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COMMISSION ON GENETIC RESOURCES FOR FOOD AND AGRICULTURE

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**VIEWS OF THE EUROPEAN REGIONAL GROUP ON POSSIBLE
MODALITIES FOR ADDRESSING ACCESS AND BENEFIT-SHARING
(ABS) FOR GENETIC RESOURCES FOR FOOD AND AGRICULTURE
(GRFA), AND ON OPTIONS TO GUIDE AND ASSIST COUNTRIES IN
DEVELOPING LEGISLATIVE, ADMINISTRATIVE AND POLICY
MEASURES**

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Introduction

The Nagoya Protocol, in particular in its Article 4, leaves Parties the option for “developing and implementing other relevant international agreements, including other specialised access and benefit-sharing agreements, provided that they are supportive of and do not run counter to the objectives of the Convention and this Protocol”. Article 8c of the Protocol “considers the importance of genetic resources for food and agriculture for their role for food security”.

At its 13th session, the FAO Commission on Genetic Resources for Food and Agriculture, established the Ad-hoc Technical Working Group on Access and Benefit-sharing, with the objective to focus on the elaboration of:

- distinctive features for genetic resources for food and agriculture requiring distinctive solutions for access and benefit sharing
- possible modalities for addressing access and benefit-sharing for genetic resources for food and agriculture, taking into account the full range of options, including those presented in the Nagoya Protocol
- options to guide and assist countries, upon their request, in developing legislative, administrative and policy measures

The meeting of the Ad Hoc Technical Working Group on ABS (WG-ABS) was held from 10 to 13 September 2012 in Longyearbyen, Svalbard.

The objective of this circular document

The ERG acknowledges the report of the meeting, reflecting the main outcomes of the discussions. Unfortunately, not all issues could be discussed in sufficient detail, and as a result not all contributions that were provided to the Working Group in Svalbard have been reflected in the report. Nevertheless, the ERG believes that some of its statements may be important for the members of the Commission and might contribute to future discussions in the Commission's Intergovernmental Technical Working Groups on plant, animal and forest genetic resources, and importantly might offer relevant considerations for those countries that are currently developing domestic legislative, administrative and policy options for ABS.

The ERG believes that the Commission can play an important role in assisting countries that are or will be developing legislative, administrative and policy measures for ABS for GRFA, so that they may take note of existing arrangements and consider the broader implications of possible measures on global food security. Therefore, in its closing statement during the meeting in Svalbard the ERG requested the Secretariat to circulate a document summarising the statements of the members of the ERG for the purpose of information and consideration by all members of the Commission¹.

ERG statements and position

In preparation of the WG-ABS meeting the European Regional organised an *expert workshop* on ‘Access and Benefit Sharing (ABS) for Genetic Resources for Food and Agriculture’ was held in Bonn in June 2012. Participants in the workshop extensively discussed possible modalities for ABS for GRFA, as well as options for multilateral instruments. The participants, representing all sub-sectors, convened to specifically address the five different subsectors (plant, animal, forest, aquatic and microbial and invertebrate genetic resources for food and agriculture), as well as to address specific issues, such as general principles, scope of GRFA, ownership of GRFA and intellectual property rights regarding GRFA. On the basis of the outcome of this workshop, the EU and its Member States, along with the rest of the ERG, prepared a common position for the WG-ABS meeting. This document sets out a concise summary of the essential elements discussed at the workshop, which were presented to the WG-ABS in Svalbard. The statements made at the WG-ABS represent the common views of the ERG.

