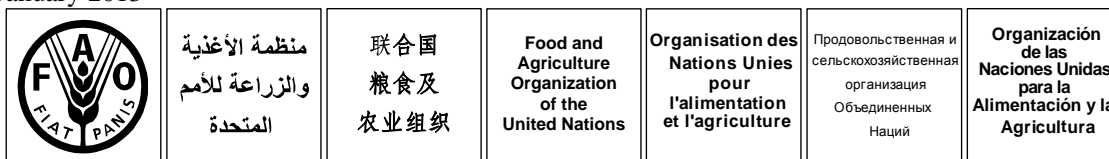


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COMMISSION ON GENETIC RESOURCES FOR FOOD AND AGRICULTURE

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Fourteenth Regular Session

Rome, 15 – 19 April 2013

TRANSFER OF ACTIVITIES OR TASKS FROM THE COMMISSION TO THE GOVERNING BODY OF THE INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE: LEGAL, ADMINISTRATIVE AND FINANCIAL IMPLICATIONS

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I. INTRODUCTION

1. The Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture (the Governing Body) and the Commission on Genetic Resources for Food and Agriculture (the Commission) have encouraged close cooperation between the Commission and the Governing Body that may gradually lead to an agreed functional division of tasks and activities between the Commission and the Governing Body within the terms of the International Treaty on Plant Genetic Resources for Food and Agriculture (Treaty)¹. At the Governing Body's and the Commission's request, a vision paper with the aim of facilitating policy coherence and complementarity of the work of the two bodies was jointly prepared by the secretariats and presented to the two bodies. The vision paper identified various options for an agreed functional division, including the option of transferring activities related to plant genetic resources from the Commission to the Governing Body². The Governing Body, at its Fourth Session, and the Commission, at its Thirteenth Regular Session, considered the vision paper and requested their Secretariats to prepare, in collaboration, a paper on the legal, administrative and financial implications of transferring activities or tasks related to plant genetic resources for food and agriculture (PGRFA) from the Commission to the Governing Body³. The Commission and the Governing Body invited their Bureaus, to continue, in consultation with each other, exploring options for close cooperation between the Commission and the Governing Body that may gradually lead to an agreed functional division of tasks and activities between the Commission and the Governing Body within the terms of the Treaty, taking into account the legal, administrative and financial implications.

2. This document provides background information on the Commission and the Governing Body and analyses the legal, administrative and financial implications of transferring activities or tasks from the Commission to the Governing Body.

II. BACKGROUND

3. *Table 1* provides a summary overview of the Commission and the Governing Body. The Commission is an intergovernmental body established by the FAO Conference in 1983. As of February 2013, 177 countries and the European Union are Members of the Commission. The Commission provides the only permanent forum for governments to specifically discuss and negotiate matters relevant to biological diversity for food and agriculture, including all plant, animal, forest, aquatic, micro-organism and invertebrate genetic resources for food and agriculture. The Commission strives to halt the loss of genetic resources for food and agriculture, to ensure food security and sustainable development by promoting the conservation and sustainable use of genetic resources for food and agriculture, including the exchange, and the fair and equitable sharing of the benefits arising from their use.

4. In its coordinating role, the Commission guides and monitors FAO's policies, programmes and activities related to genetic resources for food and agriculture, including both sectoral and cross-sectoral matters. It also keeps relevant matters in other forums under continuous review.

5. The Commission oversees the preparation of global assessments on genetic resources for food and agriculture and the updating and the implementation of global plans of action. It guides the development of relevant global information systems in support of this role. The Commission has established three intergovernmental technical working groups which support it in its work on plant, animal and forestry genetic resources.

¹ IT/GB-3/09/Report, *Appendix A.7*, paragraph 3; CGRFA-12/09/Report, paragraph 92.

² CGRFA-13/11/7; IT/GB-4/11/18.

³ IT/GB-4/11, Resolution 8/2011, paragraph 23; CGRFA-13/11/Report, paragraph 25.

