

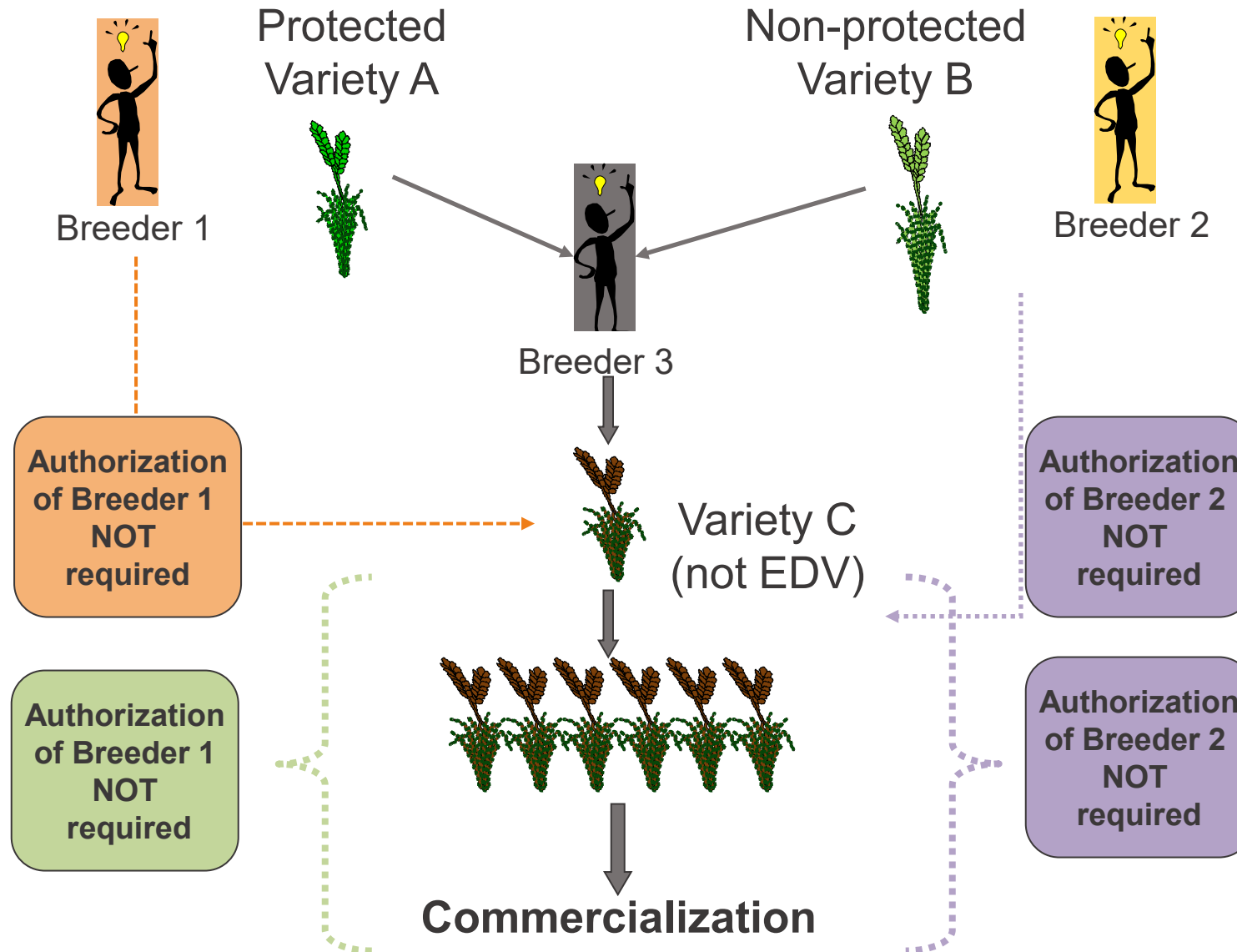
Essentially Derived Varieties

Article 14(5):

