



**Food and Agriculture
Organization of the
United Nations**



The International Treaty
**ON PLANT GENETIC RESOURCES
FOR FOOD AND AGRICULTURE**

Item 9.2 of the Provisional Agenda

NINTH SESSION OF THE GOVERNING BODY

New Delhi, India, 19–24 September 2022

**Enhancing the Functioning of the Multilateral System – Reports from Two
Virtual Informal Consultations Organized by the Government of
Switzerland**

Note by the Secretary

At its Eighth Session, the Governing Body encouraged informal consultations among Contracting Parties (IT/GB-8/19/Report, para. 33).

This document contains the reports from two virtual informal consultations organized by the Government of Switzerland in January 2021 (Appendix 1) and December 2021 (Appendix 2), respectively. Appendix 3 contains a Non-paper. Enhancement of the Multilateral System: Taking stock of progress made so far, which was prepared by the Government of Switzerland and later revised, based on the discussions during the informal consultations. Participants from all FAO Regions participated in the two meetings.

The reports were prepared by the Government of Switzerland and are presented as received by the Secretary.

Appendix 1

Informal Consultation: Enhancing the Functioning of the Multilateral System

21 January 2021, 1pm – 4pm CET
Virtual meeting

Convened by the Swiss Federal Office for Agriculture

The Governing Body, at its Eighth Session, took note of the need to take stock and to assess the next steps on further work on the enhancement of the Multilateral System and consequently encouraged informal consultations among Contracting Parties. The Bureau of the Ninth Session of the Governing Body received with appreciation an update on ongoing plans to conduct informal consultations.

Switzerland took the initiative to organize, on January 21, 2021, a first informal consultation of negotiators that had been designated by Contracting Parties to participate in GB-8 and who had been engaged and who are familiar with the enhancement process. The purposes of this informal consultation were to take stock of the progress made so far in the process established under the International Treaty to enhance the functioning of the Multilateral System, and exchange views and ideas on how to best move forward in our efforts to enhance the functioning of the Multilateral System.

The aim of the meeting was to provide an informal platform allowing participants to meaningfully contribute to the discussions. The meeting was held virtually, in a completely informal setting, and conducted under the Chatham House Rules. Twenty-five participants from all seven FAO regions attended. In order to make the most efficient use of the limited time available, Mr. Alwin Kopse acted as the facilitator and time keeper.

The outcome of this informal consultation is a non-paper entitled “*Enhancement of the Multilateral System: Taking Stock on Progress Made So Far*” that will be made available to the Bureau of the Ninth Session of the Governing Body.

Lausanne, February 2021

Appendix 2



Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

Federal Department of Economic Affairs,
Education and Research EAER

Federal office for Agriculture FOAG

Informal virtual consultation: Preparation of GB-9 discussion on possible steps forward on Enhancement of the Multilateral System (MLS) of the International Treaty – December 14, 2021

This report has been prepared by Switzerland and is an attempt to reflect the content and diversity of views that emerged during the discussion. Since this informal consultation took place under *Chatham House Rules*, the views expressed are the sole responsibility of the author and are not intended to represent any consensus among the participants or to be attributed to any individual participant.

1. Introduction

At its Eighth Session in September 2019, the Governing Body of the International Treaty could not reach consensus on measures to enhance the functioning of the Multilateral System. It took note of the need to take stock and to assess the next steps on further work on the enhancement of the Multilateral System and consequently encouraged informal consultations among Contracting Parties and especially national consultations amongst sectors and relevant stakeholders.

Switzerland took the initiative to organize, on January 21, 2021, a first informal consultation of negotiators that were designated by Contracting Parties to participate in GB-8 and who have been engaged and who are familiar with the enhancement process. The purposes of this informal consultation were to take stock of the progress made so far in the process established under the International Treaty to enhance the functioning of the Multilateral System, and exchange views and ideas on how to best move forward in our efforts to enhance the functioning of the Multilateral System.