Table 1: Summary Table: Governing Body of the Treaty and Commission

	Governing Body	Commission
Mandate genetic resources	Plant genetic resources for food and agriculture (Article 3 Treaty)	All components of biodiversity of relevance to food and agriculture Resolution 3/95
Contracting Parties/ Members	128	176
Legal basis	Article XIV FAO Constitution, FAO Conference Resolution 3/2001	Article VI.1 FAO Constitution FAO Conference Resolution 3/95 FAO Council Resolution 1/110
Established by	International Treaty on Plant Genetic Resources for Food and Agriculture	FAO Conference Resolutions 9/83; 3/95
Amendments to constituent texts	Any CP may propose amendments to the Treaty; they are adopted by consensus by the GB and come into force following ratification, acceptance or approval (Art.23 Treaty); they are reported to the Council which has the power to disallow them ⁴ .	Commission may suggest amendments to the basic resolutions by which they were set up and which determine their terms of reference. Such decision on proposed amendments lies with the Council or Conference ⁵ .
Programmatic and budgetary capacity	Adopts plans and programmes for the implementation of the Treaty (Article 19.3(b)) and a budget for the Treaty (Article 19.3(d))	Reports to the Director-General, who shall bring to the attention of the Conference through the Council any recommendations adopted by the Commission which have policy implications or which affect the programme or finances of the Organization (Art. 7 Statutes)
Rules of Procedure (RoP)	http://www.planttreaty.org/sites/default/files/gb1repe.pdf	http://www.fao.org/nr/cgrfa/cgrfa-about/cgrfa-rules/en/
Decision-making process	All decisions shall be taken by consensus unless by consensus another method at arriving at a decision on certain measures is reached, except that consensus shall always be required in relation to Art. 23 (Amendments to the Treaty) and 24 (Annexes) of the Treaty ⁶ .	All decisions shall be taken by consensus unless by consensus another method at arriving at a decision on certain measures is reached ⁷ .
Right to establish subsidiary bodies	Yes Article 19.3(e)	Yes, Articles 3, 5, 6 Statutes (subject to the determination by the Director-General that the necessary funds are available)
Subsidiary bodies (permanent)	1. Compliance Committee	1. Intergovernmental Technical Working Group Plant GR 2. Intergovernmental Technical Working Group Animal GR 3. Intergovernmental Technical Working Group Forest GR
Subsidiary bodies (temporary/ ad hoc)	1. Ad Hoc Advisory Committee on the Funding Strategy 2. Ad Hoc TPB Committee 3. Ad Hoc Tech Advisory Committee on Sustainable Use of PGRFA 4. Ad Hoc Tech Advisory Committee on the SMTA and the Multilateral System	1. Ad Hoc Technical Working Group on Access and Benefit-sharing for Genetic Resources for Food and Agriculture

⁴ Basic Texts, Volume II, PART O, paragraph 8.

⁵ Basic Texts, Volume II, PART O, paragraph 34.

⁶ RoP of the Governing Body , Rule VI.

⁷ Commission RoP, Rule VII.

6. By facilitating the implementation of global action plans the Commission supports the development of national and regional policies and programmes on genetic resources for food and agriculture.

7. The Commission also negotiates other international instruments addressing the conservation and sustainable utilization of genetic resources for food and agriculture. The Commission negotiated the Treaty which is currently the only international, legally binding and fully operational agreement on access and benefit-sharing.

8. As a statutory body established under Article VI.1 of the constitution of FAO, the Commission reports to the Director-General who shall bring to the attention of the Conference through the Council any recommendations adopted by the Commission which have policy implications or which affect the programme or finances of the Organization. Major recommendations adopted by the Commission as well as agreements which the Commission negotiates, are therefore reported by the Commission to the FAO Conference which would usually endorse or formally adopt them. The FAO Conference is the highest governing body of FAO.

9. According to Article 17.3 of the Treaty, Contracting Parties shall cooperate with the Commission in its periodic reassessment of *The State of the World's Plant Genetic Resources for Food and Agriculture* in order to facilitate the updating of the rolling *Global Plan of Action for the Conservation and Sustainable Utilization of Plant Genetic Resources for Food and Agriculture (Global Plan of Action)* to which the Treaty makes reference in its Article 14. According to Article 14, Contracting Parties, recognizing that the rolling *Global Plan of Action* is important to the Treaty, should promote its effective implementation, including through national actions and, as appropriate, international cooperation to provide a coherent framework, *inter alia*, for capacity-building, technology transfer and exchange of information, taking into account the provisions of Article 13 of the Treaty.

