

POLAND

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

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Sent: Friday, May 10, 2024 2:00 PM

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Subject: RE: Action by May 20, 2024: call for replies to questions by the WG-SHF (UPOV Circular E-24/047)

Madam,
Sir,

The Research Centre for Cultivar Testing (COBORU) submits their responses to the below questions.

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

Poland has implemented the obligatory exception „acts done privately and for non-commercial purposes” in the Polish Act of 26 June 2003 on the Legal Protection of Plant Varieties (OJ 2021, item 129).

In accordance with the Article 22 (3) (1) of the quoted Act, the exclusive right shall not apply to propagating material and harvested material intended for private, non-commercial purposes.

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

There is no definition of the term: "acts done privately and for non-commercial purposes" in the Polish law.

The wording of Article 22(3) indicates that acts which are both of a private nature and for non-commercial purposes are covered by the exception. Thus, non-private acts, even where for non-commercial purposes, may be outside the scope of the exception. In Polish literature, the view was expressed that the use of seed material by a farmer to produce grain intended then as feed for animals sold for slaughter or producing milk for sale does not fall within the scope of the exception (P. Gała, M. Korzycka-Iwanow (in:) R. Skubisz (ed.), System prawa prywatnego, vol. 14A, Prawo własności intelektualnej, Warszawa 2012, p. 1026).

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

The exception in question is governed by the Act of 26 June 2003 on the Legal Protection of Plant Varieties (OJ 2021, item 129). The COBORU does not have any knowledge on jurisprudence concerning this issue.

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

It is important to define the scope of the exception. We can expect that limits of this exception will finally be defined in case law. This institution creates exceptions to an exclusive right, so it should be interpreted narrowly.

Best regards,

Małgorzata Janiszewska-Michalska, PhD

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