The outcome of the first informal was a non-paper titled “*Enhancement of the Multilateral System: Taking Stock on Progress Made So Far*” that was made available to the Bureau and to the participants to this informal consultation.

With the intention to go one step further and to focus more specifically on the preparations for the Ninth Session of the Governing Body that is currently scheduled for May 2022, Switzerland decided to organize a second informal virtual consultation on December 14, 2021.

In addition to the key negotiators who attended the First informal consultation, an invitation was sent to experts from all members of the Ad Hoc Open-ended Working Group to Enhance the Functioning of the MLS, Contracting Party observers, as well as the observers from key stakeholder groups.

The Objectives were

1. to exchange views on expectations from GB-9 regarding next steps;
2. to discuss how, within the scope of what was agreed by GB-8, to prepare possible elements as an informal basis to facilitate discussions at GB-9; and
3. to exchange ideas of regional and inter-regional informal consultations from now until the GB-9.

2. Organisation and Participation

The ITPGRFA Secretariat provided the logistical support for the organisation of this informal consultation. 47 participants representing the 7 Regional groups as well as most of the stakeholder group's observers attended the meeting.

3. Outcomes

- Participants welcomed the organisation of this informal consultation 2 years after GB-8 and thanked Switzerland for the initiative.
- They reemphasized the great importance of the MLS of the International Treaty. While several participants expressed disappointment on not reaching consensus at GB-8, many of them showed an **overall willingness to restart the discussion on enhancement of MLS** and reiterated their strong commitment to continue working towards reaching an agreement and consensus on the key issues.
- **General recognition of the need for having a discussion on the enhancement of the MLS at GB-9 in order to go back to a formal intersessional process.** Overall, participants expressed their expectations of the GB-9 to set a clear way forward on negotiating the enhancement of MLS, to define the format under which consultations will proceed and to agree on the issues that will be discussed. A new intersessional working group was mentioned, as one option. Its form, composition, scope and mandate are to be discussed and agreed by GB-9.
- There was **strong recognition of the need for trust building** between Contracting Parties and with stakeholders in order to improve common understanding of the proposals and their impacts.
- Considering the lengthy negotiations under GB-8, efforts made in finding solutions and compromises made, participants mentioned three options for the way forward:
 - Option 1 would be to pick up negotiations where they ended, bearing in mind that progress was made.
 - Option 2 would be to start over, to take a step back and to redefine principles and basic elements of the MLS, allowing to incorporate new developments and insights that have emerged since GB-8. Proposal on interpretation of food security in the context of multiple use crops was stated as an example. A mechanism to carefully review the outstanding issues as follow-up to GB-9 was also mentioned in this context.

- Option 3 would be having something in between, in order to build on the work done so far but taking a different and refreshed approach to negotiations.
 - Either way, several participants pointed out the need for first having an agreement on the shared aim and goal.
 - Some participants raised the idea of organizing technical meetings in order to assess in particular the current level of exchanges and the flow of material prior to discussing possible options for policy responses. Other participants suggested that separating technical and political discussions would not be a practical way forward and that these discussions should rather happen simultaneously.
 - **DSI is identified as the “deal breaker”**. Reference was made to the possible outcome of the ongoing negotiations in the CBD on the post 2020 GBF. Some participants suggested to wait for results in the CBD process, while others raised the time concern. No agreement by CBD-COP15 on DSI should not stop ITPGRFA to continue to work on a specific arrangement on DSI for PGRFA for sustainable agriculture and food security. It was also suggested concentrating on other issues that can be addressed, while waiting for outcomes on DSI in CBD negotiations.
 - In any case it would be advisable to hold GB9-ITPGRFA after COP15-CBD.
 - Payment rates were mentioned as another key issue.
 - The non-paper “*Enhancement of the Multilateral System: Taking Stock on Progress Made So Far*”, intended to take stock of the status of the various issues under discussion, was not discussed in detail, but the attempt to present the various issues under discussion in relation to the progress made so far was recognised as being biased by some of the participants. While recognising that the non-paper captured the key outstanding issues, it was also suggested that these issues should be presented in other way, namely without any classification or ranking of their status, to facilitate further consideration.
 - No specific proposals for further informal intra and interregional informal consultation were made. However, some participants showed interest in engaging with Switzerland and others in the preparation and organization of another “global” informal consultation of this type until GB-9. The Secretariat offered support in enabling further discussions.
 - Switzerland confirmed that it would be briefing the Bureau on the outcomes of the informal consultations.
- 4. Some ideas for action on the road to GB-9 that could be considered by the Bureau**
- Preparation by the Secretariat of a document presenting the outstanding issues.