10. The Treaty was adopted by the FAO Conference as per Article XIV of the FAO Constitution in 2001 and entered into force in 2004. There are currently 128 Contracting Parties to the Treaty.

11. The objectives of the Treaty are the conservation and sustainable use of plant genetic resources for food and agriculture and the fair and equitable sharing of the benefits arising out of their use, in harmony with the CBD, for sustainable agriculture and food security. The Governing Body shall promote the full implementation of the Treaty, keeping in view its objectives. Article 19.3 of the Treaty contains a non-exhaustive list of specific functions of the Governing Body. The Governing Body is the highest body of the Treaty. It adopts the budget of the Treaty and decides, by consensus, on amendments of the Treaty. According to Article 19.9, sessions of the Governing Body should, as far as possible, be held back-to-back with the regular sessions of the Commission.

12. Through the Treaty, Contracting Parties agreed to establish a Multilateral System, which is efficient, effective, and transparent, both to facilitate access to plant genetic resources for food and agriculture, and to share, in a fair and equitable way, the benefits arising from the utilization of these resources, on a complementary and mutually reinforcing basis. The Multilateral System currently addresses plant genetic resources for food and agriculture of 64 of the most important crops, which account for about 80 percent of all human consumption and which are listed in Annex I to the Treaty. Annex 1 has been established according to criteria of food security and interdependence.

13. The Governing Body of the Treaty also adopted a Funding Strategy to enhance the availability, transparency, efficiency and effectiveness of the provision of financial resources to implement activities under the Treaty. According to the Funding Strategy, the initial priorities of the Strategy will be the priority activity areas of the rolling Global Plan of Action, for further

development by the Governing Body. As part of the strategy, the Benefit-sharing Fund has been established to which organizations based in eligible Contracting Parties can submit project proposals for grants, on agreed thematic focuses. These organizations include governmental and non-governmental organizations, including genebanks and research institutions, farmers and farmers' organizations and regional and international organizations.

14. The Governing Body and the Commission have repeatedly emphasized the need for close collaboration between the two bodies. Both bodies adopted a *Joint Statement of Intent for Cooperation between the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture and the Commission on Genetic Resources for Food and Agriculture*⁸.

III. LEGAL AND ADMINISTRATIVE IMPLICATIONS

15. This section examines the legal implications of transferring any of the following tasks or activities from the Commission to the Governing Body:

- a) Overseeing the preparation of *The State of the World's Plant Genetic Resources for Food and Agriculture* (SoW PGR);
- b) Updating and monitoring the implementation of the Global Plan of Action for the Conservation and Sustainable Utilization of PGRFA (Global Plan of Action);
- c) The operation of the World Information and Early Warning System (WIEWS) and the overseeing of the other PGRFA information systems;
- d) Development, revision and endorsement of the Genebank Standards;
- e) Keeping under continuous review all matters relating to FAO's policy, programmes and activities in the area of PGRFA; and
- f) Reviewing the relevance and effectiveness of the Code of Conduct for Germplasm Collecting and Transfer and developing procedures for monitoring and evaluating the observance of the Code.

A. *Overseeing the preparation of The State of the World's Plant Genetic Resources for Food and Agriculture (SoW PGR)*

16. In 1996, FAO launched the first SoW PGR developed through a participatory, country-driven process under the guidance of the Commission. The Treaty, adopted five years later, refers in its Article 17.3 to the SoW PGR and provides that "*Contracting Parties shall cooperate with the Commission on Genetic Resources for Food and Agriculture of the FAO in its periodic reassessment of the state of the world's plant genetic resources for food and agriculture in order to facilitate the updating of the rolling Global Plan of Action referred to in Article 14.*" Accordingly and in line with its Statutes, the Commission initiated, guided the preparation of and endorsed the second SoW PGR which was launched by the Director-General in October 2010.

17. The proposal to prepare the first SoW PGR as supported by the FAO Conference, in 1991, on the basis of a recommendation made by the Commission and the Council. One year later, in 1992, the FAO Conference stated that the Report, as well as the Global Plan of Action, "*should be regarded as integral parts of one process to be carried out under the guidance of the CGRFA and its Working Group*". Until today, the Commission, in line with its Statutes, initiates and oversees the preparation of Reports. Accordingly, the Commission initiated, guided and endorsed the preparation of the second SoW PGR. The Commission's MYPOW 2013-2021 foresees the presentation of the third SoW PGR for the Commission's Seventeenth Regular Session⁹.

