

AUSTRIA

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

From: Gulz-Kuscher, Birgit <Birgit.GULZ-KUSCHER@bml.gv.at>

Sent: Thursday, May 16, 2024 10:22 AM

To: mail, Upov <upov.mail@upov.int>

Cc: NOWOTNY, Daniela <Daniela.NOWOTNY@bml.gv.at>; POCK, Maximilian <Maximilian.POCK@bml.gv.at>; Taferner-Kriegl Jutta <jutta.taferner-kriegl@ages.at>; Lux, Anna Sophie <Anna.Lux@bml.gv.at>

Subject: AUSTRIA - Reply to questions by the WG-SHF (UPOV Circular E-24/047) - Action by May 20, 2024

Importance: High

Ladies and Gentlemen,

Austria has the honour to provide the following answers to the questions posed.

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 for “acts done privately and for non-commercial purposes” is implemented in Section 4 (3) (1) of the national Plant Variety Protection Law 2001. Section 4 (1) of the Plant Variety Protection Law 2001 (BGBl. I Nr. 109/2001 in the version BGBl. I Nr. 93/2015) lists acts which require the authorization of the breeder of the protected variety; subsection 3 (1) excludes acts done privately and for non-commercial purposes. In addition, Article 15 of Regulation (EC) No 2100/1994 specifies that Community plant variety rights do not apply to acts done privately and for non-commercial purposes.

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

When interpreting the term “acts done privately and for non-commercial purposes” Austria follows the “Explanatory Notes on Exceptions to the Breeder’s Right under the UPOV Convention”. Under national law, pursuant to Section 1 (2) of the 1994 Trade Act (GewO), an activity is carried out commercially if it is carried out independently, regularly and with the intention of generating a profit or other economic advantage, regardless of the purpose for which it is intended.

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

Since the exception entered into force in 2001, there has been no jurisprudence on this matter in Austria.

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

As the exception is already implemented, so there is no need to make further changes.

In the light of the Green Deal and the protection of plant genetic resources, Austria supports this exception from the breeder's right.

With best regards from Vienna

Birgit Gulz-Kuscher

Federal Ministry of Agriculture, Forestry, Regions and Water Management

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Birgit Gulz-Kuscher

+43 1 71100 60668

Stubenring 1, 1010 Vienna

birgit.gulz-kuscher@bml.gv.at

bml.gv.at