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COMMISSION ON GENETIC RESOURCES FOR FOOD AND AGRICULTURE

Items 2 & 3 of the Provisional Agenda
TEAM OF TECHNICAL AND LEGAL EXPERTS ON ACCESS AND BENEFIT-SHARING
Second Session
Rome, 27 – 30 November 2014
ANIMAL GENETIC RESOURCES AND ACCESS AND BENEFIT-SHARING

The Commission, at its Fourteenth Regular Session, requested the Team of Technical and Legal Experts on Access and Benefit-Sharing (TTLE ABS) to help prepare the intergovernmental technical working group meetings, and based on input from the regions, prepare written materials and propose guidance for the intergovernmental technical working groups.¹

This document contains the document, *Animal genetic resources and access and benefit-sharing*, prepared with the help of the Team of Technical and Legal Experts for the Eighth Session of the Commission's Intergovernmental Technical Working Group on Animal Genetic Resources for Food and Agriculture (Working Group).

As requested by the Commission², the TTLE ABS will participate in a designated portion of the Eighth Session of the Working Group to help inform and shape the discussions and output of the Working Group. In line with the Commission's request, the TTLE ABS is invited to compile the outputs of the Working Group into the *Revised Draft Elements to Facilitate Domestic Implementation of Access and Benefit-Sharing for Different Subsectors of Genetic Resources for Food and Agriculture*.³

¹ CGRFA-14/13/Report, paragraph 40 xiii.

² CGRFA-14/13/Report, paragraph 40 xiii.

³ CGRFA-14/13/Report, paragraph 40 xiii.

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COMMISSION ON GENETIC RESOURCES FOR FOOD AND AGRICULTURE

Item 6 of the Provisional Agenda

INTERGOVERNMENTAL TECHNICAL WORKING GROUP ON ANIMAL GENETIC RESOURCES FOR FOOD AND AGRICULTURE

Eighth Session

Rome, 26 – 28 November 2014

ANIMAL GENETIC RESOURCES AND ACCESS AND BENEFIT-SHARING

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I. INTRODUCTION

1. At its last Session in April 2013, the FAO Commission on Genetic Resources for Food and Agriculture (the Commission) considered the need for and modalities of access and benefit-sharing (ABS) arrangements for genetic resources for food and agriculture (GRFA). The Commission put in place a process the final output of which it requested to be *Draft Elements to Facilitate Domestic Implementation of Access and Benefit-Sharing for Different Subsectors of Genetic Resources for Food and Agriculture (Draft Elements)*, taking into account relevant international instruments on access and benefit-sharing⁴. As part of this process, the Commission requested its intergovernmental technical working groups on animal, forest and plant genetic resources to explore ABS issues for their respective subsectors.⁵

2. The Commission established a Team of Technical and Legal Experts on Access and Benefit-sharing (TTLE ABS) consisting of up to two representatives from each of the seven FAO regions. The TTLE ABS was mandated to:

- Coordinate, with the assistance of the Secretariat, by electronic means as appropriate, to help prepare the intergovernmental technical working group meetings, and based on input from their regions to prepare written materials and propose guidance for the intergovernmental technical working groups;⁶
- Participate in designated portions of the intergovernmental technical working group meetings dedicated to addressing ABS issues, to help inform and shape the intergovernmental technical working group discussions and output;⁷ and
- Work after each intergovernmental technical working group meeting with the Secretariat to compile the intergovernmental technical working group outputs into the *Draft Elements*, and communicate the *Draft Elements* to their regions for information.⁸

3. The Commission requested its Secretary to develop explanatory notes to the distinctive features of GRFA identified in *Appendix E* to the Commission's report, for review by the intergovernmental technical working groups and consideration by the Commission.⁹ In addition, it invited countries and stakeholders to report on use and exchange practices and relevant voluntary codes of conduct, guidelines and best practices, and/or standards on ABS, respectively, for consideration of the intergovernmental technical working groups and the Commission.¹⁰ The explanatory notes as well as the country and stakeholder reports are contained in information documents provided for this agenda item.¹¹

4. This document provides a brief overview of the Commission's work on access and benefit-sharing and summarizes recent developments in this area, including relevant provisions of the *Nagoya Protocol on Access to Genetic Resources and the Fair Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity* (Protocol). In a second step, the document discusses the relevance of the Protocol to animal genetic resources (AnGR) as well as options the Intergovernmental Technical Working Group on Animal Genetic Resources (Working Group) may wish to consider in addressing ABS for AnGR.