18. It should be further noted that in this respect, Article 19.3 of the Treaty provides *inter alia* that the functions of the Governing Body are "*to promote the full implementation of this Treaty, keeping in view of its objectives*" and, in particular, to "*perform such other functions as may be*

⁸ CGRFA-12/09/Report, Appendix H.

⁹ CGRFA-13/11/Report, Appendix F.

necessary for the fulfillment of the objective of this Treaty” .

19. The foregoing provisions set the basis for close collaboration between the Commission and the Treaty regarding the preparation of the SoW PGR. Regarding more specifically the issue of transferring the task of “*overseeing the preparation of the SoW PGR*” from the Commission to the Treaty, it is considered that the former may invite the Governing Body to undertake this task. The Governing Body would take note of the invitation and endorse the proposal, on the basis of Articles 17.3 and 19.3(d). Both bodies would need to adopt the relevant decisions to that effect by consensus during one of their sessions. Cooperation between the Treaty and the Commission, as set forth in the Treaty, refers in particular to the “*periodic reassessment of the SoW PGR*”. The Commission would still be expected to launch the process and ensure completion thereof i.e. ensure the endorsement of the proposal by the Commission which would still be referred to the FAO Conference. Any change to the nature of the cooperation as spelled out in the Treaty may require an amendment of the provisions of the Treaty and review by relevant FAO Governing Bodies.

B. Updating and monitoring the implementation of the Global Plan of Action

20. Responding to the gaps and needs identified in the first SoW PGR, the Global Plan of Action for the Conservation and Sustainable Use of Plant Genetic Resources for Food and Agriculture (Global Plan Action) was developed in tandem with the SoW PGR, as a global framework for action at local, national, regional and international levels, to be implemented by national institutions, with the support provided by, as appropriate, FAO and other intergovernmental, as well as non-governmental, organizations¹⁰. The Commission has the authority to oversee, endorse, monitor and evaluate the implementation of the Global Plan Action as well as to take the initiative for its update, including to determine the phases of such a process and the bodies involved, as it already did at its Twelfth Regular Session in 2009¹¹. The FAO Conference retains the power to adopt the Global Plan Action¹².

21. The Commission also monitors progress in the implementation of the Global Plan of Action through an agreed set of indicators and a country-led participatory approach. To support its Members’ efforts to implement the Global Plan of Action, the Commission has established in 2007 a Facilitating Mechanism that identifies opportunities for funding each of the 20 priority activity areas of the Global Plan of Action.

22. Article 14 of the Treaty recognizes that the rolling Global Plan of Action is important to the Treaty, and that “*Contracting Parties should promote its effective implementation, including through national actions and, as appropriate, international cooperation to provide a coherent framework, inter alia, for capacity-building, technology transfer and exchange of information, taking into account the provisions of Article 13*”. At the same time, article 17.3 of the Treaty

¹⁰ CL99/Rep, paragraphs 90-93; CL99/16, paragraph 19.

¹¹ At its Twelfth Regular Session, the Commission requested FAO to prepare the updated Global Plan of Action based primarily on the second SoW PGR, and in particular, on the identified gaps and needs. Taking into account the change in the institutional framework and all the developments resulting from the second SoW PGR, in particular the adoption of the Treaty in 2001, the Commission requested the Secretary to coordinate with the Secretary of the Treaty in the updating process, to ensure that specific issues of relevance to the Treaty are taken into account. It requested its Secretary to organize with the Secretary of the Treaty a joint meeting of the Bureaus of the Commission and of the Treaty to review a first draft of the updated Global Plan of Action, prior to its Thirteenth Regular Session. The Joint Bureau Meeting of the Commission and the Treaty was held on 10 March 2011. The draft updated Global Plan of Action was presented to the Governing Body, at its Fourth Session, for its information (IT/GB-4/11/Inf. 14).