- Organisation of an informal meeting of technical experts to assess the current level of exchanges and flow of material and the impacts in terms of expectations and barriers for the enhancement of the MLS.
- Organisation of an Informal consultation to prepare and facilitate discussions in GB-9.

Bern, December 16, 2021

**NON-PAPER
ENHANCEMENT OF THE MULTILATERAL SYSTEM: TAKING STOCK ON
PROGRESS MADE SO FAR**

Introduction/background:

The Governing Body, at its last session, encouraged informal consultations among Contracting Parties and especially national consultations amongst sectors and relevant stakeholders to find mutually agreeable solutions on the package of measures to enhance the functioning of the Multilateral System. (*IT/GB-8/19/Report, para. 33*). In this regard, some Contracting Parties have reiterated their strong commitment to continue working towards reaching an agreement and consensus on the key remaining issues.

This informal non-paper is intended to be a contribution in this direction, to facilitate possible discussions to be held during informal consultations towards finding compromise solutions and agreement on the enhancement package. Following GB-8 (*IT/GB-8/19/Report, para. 32*), the paper is intended to take stock of where we are in the process and to build on the significant progress made by the Working Group to Enhance the Functioning of the Multilateral System and by the Contact Group during GB 8.

An initial version of the paper was discussed during a first informal consultation held on January 21, 2021, and the current version includes views and suggestions made by participants during this first informal meeting.

Accordingly, this non-paper attempts to present the various issues under discussion in relation to the level of progress made so far, and the varying degree of work and effort needed to arrive at compromise solutions. The issues are clustered around three main negotiation blocks, namely (i) text of the revised SMTA, (ii) GB Resolution text, and (iii) Treaty Amendment text. The non-paper is structured as follows:

- Section 1 (marked in or underlined **red**) provides an overview of issues where there remain divergent views and which require further efforts to find compromise solutions and agreement;
- Section 2 (marked in or underlined **yellow**) provides an overview of issues for which agreement is within reach but which still require further work; and
- Section 3 (marked in or underlined **green**) provides an overview of issues where agreement has been practically reached.

The aim would be to progressively identify ways of how to solve issues in that order, starting from issues marked in **red** before moving on to issues marked in **yellow** and **green**, respectively.

The approach of marking issues in different colors to denote the various levels of progress made is just an attempt to allow for a delineation of these issues. This approach could be revised, adjusted or modified as needed. The same goes for the proposed sequence for addressing the various issues presented. The following table provides an overview of the main issues presented in this informal non-paper:

Table: Overview of issues

<u>Main areas for further work</u>	<u>Progress made, but some work remains to reach agreement</u>	<u>Practically done: the many agreements “ad referendum” and others</u>
<ul style="list-style-type: none"> • GSD/ DSI/ PGRFA Information • Entry into force of the Package • Rates 	<ul style="list-style-type: none"> • Amendment text • SMTA <hr/> <ul style="list-style-type: none"> ○ Finalize benefit-sharing, including reaching agreement on the details of the dual access system, ○ Termination ○ Period of payment obligations under Art. 6.8 ○ Confidentiality of reports (only last sentence of Art. 5e) • Resolution ○ Proposal for funds to be allocated to CPs/ Region 	<ul style="list-style-type: none"> • SMTA ○ Definitions: (Sales and to Commercialize) ○ Withdrawal clauses ○ Minimum incorporation threshold (PGRFAuD, payments under single access) ○ Enforceability, dispute settlement, damages ○ Improved reporting, monitoring and transparency ○ Dual system; Subscription System plus single access mechanism