⁴ CGRFA-14/13/Report, paragraph 40 (xv).

⁵ CGRFA-14/13/Report, paragraph 40 (xii).

⁶ CGRFA-14/13/Report, paragraph 40 (xiii).

⁷ CGRFA-14/13/Report, paragraph 40 (xiii).

⁸ CGRFA-14/13/Report, paragraph 40 (xv).

⁹ CGRFA-14/13/Report, paragraph 40 (x).

¹⁰ CGRFA-14/13/Report, paragraph 40 (viii); (ix).

¹¹ CGRFA/WG-AnGR-8/Inf.8; CGRFA/WG-AnGR-8/14/Inf.9; CGRFA/WG-AnGR-8/14/Inf.10. See also UNEP/CBD/ICNP/3/10; UNEP/CBD/ICNP/3/INF/2; and: <http://www.cbd.int/icnp3/submissions/>

II. BACKGROUND

5. FAO and its Commission have a longstanding history of dealing with issues related to ABS for GRFA, in particular with regard to plant GRFA. In 1983, the FAO Conference adopted the International Undertaking on Plant Genetic Resources for Food and Agriculture, which provided a policy and planning framework for the Commission with respect to plant genetic resources. During the following years, the Commission negotiated further resolutions that interpreted the International Undertaking, and in 1994, started revising the International Undertaking in response to the Convention on Biological Diversity (CBD) which had just entered into force. As a result of this process, the FAO Conference, in 2001, adopted the International Treaty on Plant Genetic Resources for Food and Agriculture (Treaty), the first legally-binding and fully operational international instrument for ABS for genetic resources.

6. In 2001, the CBD convened the first meeting of its *Ad Hoc* Open-Ended Working Group on ABS which produced the draft *Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilization*. In 2002, the Conference of the Parties of the CBD adopted the *Bonn Guidelines*. Shortly thereafter, the World Summit on Sustainable Development set a process in motion which, in 2010, led to the adoption of the Protocol.

7. The Treaty, the CBD and the Protocol recognize the authority of governments to determine access to genetic resources, which is subject to national legislation, and acknowledge that this authority flows from the sovereign rights of States over their natural resources. The Treaty allows Contracting Parties to exercise their sovereign rights through the Multilateral System of Access and Benefit-sharing (MLS), which facilitates access and the sharing of monetary and non-monetary benefits arising from the use of plant genetic resources for food and agriculture under standardized conditions as set out in the Standard Material Transfer Agreement (SMTA). The ABS mechanism of the Treaty is thus different from the bilateral, case-by-case approach primarily envisaged by the CBD and the Protocol. There are on-going discussions under Article 10 of the Protocol about the need for and modalities of a global multilateral benefit-sharing mechanism to address the fair and equitable sharing of benefits derived from the utilization of genetic resources and traditional knowledge associated with genetic resources that occur in transboundary situations or for which it is not possible to grant or obtain prior informed consent (PIC).¹²

8. While the Treaty, the CBD and the Protocol may be considered the key instruments that make up the global framework of access and benefit-sharing, other - legally non-binding - instruments, such as the *Global Plan of Action for Animal Genetic Resources* (GPA) and the *Interlaken Declaration on Animal Genetic Resources* address the issue without, however, providing concrete guidance. Through the Interlaken Declaration on Animal Genetic Resources governments committed themselves “to facilitating access to (...) [animal genetic resources] and the fair and equitable sharing of the benefits arising from their use, consistent with relevant international obligations and national laws.”¹³