¹² Alternatively, the Global Plan of Action may be adopted by an intergovernmental conference convened by the Director-General for that purpose. The first Global Plan of Action was adopted by the Fourth International Technical Conference on Plant Genetic Resources (ITCPGR/96/REP) and subsequently endorsed by the FAO Council, the Conference of the Parties to the Convention on Biological Diversity and by Heads of State and Government at the World Food Summit (CL111/Rep, paragraphs 10-13, Resolution 1/111). The Second Global Plan of Action was agreed by the Commission at its Thirteenth Regular Session in July 2011 and subsequently approved by the FAO Council at its 143rd Session in November 2011 (CL 143/REP, paragraph 43), as mandated by the Conference (C 2011/REP, paragraph 71).

provides that “*Contracting Parties shall cooperate with the Commission on Genetic Resources for Food and Agriculture of the FAO in its periodic reassessment of the state of the world’s plant genetic resources for food and agriculture in order to facilitate the updating of the rolling Global Plan of Action referred to in Article 14.*” In this regard, it is worth mentioning that the Treaty gives an important role to the Global Plan of Action in relation to the benefit-sharing in the context of the Multilateral System: the priority activity areas in the rolling Global Plan of Action will be taken into account for the exchange of information, access to and transfer of technology, capacity-building, and the sharing of the benefits arising from commercialization¹³.

23. With respect to the transfer of the present task the legal implications may differ depending on the scope of the activity to be transferred. In case the Commission retains the authority to launch the update procedure, including to define its scope and the participants in the process, the Commission may invite the Governing Body to undertake the task of updating the Global Plan of Action, as it deems “*necessary or desirable to ensure the development of the global system*”¹⁴. In turn the Governing Body would take note of the invitation and may accept the proposal on the basis of Article 19.3(k) of the Treaty. To this end, both bodies would need to adopt the relevant decision by consensus. In this regard consideration should also be given to the fact that like the first Global Plan of Action, the Second Plan of Action foresees that the overall progress in its implementation will be monitored through the Commission in close collaboration with the Governing Body.

24. Since the development, updating, monitoring and implementation of the Global Plan of Action forms part of the Commission’s mandate, any transfer proposal which goes beyond the foregoing would need to be referred to FAO’s Governing Bodies. Similarly, an amendment to the provisions of Article 17.3 of the Treaty may be required. Finally, the FAO Conference – or, upon request of the latter, the Council – would retain the authority to adopt the updated Global Plan of Action.

C. Overseeing FAO’s support to NISMs and maintenance of WIEWS

25. The World Information and Early Warning System (WIEWS) was established in 1993 by the Commission as a world-wide dynamic mechanism to foster information exchange among FAO Member States by the gathering and dissemination of information on PGRFA, in conformity with Articles 7.1(e) and (f) of the International Undertaking on Plant Genetic Resources. In the words of the Commission, WIEWS is “*a dynamic, constantly updated database of databases, and other important information sources, on all potential areas of interest to the scientific community*”. As part of this monitoring and updating effort, at its Tenth Session in 2004, the Commission agreed to apply a new approach for monitoring the Global Plan of Action implementation based on internationally agreed indicators, which led to the establishment of the National Information Sharing Mechanisms (NISMs). The Commission, at its Eleventh Regular Session, expressed its willingness to work with the Governing Body of the Treaty in the further development of WIEWS in the context of developing the Global Information System on Plant Genetic Resources for Food and Agriculture foreseen in the Treaty and invited the Governing Body to consider utilizing national information sharing mechanisms established through WIEWS, as contributions to the development of its Global Information System¹⁵.

26. Information exchange is also one of the areas expressly listed in Article 14 of the Treaty, which reads as follows: “*Contracting Parties should promote its effective implementation, including through national actions and, as appropriate, international cooperation to provide a coherent framework, inter alia, for capacity-building, technology transfer and exchange of information, taking into account the provisions of Article 13.*” More specifically, the *Global Information System on Plant Genetic Resources for Food and Agriculture* is a supporting

¹³ Articles 13.2 and 13.5 (Benefit Sharing in the Multilateral System); 17(The Global Information System on Plant Genetic Resources for Food and Agriculture); 18 (Financial Resources).

¹⁴ Commission Statutes, Article 2(ii).