1. MAIN AREAS FOR FURTHER WORK

There are three main areas that will require most of our efforts if we are willing to develop a possible way forward and reach a compromise on the package of measures. These are core areas dealing with key questions, which is well-reflected in the level of attention that they had already received in the process.

Consequently, these areas and issues should be the first focus of our informal consultations

A. GSD/DSI/PGREA Information

In the formal process to enhance the Multilateral System, GSD/DSI/PGRFA information had become the most difficult issue when negotiators at GB-8 tried to agree on the package of measures. Different ideas and approaches were presented on how the issue could be addressed by looking at terminology and substantive -related considerations. No agreement on both fronts could in the end be reached.

a) Preliminary consideration on terminology

The term “digital sequence information” (DSI) is still to be considered as a place holder. The CBD AHTEG on DSI has provided guidance on categories of information that could be referred to as DSI (<https://www.cbd.int/meetings/DSI-AHTEG-2020-01>).

b) Moving forward: build on discussions held at GB-8

As there still remain divergent views on how and to what extent to reflect issues related to DSI/GSD in the text of the revised SMTA as well as in the respective Resolution adopting the enhanced

Multilateral System, the suggested way forward is (1) first to discuss and agree on where to address DSI/GSD in the Resolution, SMTA and MYPOW and (2) then to discuss how DSI/GSD could be addressed in each of these texts. There were a number of further text proposals made at GB-8 that could help to find the way forward.

At GB-8, during the discussions in the informal group, there was an emerging consensus to include matters related to DSI within the package of measures for the enhancement of the functioning of the Multilateral System, as well as in the context of the implementation of other Treaty mechanisms and programmes, especially as part of the MYPOW. The GB-8 informal group discussed how to include DSI in the package of measures. Further ideas were contributed by negotiators in the informals but due to lack of time and the complexity of matters at hand, no final consensus was possible at GB8. The following bullet points attempt to organize in blocks some of the matters discussed by negotiators at the GB-8 informal group.

Resolution:

- Could the Resolution address DSI and the limits that the revised SMTA has in this regard?
- Discussion of the potential need to revise the SMTA after thorough consideration of DSI as it relates to PGRFA and the tools of the Treaty.

SMTA:

- It was discussed that the subscription option may reflect the issue of DSI sufficiently.
- With regard to the single access option, should there be a need to revise the SMTA to include DSI, focus on Arts. 6.7, 6.8 (or Annex 2) and 6.9.¹?
- In terms of defining DSI or GSD, the following questions have been raised during the negotiations:
 - Would an elaboration of a new definition for DSI or GSD be a useful way forward at this stage?
 - Would it be more prudent to avoid creating a new definition of DSI/GSD but consider the possible inclusion of an existing definition and use of terms for DSI/GSD within the SMTA?²
- There were also discussions as to whether trust-building measures could be considered as a means to ensure that DSI/GSD from MLS materials is solely used for the purpose of research, breeding and training for food and agriculture, and the consequences if DSI and GSD is used for chemical, pharmaceutical and or other non-food/feed industrial uses?

MYPoW:

¹ For example, a concrete proposal discussed by the GB-8 informal group was to add to Articles 6.7 and 6.8 (revised): “It is acknowledged that the Recipient, in developing such a Product, may have used the available related information referred to in Articles 3 and 5b of this Agreement, which could include genetic sequence data.”

