

**Working Group on Guidance Concerning Smallholder Farmers in
Relation to Private and Non-Commercial Use** **WG-SHF/6/2****Sixth Meeting
Geneva, October 23, 2024****Original: English
Date: August 14, 2024**

**COMPILATION OF RESPONSES TO THE QUESTIONS CONCERNING THE EXCEPTION “ACTS DONE
PRIVATELY AND FOR NON COMMERCIAL PURPOSES”***Document prepared by the Office of the Union**Disclaimer: this document does not represent UPOV policies or guidance***EXECUTIVE SUMMARY**

1. The purpose of this document is to report on replies to the questions concerning the exception “*acts done privately and for non-commercial purposes*”, and invite the Working Group on Guidance concerning Smallholder Farmers in relation to private and non-commercial use (WG-SHF) to consider the responses to the questions in presented in the Annex to this document.
2. The WG-SHF is invited to:
 - (a) note the information provided in this document;
 - (b) consider the responses to the questions, as set out in the Annex.

BACKGROUND

3. The WG-SHF, at its fourth meeting, held in Geneva on October 25, 2023, agreed that gathering information would be useful to provide the basis for developing guidance concerning smallholder farmers in relation to private and non-commercial use and agreed that the Office of the Union should issue a circular 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.
4. The Office of the Union issued circular E-24/005 on January 19, 2024, to the members of the WG-SHF with a request to identify questions and to whom they should be addressed,
5. The WG-SHF, at its fifth meeting, held in Geneva on March 22, 2024, considered document WG-SHF/5/2, “Proposals by members of the WG-SHF on questions to collect information for the WG-SHF”. Based on the replies to the Circular and the discussion at its fifth meeting, the Office of the Union prepared a questionnaire.
6. The WG-SHF agreed that the following questions should be sent to all UPOV members (see paragraph 32 “Report”, document WG-SHF/5/3):
 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.*

7. On April 22, 2024, the Office of the Union issued Circular E-24/047 inviting all UPOV members to reply to the above-mentioned questions.

8. In reply to Circular E-24/047, the Office of the Union received 38 responses. The Annex to this document provides for a compilation of the responses to the questions.

9. The responses to the questions are also published on the UPOV Website, available under: https://www.upov.int/meetings/en/details.jsp?meeting_id=83694.

10. To assist the WG-SHF in its considerations, some general observations on the replies received are presented below:

1. *Is your country/intergovernmental organization implementing the exception “acts done privately and for non-commercial purposes”? If so, how is it implemented?*

The exception appears to have been implemented in all of the UPOV members that have provided responses, bound by the 1991 Act, as well as a few members that have provided responses, bound by the 1978 Act.

2. *Concerning this exception, are there definitions for the following term: “acts done privately and for non-commercial purposes”?*

Almost all responses provide that there is no specific definition other than the text of the law. Some responses nevertheless provided explanations on how the term is to be understood in their respective jurisdiction.

3. *Please specify legislation/regulation and jurisprudence concerning this exception.*

The responses from UPOV members that have implemented the exception, refer to the relevant legislation in which the exception has been encoded.

No response specified jurisprudence concerning the exception.

4. *Are there any challenges and/or opportunities in implementing this exception in your jurisdiction? Please explain.*

The vast majority of responding countries did not identify any specific challenges or opportunities in relation to implementing the exception in their jurisdictions.

Some members reported on challenges and opportunities in implementing the optional exemption (Article 15.2 of the 1991-Act of the UPOV Convention), which was not the subject of the survey.

Some responses highlighted that there is a challenge to establish the difference between small holder farmers and subsistence farmers. One member stated that such a definition would assist in applying the exception for private and non-commercial purposes.

11. *The WG-SHF is invited to:*

(a) note the information provided in this document;

(b) consider the responses to the questions presented in the Annex.

[Annex follows]

WG-SHF/6/2

ANNEX

Compilation of responses to the questions concerning the exception “acts done privately and for non commercial purposes” received in reply to Circular E-24/047 of April 22, 2024

The excel table with the compilation of responses is available at:

https://www.upov.int/meetings/en/doc_details.jsp?meeting_id=83694&doc_id=634988

[End of Annex and of document]