¹⁵ CGRFA-11/07/Report, paragraph 37.

component of the Treaty. Indeed, according to Article 17.1 of the Treaty, “*the Contracting Parties shall cooperate to develop and strengthen a global information system to facilitate the exchange of information, based on existing information systems, on scientific, technical and environmental matters related to plant genetic resources for food and agriculture, with the expectation that such exchange of information will contribute to the sharing of benefits by making information on plant genetic resources for food and agriculture available to all Contracting Parties*”.

27. Today, the Commission oversees FAO’s activities in support of NISMS and WIEWS and holds the initiative for further developing it, in accordance with the criteria of necessity and appropriateness stated in Article 2 (ii) of the Statutes of the Commission.

28. From a legal viewpoint, transferring the task of overseeing FAO’s support to NISMs and maintenance of WIEWS from the Commission to the Governing Body has no specific implications. In line with its general mandate – as provided for in Article 2, paragraphs (i) and (ii), of the Commission’s Statutes– of keeping under continuous review all matters relating to the policy programmes and activities of FAO in the area of genetic resources of relevance to food and agriculture, the Commission may adopt a decision to transfer the competence to oversee FAO’s support to NISMs and maintenance of WIEWS, as it may deem necessary or desirable to ensure the development of the Global System. The Governing Body may take note of the invitation and endorse by consensus the proposal on the basis of Article 17.1 of the Treaty.

D. Development, revision and endorsement of the Genebank Standards

29. The *Genebank Standards* were published in 1994, developed to respond to the need for appropriate standards for international *ex situ* conservation and concerned solely with the storage of seeds of orthodox species¹⁶. The Commission, at its Fourth Session in 1991, agreed to convene a panel of technical experts to work together with FAO and the International Board for Plant Genetic Resources (IBPGR – now Bioversity International) to redefine Genebank Standards¹⁷. At its Fifth Regular Session¹⁸, the Commission endorsed the standards in order that they might acquire universal value and be more easily adopted by countries.

30. With the adoption of the Treaty, Contracting Parties shall, subject to their national legislation, “*cooperate to promote the development of an efficient and sustainable system of ex situ conservation, giving due attention to the need for adequate documentation, characterization, regeneration and evaluation ...*” and “*monitor the maintenance of the viability, degree of variation, and the genetic integrity of collections of plant genetic resources for food and agriculture*”¹⁹. The International Agricultural Research Centres (IARCs) of the Consultative Group on International Agricultural Research (CGIAR) which hold *ex situ* collections of PGRFA are to “*undertake to manage and administer these ex situ collections in accordance with internationally accepted standards, in particular the Genebank Standards as endorsed by the FAO Commission on Genetic Resources for Food and Agriculture*”²⁰.

31. The Commission, at its Twelfth Regular Session, agreed on the need for revising the Genebank Standards and it requested FAO, in cooperation with the Treaty, the Consultative Group on International Agricultural Research (CGIAR) and other relevant international institutions, to undertake this review for consideration by its Intergovernmental Technical Working Group on Plant Genetic Resources for Food and Agriculture (Working Group), at Thirteenth Regular session²¹. The Bureaus of the Commission and the Treaty reviewed the status of revision of the *Genebank Standards* at their Second Joint Bureau Meeting, held on 13 November 2010.

¹⁶ CPGR/93/5 Annex.

¹⁷ CPGR/91/Report, paragraph 61.

¹⁸ CPGR/93/Report, paragraph 30.

¹⁹ Article 5 e;f.

²⁰ Article 15.1 d.

²¹ CGRFA-12/09/Report, paragraph 28.

32. In response to the Commission's request to coordinate the agendas of the Commission and of the Governing Body, for the purpose, *inter alia*, of the revision of the *Genebank Standards* and discussing modalities for the input of the Governing Body in the process of this revision²², the Bureaus agreed that the *Draft Revised Genebank Standards* should be made available to the Fourth Session of the Governing Body, for its information²³.

33. The Commission requested its Working Group to finalize the *Draft Revised Genebank Standards*, for endorsement by the Commission at this session²⁴.