9. Among the main goals of the GPA is the aim “to meet the needs of pastoralists and farmers, individually and collectively, within the framework of national law, to have non-discriminatory access to genetic material (...), so that they may continue to manage and improve animal genetic resources, and benefit from economic development.”¹⁴ National sustainable use policies, according to the GPA, should “consider the contributions of livestock keepers, professional breeders and other actors to animal genetic diversity, respect the interests, rights and obligations of stakeholders, and take into account exchange, access, and the fair and equitable sharing of the benefits from animal genetic resources.”¹⁵ In addition, “appropriate conservation measures should ensure that farmers and researchers have access to a diverse gene pool for further breeding and research.”¹⁶ With regard to *ex*

¹² Protocol, Article 10.

¹³ Interlaken Declaration on Animal Genetic Resources, paragraph 4.

¹⁴ Global Plan of Action for Animal Genetic Resources, Part I, paragraph 15.

¹⁵ Global Plan of Action for Animal Genetic Resources, Part II, Strategic Priority 3, Rationale.

¹⁶ Global Plan of Action for Animal Genetic Resources, Part II, Strategic Priority 3, Introductionm, paragraph 37.

situ conservation programmes, the GPA recommends to “establish modalities to facilitate use of genetic material stored in *ex situ* gene banks under fair and equitable arrangements for storage, access and use of animal genetic resources.”¹⁷ With regard to international policies and regulatory frameworks, the GPA recommends to “review the implications and impacts of international agreements and developments relevant to access to animal genetic resources and sharing the benefits of their use upon animal genetic resources stakeholders, especially livestock keepers.”¹⁸

III. THE USE AND EXCHANGE OF ANIMAL GENETIC RESOURCES

10. AnGR have been used and exchanged by humans for the last several thousand years. Long processes of domestication and selective breeding have considerably altered the genotypic and phenotypic characteristics of the species and populations involved, and currently used AnGR are characterized by long genetic distances from their wild ancestors. In fact, for many domesticated livestock species no wild relatives exist, as they have become extinct, and for others wild relatives are very rare. Because of the relatively low reproduction rates and long generation intervals of many livestock species, animal breeding often relies on continuous genetic improvement over long timeframes, and on the inclusion of parts of the production population in the breeding process in order to achieve sufficiently large effective population sizes and obtain satisfactory selection gains. This factor limits the potential for centralizing the production of breeding stocks.

11. AnGR are used by a wide range of stakeholders and the level of centralization and specialization of breeding activities is quite variable within the sector. Traditionally, the management of AnGR and breeding lies in the hands of livestock keepers who combine breeding and production functions within the same populations. This can be done at a fairly local scale, selecting the animals to form the next generation from locally available herds and flocks, or at a regional or national scale by forming a common breeding population through breeding associations or herdbook societies. In recent decades, a highly specialized breeding sector has developed for some livestock species and in some regions of the world. In the poultry sector in particular, relatively high reproduction rates have enabled a large-scale breeding industry to centralize genetic improvement and the supply of improved animals to producers. Similar structures are emerging in the pig sector, although to a lesser extent.¹⁹

12. The majority of AnGR are kept in the form of live animals *in situ* in their production environments. *In situ* conservation is therefore closely linked with sustainable use, although some targeted *in situ* conservation programmes do exist. Only a limited amount of AnGR is stored *ex situ* for conservation purposes or for breeding activities such as artificial insemination and embryo transfer. AnGR are therefore mainly held under private ownership and their exchange takes place mostly on a commercial basis. In general, the assumption when selling genetic material in the form of breeding animals, semen, embryos, etc., is that its value as a genetic resource is already reflected in its price, and that the buyer will be free to use it for further research and breeding.²⁰ However, in some cases restrictions on the further use of breeding material and its transfer to third parties may be agreed contractually between the parties involved, or alternatively may be based on “gentlemen’s agreements”. While commercial livestock breeders mainly protect their investment in innovation by staying ahead of the competition and by making use of biological protection tools, the use of legal instruments such as trade secrets and patents to protect intellectual property has become more frequent lately.