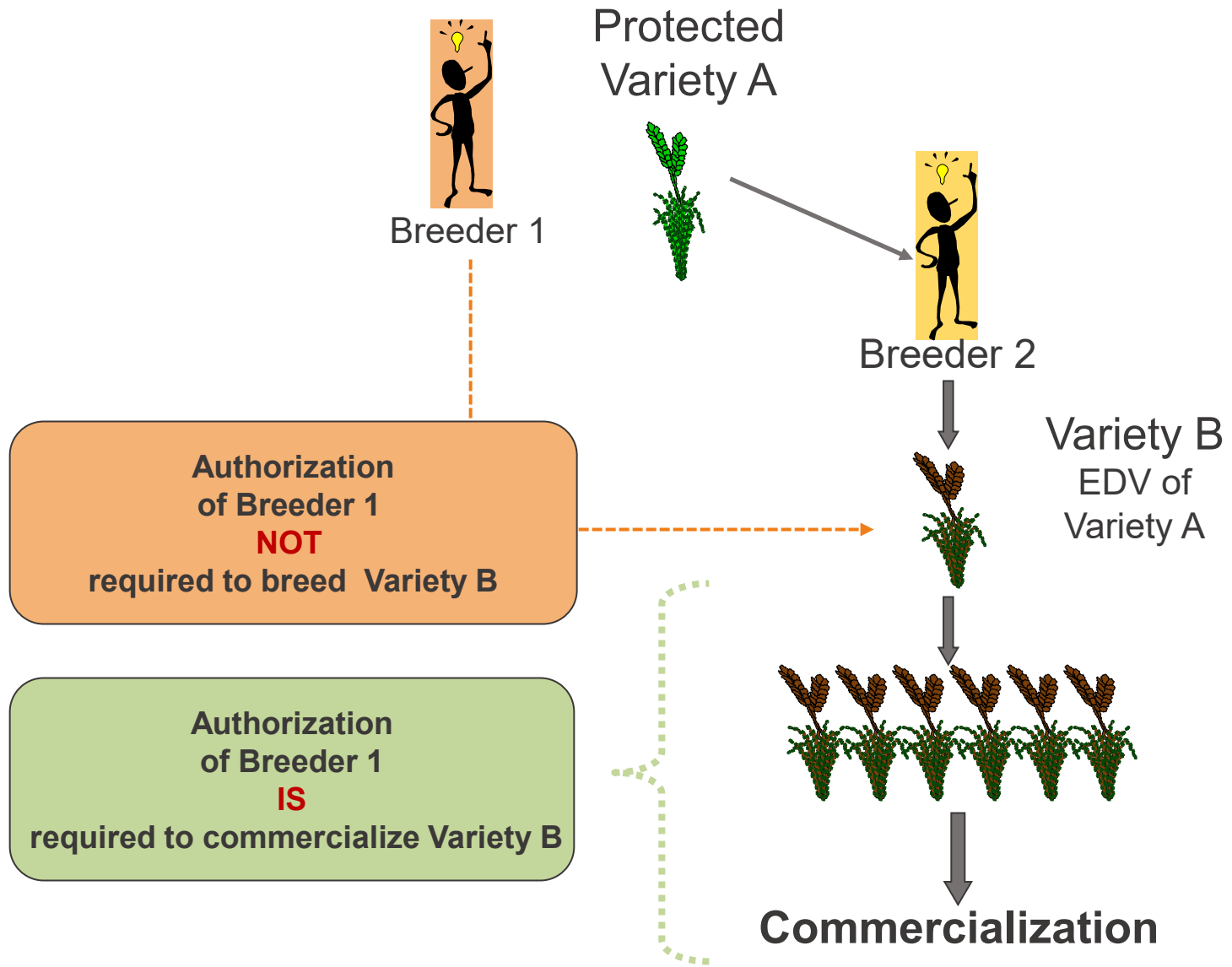
(a) The provisions of paragraphs (1) to (4) on the scope of protection shall also apply in relation to

(i) **varieties which are essentially derived** from the protected variety, where the protected variety **is not itself** an essentially derived variety,