34. In view of the foregoing, it appears that the Commission has taken a lead coordinating role and provided an inter-governmental forum for the development of the *Genebank Standards*. On the other hand, the Treaty does not provide for a direct competence of the Governing Body in these matters. Rather, the Treaty recognizes these competences to be borne by the Commission²⁵. Until now, there has been a close collaboration between the two bodies, as requested by them. The transfer of the competence to oversee the development/revision of and to endorse *Genebank Standards* from the Commission to the Treaty would require a consultation with the FAO Governing Bodies²⁶ as well as a review and amendment of the Treaty in order to recognize a specific competence of the Governing Body with respect to *Genebank Standards*.

E. Keeping under continuous review all matters relating to the policy, programmes and activities of FAO in the area of plant genetic resources of relevance to food and agriculture

35. In accordance with its Statutes, the Commission is responsible to keep under continuous review all matters relating to the policy, programmes and activities of FAO in the area of genetic resources of relevance to food and agriculture, including their conservation and sustainable use and the fair and equitable sharing of benefits derived from their utilization, and to advise the Director-General and the Council and, as appropriate, its technical committees, including in particular the Committees on Agriculture, Forestry and Fisheries, on such matters²⁷. The Commission's Statutes were adopted by the FAO Council through Resolution 1/100 in 1995²⁸, at the request of the Conference "*to adopt suitable statutes for the broadened mandate of the Commission, on an interim basis and, if necessary, to review them at a future session in the light of the relevant developments*"²⁹.

36. Article 19 of the Treaty does not provide for a comparable mandate for the Governing Body. This particular mandate is not set out in the Treaty, no such function is provided for in Article 19 of the Treaty. Rather a report on FAO's activities related to plant genetic resources for food and agriculture is submitted to the Governing Body for information.

37. As a consequence, the transfer of this competence to the Governing Body, besides the policy implications, would require:

²² CGRFA-12/09/Report, paragraph 91

²³ IT/GB-4/11/Inf.12

²⁴ See CGRFA-14/13/22.

²⁵ Treaty, Article 15.1(d).

²⁶ Paragraph 9 III states: "... *Its terms of reference shall be: (...) III. To provide an intergovernmental forum for negotiations and to oversee the development, upon the request of the FAO Governing Bodies, of other international agreements, undertakings, codes of conduct or other instruments relating to genetic resources of relevance to food and agriculture, and to monitor the operation of such instruments*".

²⁷ Article 2(i) of the Statutes of the Commission provide that the "[Commission should] *keep under continuous review all matters relating to the policy programmes and activities of FAO in the area of genetic resources of relevance to food and agriculture*".

²⁸ CL110, paragraphs 13-14, Resolution 1/110.

²⁹ C28, paragraphs 65-69, Resolution 3/95.

- a) An amendment to Article 2(i) of the Statutes of the Commission to prevent possible overlap between the respective mandates of the bodies concerned;
- b) A review and amendment of the Treaty in accordance with its Article 23; and
- c) Consultation and concurrence of FAO's Governing Bodies, in view also of the policy implications.

F. Reviewing the relevance and effectiveness of the Code of Conduct for Plant Germplasm Collecting and Transfer and the task of developing procedures for monitoring and evaluating the observance of the Code

38. The International Code of Conduct for Plant Germplasm Collecting and Transfer (Code of Conduct) was adopted by the Conference, at its Twenty-seventh Session³⁰, following numerous consultations led by the Commission³¹. The Code of Conduct expressly mandates the Commission to monitor and evaluate its observance through a system of periodical information and reports and a mechanism of denunciation of the cases of non-observance. Article 15 of the Code of Conduct states that:

“15.1 Governments should periodically inform the FAO Commission on Plant Genetic Resources of actions taken with regard to the application of this Code. When appropriate, this may be effected in the context of the yearly reports provided under Article 11 of the International Undertaking on Plant Genetic Resources.

15.2 Governments should inform the FAO Commission on Plant Genetic Resources of any decision to prohibit or restrict proposed collecting missions.

15.3 In cases of non-observance by a collector or sponsor of the rules and regulations of a host country regarding the collecting and transfer of plant genetic resources, or the principles of this Code, the government may wish to inform the FAO Commission on Plant Genetic Resources. The collector and sponsor should receive copies of this communication, and have the right to reply to the host country with copy to the FAO Commission. At the request of collectors or their sponsors, FAO may provide a certificate stating that no unresolved complaints are outstanding about them under this Code”³².

