

SWEDEN

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

From: Karolina.Asman@jordbruksverket.se <Karolina.Asman@jordbruksverket.se>
Sent: Monday, May 20, 2024 2:20 PM
To: mail, Upov <upov.mail@upov.int>
Cc: Anna.Pettersson@jordbruksverket.se; Magnus.Franzen@jordbruksverket.se; Carina Knorpp <carina.knorpp@regeringskansliet.se>
Subject: SV: EXTERNT: GENTLE REMINDER: Action by May 20, 2024: call for replies to questions by the WG-SHF (UPOV Circular E-24/047)

Dear UPOV secretariat,

Here comes also Sweden's responses to the questions on UPOV Circular E-24/047, see answers below.

Kind regards Karolina Åsman



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Compulsory exceptions

Article 15(1)(i) of the 1991 Act of the UPOV Convention provides for the following compulsory exception:
“(1) [Compulsory exceptions] The breeder's right shall not extend to
(i) acts done privately and for non-commercial purposes,”

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

Yes, In Sweden we are implementing the exception.

The Federation of Swedish Farmers is active through the Swedish Seed Trade Association in collecting royalties emerging from the production and use of farm-saved seed (FSS), given that Sweden is Party to UPOV 1991. Swedish farmers are authorized according to Article 14 of Council Regulation (EC) 2100/94 on Community plant variety rights to use part of their harvest for propagation on their own holdings. Article 8 of Council Regulation (EEC) No 1765/9, which establishes a support system for producers of certain arable crops sets, however, limitations to this exemption. A farmer may keep enough planting material to sow an area equivalent to the annual production of not more than 92 tons of cereals, or 185 tons of potato. The Federation of Swedish Farmers is active through the Swedish Seed Trade Association in collecting royalties from those farmers whose productions units (farms) are larger than specified by the exception (see above). The percentage of farm-saved varies with crop and ranges from 0,3 % (Brassica oil crops) to 20 % (spring oat; figures from 2022). There is a broad and common understanding among Swedish farmers that their businesses will profit from re-investing royalties into further plant breeding.

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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.

The exception is implemented in Växtförädlarrättslag (1997:306): https://www.riksdagen.se/sv/dokument-och-lagar/dokument/svensk-forfattningssamling/vaxtforadlarrattslag-1997306_sfs-1997-306/

2 kap. 3 § The plant breeders right does not cover

1. exploitation/utilization that takes place privately and for non-commercial purposes,
2. exploitation/utilization for experiments, and
3. exploitation/utilization for the production of new plant varieties.

2 kap. 5 § What is said about exceptions to the exclusive right in Article 14 of Council Regulation (EC) No. 2100/94 of 27 July 1994 on Community plant breeders' rights and in the implementing regulations that have been issued based on the article must also be applied to a plant variety registered according to this law. What is said in the article and the implementing regulations about Community plant breeding rights shall refer to plant breeding rights according to this law.

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

Please explain.

Yes. The Swedish Seed Trade Association sometimes needs legal support to collect the information they need from the growers, especially new growers who grow on a smaller scale. Today, the authority does not have that possibility. For farmers the authority has the possibility to provide information from the applications of support to farmers within the framework of the common agricultural policy. However, the authority in Sweden has limited opportunities to help the Swedish Seed Trade Association to get information from seed packaging and seed cleaners if they refuse to provide information voluntarily. See also article 14.3 in Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights that states -monitoring compliance shall be a matter of exclusive responsibility of holders and in organizing that monitoring, they may not provide for assistance from official bodies.