The Breeder's Exemption



The Breeder's Exemption and EDVs



Essentially Derived Varieties

A variety shall be deemed to be essentially derived from another variety (“the **initial variety**”)

However, if the initial variety is not protected, the breeder of a protected EDV of that initial variety does **not need the authorization** to commercialize the EDV

Guidance

- On 27 October 2023 the UPOV Council adopted new explanatory notes, EXN/EDV/3

available at https://www.upov.int/explanatory_notes/en/

Essentially Derived Varieties

A variety shall be deemed to be essentially derived from another variety (“the initial variety”) when

- (i) it is **predominantly derived** from the initial variety, or from a variety that is itself predominantly derived from the initial variety, while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety,
- (ii) it is **clearly distinguishable** from the initial variety and
- (iii) except for the differences which result from the act of derivation, it **conforms to the initial variety in the expression of the essential characteristics** that result from the genotype or combination of genotypes of the initial variety.

Essentially Derived Varieties

May be obtained for example by (Article 14(5)(c):

- **selection** of a natural or induced **mutant**
- **selection** of a **somaclonal variant**
- **selection** of a **variant individual** from plants of the initial variety
- **back-crossing**
- transformation by **genetic engineering**

Exceptions to the breeder's right

Compulsory

Acts done:

- privately and for non-commercial purposes
- for experimental purposes
- breeding other varieties (breeder's exemption")

Optional

Farm-saved seed

Exceptions to the breeder's right

Explanatory Notes



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UPOV/EXN/EXC/1
ORIGINAL: English
DATE: October 22, 2009

INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
GENEVA

EXPLANATORY NOTES ON
EXCEPTIONS TO THE BREEDER'S RIGHT
UNDER THE 1991 ACT OF THE UPOV CONVENTION

https://www.upov.int/edocs/expndocs/en/upov_exn_exc.pdf

UPOV

Exceptions to the breeder's right

Compulsory

Acts done:

- privately and for non-commercial purposes
- for experimental purposes
- breeding other varieties (breeder's exemption")

Exceptions to the breeder's right – Explanatory Notes

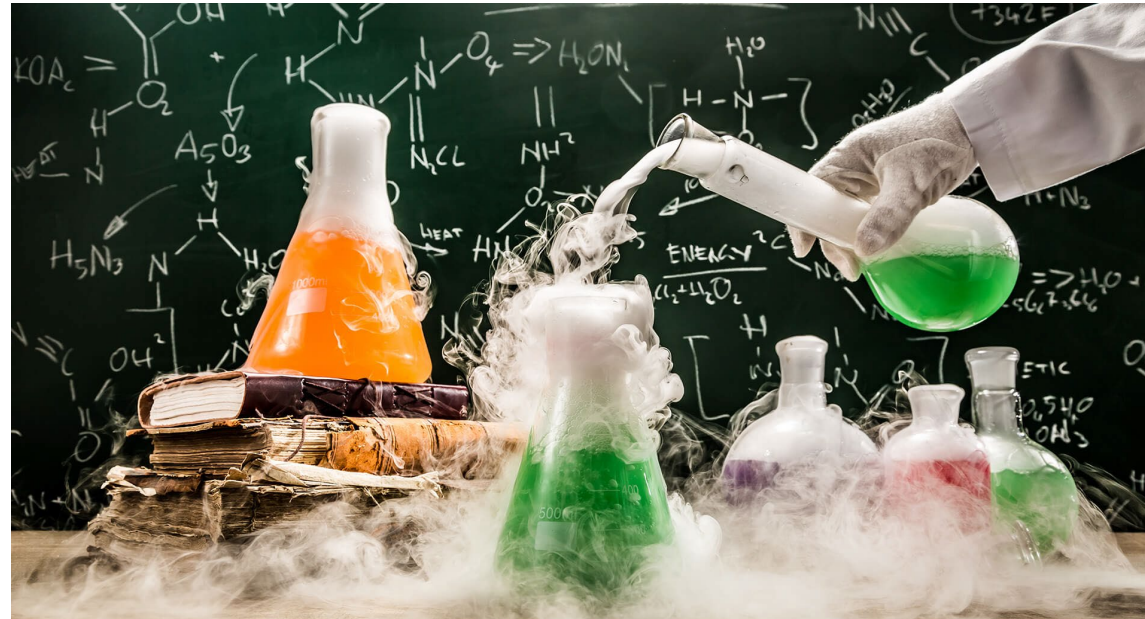
Acts done privately and for non-commercial purposes;