39. Furthermore, the Commission has a mandate to review the relevance and effectiveness of the Code of Conduct, and to initiate the process of update, as it deems it necessary. Article 16 of the Code of Conduct provides with regard to monitoring and evaluation:

16.1 Appropriate national authorities and the FAO Commission on Plant Genetic Resources should periodically review the relevance and effectiveness of the Code. The Code should be considered a dynamic text that may be brought up to date as required, to take into account technical, economic, social, ethical and legal developments and constraints.

16.2 Relevant professional associations and other similar bodies accepting the principles embodied in this Code may wish to establish peer review ethics committees to consider their members' compliance with the Code.

16.3 At a suitable time, it may be desirable to develop procedures for monitoring and evaluating the observance of the principles embodied in this Code, under the auspices of the FAO Commission on Plant Genetic Resources which, where invited to do so by the parties concerned, may settle differences that may arise”³³.

³⁰ C27/Rep, paragraphs 104-105, Resolution 8/93.

³¹ See CPGR/91/Rep, paragraph 86; CL103/Rep, paragraph 52.

³² C27/Rep, Appendix E.

³³ C27/Rep, Appendix E.

40. Art. 12.3(h) of the Treaty requires that, in the absence of national legislation, access to plant genetic resources of the Multilateral System found in *in situ* conditions will be provided in accordance with such standards as may be set by the Governing Body. The Ad Hoc Technical Advisory Committee on the Standard Material Transfer Agreement and the Multilateral System considered the provisions of the Code of Conduct that address the technical aspects of collecting material found in *in situ* conditions, as possible standards for the implementation of Article 12.3 (h) of the Treaty.

41. Hence, a transfer of the above review and monitoring tasks of the Code of Conduct from the Commission to the Governing Body would imply:

- a) A request of the FAO Governing Bodies to transfer the development and monitoring of the operation of the Code of conduct to the Governing Body. The request would need to take into account Paragraph 9 III of the Commission's Statutes;
- b) A revision and amendment to the Code of Conduct (Articles 15 and 16) under the auspices of the Commission, to be adopted by the FAO Conference; and
- c) Upon invitation of the FAO Conference, acceptance by the Governing Body to carry out the new task by consensus.

IV. FINANCIAL IMPLICATIONS

42. Financial resources for FAO's work on the various sectors of genetic resources for food and agriculture, including on the tasks and activities considered in this document, are provided in FAO's biennial Programme of Work and Budget (PWB), which is adopted by the FAO Conference. The financial resources for carrying out FAO's programme of work comprise an allocation of the FAO regular budget (assessed contributions by FAO members) and an estimate of extra-budgetary resources (voluntary contributions to Trust Funds). Many recent activities overseen by the Commission in the field of plant genetic resources, such as the preparation of the second SoW PGR, relied heavily on extra-budgetary resources.

43. The budget of the International Treaty is adopted by its Governing Body. The source and use of moneys, and the Trust Fund structure, of the International Treaty have been defined in its Financial Rules³⁴. The budget of the Treaty comprises: (1) the Core Administrative Budget which provides for administrative expenditures under the Treaty including expenses of the Secretariat; (2) Special Funds, such as the fund to support the participation of developing countries, multidonor funds or separate funds required by the donor; and (3) the Benefit-sharing Fund, in accordance with Article 13.2 of the Treaty.

44. The Treaty's Core Administrative Budget includes an amount provided for the Treaty in the approved regular budget of the FAO³⁵, which currently constitutes around one third of the Core Administrative Budget, as well as voluntary contributions from Contracting Parties of the Treaty and other contributions.

45. If a task or activity is formally transferred from the Commission to the Governing Body of the Treaty, a determination would need to be made as to whether this would have any financial implications. If so, the FAO Conference would have to decide whether to reallocate any FAO regular budget resources to the Treaty's Core Administrative Budget to cover some or all of the associated costs.

V. GUIDANCE SOUGHT

46. The Commission is invited to review this document and consider the transfer of tasks and activities related to PGRFA from the Commission to the Governing Body in the light of the legal, administrative and financial implications.

³⁴ IT/GB-4/11/Report, *Appendix A.1.*

³⁵ CL 143/3 paragraph 26.