024. The WG-SHF/6 documents will be available at: https://www.upov.int/meetings/en/details.jsp?meeting_id=83694.

14. *The CAJ is invited to note the developments concerning the work of the WG-SHF, as reported in this document.*

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)

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 (APBREBES), CropLife International, European Coordination Via Campesina (ECVC), Euroseeds, International Community of Breeders of Asexually Reproduced Horticultural Plants (CIOPORA), 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]