13. Rather than holding their AnGR under straightforward private ownership, some traditional livestock-keeping communities may also practise forms of collective ownership or management of AnGR.²¹ In other traditional systems private ownership coexist with customary practices facilitating

¹⁷ Global Plan of Action for Animal Genetic Resources, Part II, Strategic Priority 9, paragraph 3.

¹⁸ Global Plan of Action for Animal Genetic Resources, Part II, Strategic Priority 21, paragraph 2.

¹⁹ Background Study Paper No. 43, p. 2.

²⁰ Background Study Paper No. 43, p. 28.

²¹ Background Study Paper No. 43, p. 3.

the conservation and exchange of animal genetic resources (e.g. dowry paid in breeding stock; barter exchange of stud service).

14. Relatively few AnGR are held in the public domain. Public *ex situ* collections and genebanks mainly fulfil conservation purposes and are less involved in the exchange of genetic material and its provision for breeding purposes. Public-sector breeding programmes nowadays seldom have the resources and size to play a major role as a source of improved genetic material for established breeds, but are often instrumental in diversifying or even transforming livestock industries in particular regions by introducing or breeding new bloodlines.

15. Historically, AnGR have been widely exchanged throughout the world and many of the most commonly used breeds are of mixed ancestry. Livestock keepers and breeders in many parts of the world have contributed to the development of these breeds, and today commercial livestock production in most regions depends on AnGR that originated or were developed elsewhere. Currently, major flows of germplasm in the commercially most relevant species take place between developed countries or from developed to developing countries. Genetic material of some breeds adapted to tropical and subtropical environmental conditions is also exchanged among developing countries. In contrast to the commercially more relevant breeds that are widely exchanged, many breeds developed locally as a result of genetic isolation and adaptation are not strongly involved in international exchange. This may change in the future, as many of the traits needed to respond to the effects of climate change and the related changes in disease patterns, may be found in locally adapted or “native” breeds. Climate change is not only likely to increase the exchange of AnGR overall, but could possibly also lead to a more important flow of germplasm from developing to developed countries.²² Many locally adapted breeds have already been taken to other parts of the world for novelty uses (e.g. pygmy goats; potbellied pigs), to establish niche industries or as pet/ hobby animals (e.g. ostriches, chinchillas; Angora rabbits) or to overcome local environmental challenges (e.g. Boer goats to the United States of America and China).

16. The need to adapt livestock production to the challenges of climate change also highlights the threat posed by the loss of genetic diversity and the importance of not only effectively conserving the full range of existing diversity, but also allowing that diversity to continue evolving and adapting to changing local climatic conditions. Genetic diversity can be lost both at the level of breeds, when locally adapted breeds fall out of use and hence risk extinction, and at the within-breed level, when the effective population size of widely used breeds becomes too small because of the use of a very limited number of parent animals. Locally adapted genetic traits are vulnerable to the introduction of more productive but less adapted genetic material.

IV. ANIMAL GENETIC RESOURCES AND ACCESS AND BENEFIT-SHARING

17. The Protocol was adopted on 29 October 2010 by the Conference of the Parties (COP) to the CBD at its tenth meeting, held in Nagoya, Japan. The objective of the Protocol is to further advance the third of the three objectives of the CBD: the fair and equitable sharing of benefits arising out of the utilization of genetic resources, including by appropriate access to genetic resources, technology transfer and funding.

18. The point of departure of the Protocol is the sovereign right of states over their natural resources, which implies that the authority to determine access to genetic resources rests with national governments and is subject to national legislation. The sovereign right of states to determine access to genetic resources should not be confused with other categories of entitlement, such as the private ownership of an animal. A farmer’s ownership of an animal may be conditioned by certain laws. For example, animal welfare legislation may regulate the handling, husbandry and transport of the animal. Other laws may require the animal to be vaccinated against specific diseases, and so on. In a similar

²² Background Study Paper No. 43, p. 37.

way, ABS measures may require that, even though an animal is the private property of a farmer or the collective property of a community, certain conditions (e.g. related to the need for “prior informed consent”) must be met before it can be provided to a third party for research and development.

