

EUROPEAN UNION

Contribution received in reply to UPOV Circular E-24/047 of April 22, 2024

From: MANNERKORPI Paivi <Paivi.MANNERKORPI@ec.europa.eu>
Sent: Thursday, May 16, 2024 2:51 PM
To: mail, Upov <upov.mail@upov.int>
Cc: Dirk Theobald <Theobald@cpvo.europa.eu>; ANDRE Dorothee <Dorothee.Andre@ec.europa.eu>
Subject: FW: GENTLE REMINDER: Action by May 20, 2024: call for replies to questions by the WG-SHF (UPOV Circular E-24/047)

Dear Madam/Sir,

Thank your consulting us. Please find below our answers to your questions.

Kind regards,
Päivi Mannerkorpi

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

Yes, this exception is applied and included in the Regulation 2100/94/EC on Community Plant Variety Rights:

Article 15 Limitation of the effects of Community plant variety rights

‘The Community plant variety rights shall not extend to: (a) acts done privately and for non-commercial purposes;’

The recitals of the Regulation explain that

- *Whereas the scope of protection should be extended, compared with most national systems, to certain material of the variety to take account of trade via countries outside the Community without protection; whereas, however, the introduction of the principle of exhaustion of rights must **ensure that the protection is not excessive***
- *‘Whereas, the exercise **of Community plant variety rights must be subjected to restrictions** laid down in provisions adopted in the public interest’;*

There are no implementing acts on this exception.

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

No

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

See point 1. There is no jurisprudence in the EU.

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

We are not aware of any issues nor do we have any experiences in implementing this exception.