- the propagation of a variety by an **amateur gardener** for exclusive use in his own garden
- the propagation of a variety by a farmer exclusively for the production of a **food crop** to be consumed entirely by that farmer and the dependents of the farmer living on that holding,

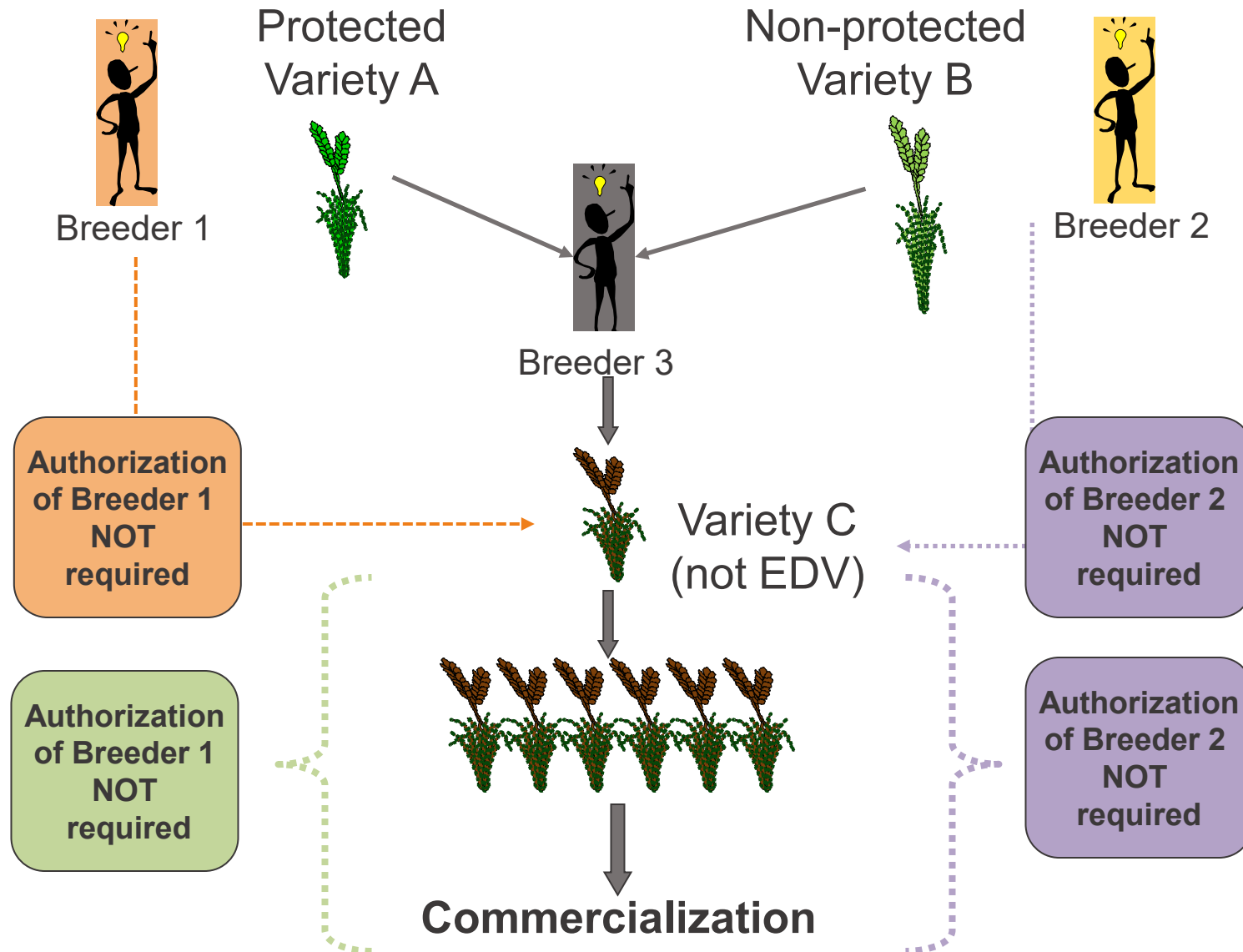


Exceptions to the breeder's right

Acts done for experimental purposes



The Breeder's Exemption



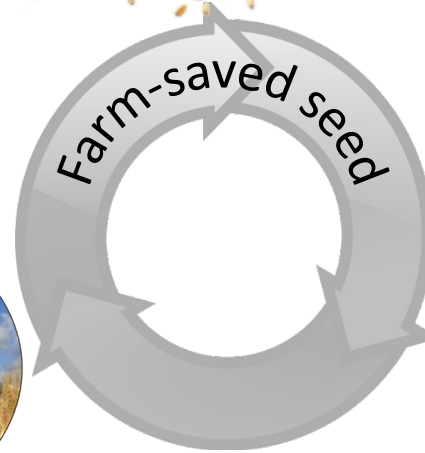
Advantages of the breeder's exemption

- **Germplasm** sources remain **accessible** to the community of breeders
- **Genetic basis** for plant improvement is **broadened** and is actively conserved
- Variety **improvement** is enhanced
- Opportunity for all **breeders to share** in benefits of breeding activities

Exceptions to the breeder's right (1991 Act)

Optional

Farm-saved seed



Optional Exception To The Breeder's Right - Farm-saved seed – Article 15(2)

A Contracting Party may restrict the breeder's rights in order to permit farmers to use:

- for propagating purposes on their own holding the product of the harvest
- obtained on their own holdings from the protected variety
- within reasonable limits
- subject to safeguarding legitimate interests of the breeder

[Recommendation of the Diplomatic Conference on Article 15(2)]

Optional exception to the breeder's right

Reasonable limits and safeguarding the legitimate interest of the breeder

Possible factors:

- Type of variety
- Size of holding/crop area/crop value
- Proportion/amount of harvested material
- Remuneration to the breeder

Review over time

Should all species be covered by the exception ?



Fruits



Vegetables



Ornamental



Agriculture

Optional Exception To The Breeder's Right Farm-saved seed – Article 15(2)