19. The Protocol, which covers genetic resources, including GRFA, within the scope of Article 15 of the CBD as well as associated traditional knowledge, sets out core obligations for its Parties to take measures in relation to: (1) access to genetic resources for genetic or biochemical research and development and to associated traditional knowledge; (2) the sharing of benefits derived from such research and development as well as subsequent applications and commercialization; and (3) the compliance of the use of genetic resources with the applicable ABS measures.

(1) Access to genetic resources and traditional knowledge associated with them

20. The Protocol provides that, “subject to domestic access and benefit-sharing legislation or regulatory requirements, access to genetic resources for their utilization shall be subject to the prior informed consent of the Party providing such resources that is the country of origin of such resources or a Party that has acquired the genetic resources in accordance with the Convention, unless otherwise decided by that Party.”²³ To implement requirements for PIC, a Party must take the necessary measures to provide, for example, for legal certainty, clarity and transparency of their ABS legislation, provide for fair and non-arbitrary procedures on accessing genetic resources and provide information on how to apply for PIC (“access standards”).²⁴

21. The Protocol also requires its Parties to take action with regard to “traditional knowledge associated with genetic resources” and genetic resources that are held by indigenous and local communities:

- With regard to *traditional knowledge associated with genetic resources*, Parties shall, in accordance with their domestic laws, take measures, as appropriate, with the aim of ensuring that the knowledge is accessed with the PIC or approval and involvement of the indigenous and local communities, and that mutually agreed (MAT) terms have been established.²⁵ In addition measures shall be taken in order that the benefits arising from the utilization of the traditional knowledge are shared in a fair and equitable way with the communities holding such knowledge.²⁶
- With regard to *genetic resources held by indigenous and local communities*, Parties shall take measures with the aim of ensuring that PIC or approval and involvement of indigenous and local is obtained for access to genetic resources where the communities have the established right to grant access to such resources²⁷ and that benefits are shared, in accordance with domestic legislation regarding the established rights of the indigenous and local communities.²⁸

22. The Protocol does not define “access to genetic resources.” Instead it relies on the CBD definition of “genetic resources”²⁹ and it introduces the concept of “utilization of genetic resources” which according to the Protocol means “to conduct research and development on the

²³ Protocol, Article 6.1.

²⁴ Protocol, Article 6.

²⁵ Protocol, Article 7.

²⁶ Protocol, Article 5.5.

²⁷ Protocol, Article 6.2.

²⁸ Protocol, Article 5.2.

²⁹ “Genetic resources” mean “genetic material of actual or potential value.” “Genetic material” is defined as “any material of plant, animal, microbial or other origin containing functional units of heredity.” Biotechnology means “any technological application that uses biological systems, living organisms, or derivatives therefore, to make or modify products or processes for specific use.” See CBD, Article 2. “Derivative” means “a naturally occurring biochemical compound resulting from the genetic expression or metabolism of biological or genetic resources, even if it does not contain functional units of heredity”, see Protocol, Article 2(e).

genetic and/or biochemical composition of genetic resources, including through the application of biotechnology (...).”³⁰

23. Given this definition, access to an animal for the purpose of deriving from it, and further developing, a biochemical component that in its final state may not contain DNA and therefore no longer qualify as a “genetic resource” is considered access for “utilization”. However, access to material that is not a genetic resource, and access to a genetic resource for purposes other than research and development on its genetic and/or biochemical composition (e.g. access to milk for human consumption), are clearly outside the scope of the Protocol. However, many genetic resources for food and agriculture, including AnGR, are shaped, developed – and, indeed, improved – through their continued use in agricultural production. Where “research and development” and agricultural production occur in tandem, it will often be difficult to distinguish “utilization” from activities related to production. Reproduction of cattle may serve the purposes of herd reproduction, veal/ beef production and/or milk production, often at the same time, while simultaneously aiming at genetic development and improvement. This is especially true for modern, globally distributed breeds.