¹ With reference also to point 15 g) of the final report of the WG-ABS (CGRFA/WG-ABS-1/12/Report; available on the Commission's website at: www.fao.org/nr/cgrfa)

1. General principles for addressing ABS for GRFA

The ERG identified a set of general principles that should be considered when defining the objectives of approaches and/or modalities for ABS for GRFA. Those principles are:

- a) To ensure continued availability of GRFA for sustainable agriculture in order to satisfy basic human needs such as food security and nutrition but also to increase resilience to environmental challenges such as climate change
- b) To facilitate continuous and enhanced access, exchange and use of GRFA, taking into account the interdependence of all countries with regard to GRFA
- c) To maintain the intrinsic inter-linkage of the three objectives of the CBD, in particular the linkage between the need of conservation and the use of benefits shared for that purpose
- d) Last but not least to maintain global governance in the agricultural sector in recognition of the inter-relationship of all GRFA

The ERG is of the view that modalities for ABS should be adapted to the specific features and needs of the different GRFA subsectors. In this respect, it was also noted that in order to maintain global governance in the agricultural sector and to address the importance of their special role for food security, the CGRFA might consider developing the components of a matrix, exhibiting already existing components of ABS such as the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) and sectoral Global Plans of Actions and exploring gaps and further needs for additional instruments. Draft elements for voluntary guidance for legislative, administrative and policy measures, voluntary codes of conduct, model contractual clauses and best practices and/or standards in relation to ABS for GRFA or subsectors of GRFA, would constitute important elements of this framework or matrix.

2. The distinctive features of genetic resources for food and agriculture

During the expert workshop in Bonn, participants reviewed the main types of uses of genetic resources and their (end) products, main type of public/private users, the role of intellectual property rights, the frequency of exchanges compared with the number of innovations, and the direction of flows in the five different subsectors. Based on this review, the ERG considers that there are substantial differences between the five subsectors in these respects, whereas at the same time distinctive commonalities could be observed, which would warrant a special approach regulating the conservation, exchange and use of all GRFA. The following distinctive commonalities have been described:

- The use of GRFA often leads to incremental improvements in the process of innovation
- For the purpose of innovation, multiple sources of genetic resources are used leading to products which may become themselves resources for further research, breeding and training
- Users may also become providers
- The different subsectors are often interconnected

The ERG recognises that the specific features of GRFA are not always to the fullest extent represented in the genetic resources of each of the subsectors. Nevertheless, genetic resources from all five subsectors share most of these features to a large extent, warranting the discussion on the need of a special approach for each of these subsectors of GRFA.

Furthermore, the ERG believes that a concise discussion on the scope of genetic resources of relevance to food and agriculture, as opposed to genetic resources in general, might benefit the

discussion in many other forums, noting that both FAO and the Convention on Biodiversity (CBD) have adopted a wide definition of genetic resources for food and agriculture².

3. Consequences for ABS measures adapted to the needs of GRFA

Representatives of the ERG shared the view that, based on experiences of the use of the Standard Material Transfer Agreements (MTA) of the Multilateral System of the International Treaty, developing specific ABS arrangements, taking into account the distinctive features of the different GRFA subsectors, provides the best approach for adequate subsectoral solutions and should be further investigated. Specific attention in this effort may be given to the following principles:

- Maintaining the transaction costs of the implementation of ABS modalities as low as possible through the development of simple, transparent and light structures and procedures;
- Providing sufficient flexibility for stakeholders to adhere to applicable ABS requirements;
- Ensuring adequate participation of all relevant stakeholders in the development of options and modalities for ABS on GRFA;
- Building upon existing practices of exchange;
- Considering whether standardization of approaches can be based on existing practices of exchange on GRFA;
- Considering whether standardized arrangements or multilateral approaches should result in a decoupling of benefit-sharing from the individual provider on the one hand and the access to the individual genetic resource on the other hand;
- Considering whether and how to address privately owned GRFA;
- Considering how the potential of non-monetary benefit sharing can be fully realized.

Closing remark

The ERG hopes the members of the CGRFA may appreciate the sharing of the findings above.

² The clustering of features and the need to further work on the scope of GRFA per subsector has been elaborated in the Secretariat's document(s) and were also reflected in the Working Group's final report under point 11 and 12.