Recommendation of the Diplomatic Conference on Article 15(2)

12. Article 15 (2) is an “optional” provision as clarified by the wording “ ... each contracting Party may ... ”. Thus, it is a matter for each member to decide whether it would be appropriate to incorporate the option provided in Article 15 (2). The purpose of the following paragraphs is to provide guidance to those members of the Union which decide to incorporate the optional exception into their legislation.

14. The Diplomatic Conference recommendation indicates that the optional exception was aimed at those crops where, for the member of the Union concerned, there was a common practice of farmers saving harvested material for further propagation.

https://www.upov.int/edocs/expndocs/en/upov_exn_exc.pdf

Should all sizes of farms be covered by the exception ?



Should the crop value determine if a farm is covered by the exception ?



Should the farmer pay a remuneration/royalty to the holder ?



- There is considerable scope for relevant crops to **exempt small commercial farmers from paying remuneration on FSS** without significantly impacting the income to breeders
- It is important that **farmers that pay remuneration on FSS** have confidence in the benefits that will result for them in the form of new, improved varieties.
- Arrangements for **collecting remuneration** on FSS need to suit the particular situation of each country

Matters after the grant



Termination of the breeder's right

- **Expiration of duration**
- **Renunciation or surrender**
 - A unilateral decision of the holder of the breeder's right that is not linked to compliance with any obligation under the UPOV Convention
 - The competent authority publishes the termination of the breeder's right.
- **Nullity**
- **Cancellation**