(2) Sharing of benefits

24. The Protocol requires that access is granted by and benefits are shared with “the Party that is the country of origin of the resource or has acquired the resource in accordance with the CBD.” Countries of origin of genetic resources, according to the CBD, are countries that possess them “in *in situ* conditions”, which are defined as “conditions where genetic resources exist within ecosystems and natural habitats, and, in the case of domesticated or cultivated species, the surroundings where they have developed their distinctive properties”.³¹ A potential problem that may arise in relation to AnGR is that for many animal breeds that are the result of dispersed contributions and that owe their development to a range of actors and environments in several different countries, it will often be difficult to determine in which country they developed “their distinctive properties.” However, no such problems will arise where local breeds have been over many generations their distinctive properties in a particular country. Many of these breeds are even named for the region, where they were developed, or for their traditional owners.

25. The Protocol also requires that, under circumstances further specified, benefits arising from the utilization of genetic resources held by indigenous and local communities and from traditional knowledge associated with genetic resources must be shared in a fair and equitable way with the indigenous and local communities concerned.

(3) Compliance measures

26. A key component of the Protocol are the compliance measures: appropriate, effective and proportionate measures to provide that genetic resources utilized within a Party’s jurisdiction are of good legal status, i.e. have been accessed with PIC, and that mutually agreed terms have been established as required by the relevant domestic ABS measures of the other Party.³² The rationale of these compliance measures is to discourage unauthorized utilization of genetic resources. To support compliance, countries have to monitor and enhance transparency about the utilization of genetic resources and associated traditional knowledge, and designate one or more so-called checkpoints.³³ While the Protocol’s “user-country” measures may well have a deterrent effect in countries that implement and effectively enforce them, they may pose substantial administrative and logistical challenges in many countries. The Protocol does not distinguish between user and provider countries and so all Parties will have to adopt compliance measures.

³⁰ Protocol, Article 2.

³¹ CBD, Article 2.

³² Protocol, Article 15.1.

³³ Protocol, Article 17.1

The Nagoya Protocol and genetic resources for food and agriculture

27. The negotiation of the Protocol revealed different views regarding the status that should be given to the issue of food security, and more broadly, the sector of food and agriculture. The Protocol, as adopted, reflects to some extent this multiplicity of views in that it takes a differentiated and balanced approach which, in fact, reflects to a remarkable extent issues stressed and concerns raised by FAO and its Commission.

28. In adopting Resolution 18/2009, the FAO Conference had stressed the essential role of GRFA in food security and sustainable development and recognized the interdependence of countries with respect to these resources and the dependence of the resources for their survival on active cooperation among all stakeholders involved in their conservation, breeding and sustainable utilization as well as benefit-sharing. The FAO Conference therefore invited negotiators of the Protocol to:

- “take into account the special nature of agricultural biodiversity, in particular of genetic resources for food and agriculture, their distinctive features and problems needing distinctive solutions;
- “in developing policies [...] consider sectoral approaches which allow for differential treatment of different sectors or sub-sectors of genetic resources, different genetic resources for food and agriculture, different activities or purposes for which they are carried out; [...]
- “to explore and assess options for the International Regime on Access and Benefit-sharing that allow for adequate flexibility to acknowledge and accommodate existing and future agreements relating to access and benefit-sharing developed in harmony with the CBD; [...]
- “to work closely with the Commission on Genetic Resources and the Governing Body of the International Treaty regarding access and benefit-sharing in the area of genetic resources for food and agriculture in a mutually supportive manner in future years.”³⁴

29. The Protocol reflects the issues raised by FAO. The Protocol, in its preamble, explicitly recognizes the importance of genetic resources to food security³⁵, the special nature of agricultural biodiversity, its distinctive features and problems needing distinctive solutions³⁶, as well as the interdependence of all countries with regard to GRFA and the special nature and importance of these resources for achieving food security worldwide and for sustainable development of agriculture in the context of poverty alleviation and climate change. In this regard, the Protocol also acknowledges the fundamental role of the International Treaty and the Commission.³⁷

30. In its operational provisions, the Protocol requires Parties to consider, in the development and implementation of their access and benefit-sharing legislation or regulatory requirements, the importance of GRFA and their special role for food security.³⁸ Parties shall pay due regard to cases of present or imminent emergencies that threaten or damage human, animal or plant health, as determined nationally or internationally.³⁹ In addition, they shall create conditions to promote and encourage research which contributes to the conservation and sustainable use of biological diversity, particularly in developing countries, including through simplified measures on access for non-commercial research purposes, taking into account the need to address a change of intent for such research.⁴⁰

31. The Protocol does not prevent its Parties from developing and implementing other relevant international agreements, including other specialized access and benefit-sharing agreements, provided

³⁴ C 2009/REP, paragraph 174 (Resolution 18/2009).

³⁵ Protocol, preamble paragraph 14.

³⁶ Protocol, preamble paragraph 15.

³⁷ Protocol, preamble paragraph 16.

³⁸ Protocol, Article 8(c).

³⁹ Protocol, Article 8(b).

⁴⁰ Protocol, Article 8(a).

that they are supportive of and do not run counter to the objectives of the CBD and the Protocol.⁴¹ The Protocol indicates that it is the instrument for the implementation of the access and benefit-sharing provisions of the CBD.⁴² At the same time, the Protocol states that where a specialized international access and benefit-sharing instrument that is consistent with and does not run counter to the objectives of the CBD and the Protocol applies, the Protocol does not apply for the Party or Parties to the specialized instrument in respect of the specific genetic resource covered by and for the purpose of the specialized instrument.⁴³ One of the instruments explicitly acknowledged by the Protocol is the International Treaty developed in harmony with the Convention.⁴⁴ Beyond this openness to other international instruments, the Protocol also states that due regard should be paid to “useful and relevant ongoing work or practices under such international instruments and relevant international organizations, provided that they are supportive of and do not run counter to the objectives of the Convention and this Protocol.”⁴⁵

32. The Protocol also requires Parties to encourage, as appropriate, the development, update and use of sectoral and cross-sectoral model contractual clauses for mutually agreed terms and of voluntary codes of conduct, guidelines and best practices and/or standards in relation to access and benefit-sharing. The CBD COP serving as meeting of the Parties to the Protocol shall periodically take stock of the use of the model contractual clauses, codes of conduct, guidelines and best practices and/or standards.⁴⁶ Sectoral approaches, including those in line with current commercial practices that allow for different treatment of sectors or subsectors of genetic resources may therefore form part of the International Regime, which, according to CBD COP Decision X/1, is constituted of the CBD, the Protocol, as well as complementary instruments, including the International Treaty.

V. OPTIONS TO ADDRESS ANIMAL GENETIC RESOURCES IN ACCESS AND BENEFIT-SHARING MEASURES

33. The Commission tasked the Working Group to explore ABS issues for the subsector of AnGR. The Working Group may therefore wish to consider in the light of the above and taking into account the information provided to it,⁴⁷ issues ABS policy and decision-makers should take into account with regard to ABS for AnGR and recommend issues the *Draft Elements* should address.

Utilization

34. The Working Group may wish to consider, *inter alia*, the term “utilization”, as defined in the Protocol, in the context of animal breeding and animal husbandry. Which type of use of animal genetic resources should be considered “research and development on their genetic and/ or biochemical composition”? Are there established practices in the sector of AnGR that should explicitly be excluded from this definition?

Country of origin

35. The Working Group may wish to discuss which country should be considered the country of origin of AnGR that are the result of dispersed contributions and that owe their development to a range of actors and environments in several different countries? What are “distinctive properties” in the case of AnGR? Are there specific characteristics that can be used to reliably distinguish local breeds and assign to them a clear country of origin?

⁴¹ Protocol, Article 4.2.

⁴² Protocol, Article 4.4.

⁴³ Protocol, Article 4.4.

⁴⁴ Protocol, preamble paragraph 19.

⁴⁵ Protocol, Article 4.3.

⁴⁶ Protocol, Articles 19-20.

⁴⁷ CGRFA/WG-AnGR-8/Inf.8; CGRFA/WG-AnGR-8/14/Inf.9; CGRFA/WG-AnGR-8/14/Inf.10.

See also UNEP/CBD/ICNP/3/10; UNEP/CBD/ICNP/3/INF/2; and: <http://www.cbd.int/icnp3/submissions/>

Standardized vs. case-by-case ABS arrangements

36. AnGR-specific ABS measures could provide for standardized conditions, under which AnGR could be made available and benefits derived from them be shared. There is a whole range of measures countries or stakeholders may wish to consider, including contractual clauses for mutually agreed terms, voluntary codes of conduct, guidelines and best practices and/or standards in relation to access and benefit-sharing for AnGR.⁴⁸ Such arrangements of facilitated access could be sought at national, regional or even global level. Based on experiences of the AnGR sector, various ABS measures may be considered ranging from standardized models to case-by-case arrangements. The potential impacts of any new regulations on established practices in the sector should also be considered, especially when it comes to privately owned AnGR traded between farmers or breeders.

Legislative, administrative or policy measures

37. In addressing ABS for AnGR, various measures may be considered. Interestingly, the Protocol leaves quite some discretion to the Parties as to whether to adopt legislative, administrative or policy measures.⁴⁹ With regard to ABS for AnGR, existing exchange and benefit-sharing practices could be explored on which ABS rules could piggyback.⁵⁰ The Treaty demonstrates that the development of ABS rules along the lines of existing exchange practices may contribute to a high level of acceptance amongst user communities.

ABS modalities

38. There is a wide range of modalities that may be considered with regard to ABS for AnGR. Depending on the approach countries decide to take with regard to ABS for genetic resources, they may wish to consider addressing, through legislative, administrative or policy measures: the designation of competent authorities for ABS for AnGR; identification of AnGR whose utilization requires PIC and mutually agreed terms (MAT); types of authorization procedures; arrangements on the sharing of non-monetary and monetary benefits; measures to provide that AnGR have been accessed in accordance with PIC and MAT; designation of checkpoints to monitor and enhance compliance.

VI. GUIDANCE SOUGHT

39. The Working Group may wish to take note of the explanatory notes to the distinctive features of GRFA.

40. The Working Group may further wish to consider current use and exchange practices, relevant voluntary codes of conduct, guidelines and best practices, and/or standards on ABS, as reported to the Commission Secretariat, and request the Secretariat to continue updating, in collaboration with the CBD Secretariat, these compilations, focussing in particular on practices, codes of conduct, guidelines and best practices and/or standards on ABS which specifically address AnGR.

41. The Working Group may further wish to

- Explore ABS issues for its subsector, in the light of the information provided in this document,
- Provide guidance with regard to the development of elements on ABS for AnGR;
- Recommend to the Commission that the *Draft Elements* be shared with the Working Group, at its ninth session, for review;
- Refer to the distinctive features of genetic resources for food and agriculture and associated explanatory notes, and encourage countries in their domestic ABS regimes implementing the Protocol to ensure that (a) these distinctive features are adequately recognized; (b) appropriate ministries, including for agriculture and GRFA issues, are

⁴⁸ See above paragraph 31.

⁴⁹ See Protocol, Articles 5.2; 6.3; and 15.1; 15.2.

⁵⁰ For an economic analysis of standardization options for ABS, see Täuber, S. *et. al.* (2011): An economic analysis of new instruments for Access and Benefit-Sharing under the CBD – Standardization options for ABS transaction. Bonn (<http://www.bfn.de/fileadmin/MDB/documents/service/skript286.pdf>).

closely involved in the development of domestic ABS regimes for genetic resources more generally; (c) the development of domestic ABS regimes is done in coordination with appropriate stakeholders, including users of GRFA across various subsectors, to ensure the distinctive features and various customs regarding GRFA are taken into account; (d) exchange across national boundaries is enhanced given its pivotal importance to global food security; and (e) such international exchanges result in fair and equitable benefit-sharing with providers and countries of origin in line with clearly defined criteria.