² One proposal for definition was made at the GB-8 informal group discussed for consideration of the GB-8 plenary, building on the definition used in the WHO PIP framework: “‘Genetic sequence data’ means the order of nucleotides found in a molecule of DNA or RNA. They contain the genetic information that determines the biological characteristics of PGRFA.”

Another concrete proposal discussed by the GB-8 informal group was the following definition: “‘Genetic Sequence Data’ shall include but not limited to: Nucleic acid sequence reads and associated data, assembled genomes, genes, and fragments thereof, non-coding sequences, functional annotation of genes, information on gene expression including epigenetic heritable elements, amino acid sequences and molecular structure of proteins produced by gene expression, or data on other macromolecules and cellular metabolites”.

It was also proposed to add footnotes to the definitions of “genetic material” and PGRFAuD stating they both include GSD/DSI. Concrete language was proposed for Article 2 accordingly.

- Discussion of a schedule when and how GB could consider DSI/GSD as it relates to the Treaty, taking into account the related processes in CBD, the Nagoya Protocol and CGRFA.

B. Entry into force of the package

The second major area is the entry into force of the whole package of measures, addressing a complex problem that the Working Group had been considering throughout the process under different names and with different concepts, and on the basis of expert reports and comprehensive inputs from participants.

Building on these extensive discussions, we aimed at developing the most simple and easy-to-manage process, while giving confidence to all involved based on mutual trust and goodwill. We accordingly agreed to deal with these questions in the Resolution that would adopt the package and include necessary text in the revised SMTA.

It was a major success of the Working Group's meeting in June 2019 to agree "ad ref" on the main concepts of this element of the package of measures. At the October 2019 meeting, some of the language was re-opened again, but the main agreed ("ad ref") concepts remain the same:

- a) Adoption of the revised SMTA and the amendment text of *Annex I* at the same GB session.
- b) The revised SMTA would start to be used a few months after the GB decision.
- c) The amendment of *Annex I* would only apply to those Contracting Parties who ratified it.
- d) At a specified future session, the GB would take stock of the progress made in reaching the goals of the measures to enhance the functioning of the MLS. Indicators for the assessment of the GB will need to be defined and we previously discussed they could include the number of ratifications and the level of income accrued to the Benefit-sharing Fund from user-based payments.
- e) Specific consequences would apply, should the goals not have been reached (payments under 6.8 to become voluntary again, Subscription System suspended, certain choices for existing subscriptions).

Regarding the indicators to be used by the GB to take stock of the progress made, the Working Group previously discussed possibilities to add an indicator measuring the amount of material being made available by Contracting Parties under the Multilateral System, especially the expanded Annex I.

We will now need to provide clear answers to the remaining open issues in this area. On the basis of our thinking and discussions, we would then need to consider the respective language in the draft revised SMTA dealing with the "transitional phase".

It will be crucial to reach an agreement in this area or otherwise we will be caught up in the impossible situation of having to define whether the amendment comes before benefit-sharing or vice versa. We saw in the Working Group that it will be very difficult to agree on this question.

Therefore, we should pull together all our efforts to develop a viable suggestion for the entry into force of the package, building on the important considerations we made at the Working Group and during GB 8, in good spirit.

Relevant text: Draft Resolution (IT/GB-8/19/8.2 Rev.1, page 5): Paras. 36-40. Draft revised SMTA (IT/GB-8/19/8.2 Rev.1, page 11): Article 6.9.

C. Rates

A concrete issue that we need to finalize is the payment rates for both the Subscription System and the single access option. We had considered two reports of a Friends of the Co-chairs' group and inputs from users of the Multilateral System throughout the process, before we discussed the need to balance the different rates so as to reach our common overall objectives and suggested concrete rates.

For the Subscription System, we still need to agree on whether or not we want to see a single/flat rate only, or rather differentiated rates that would consider the level of access restrictions put on PGRFA.

Regarding concrete rates, the informal group that met during GB-8 agreed to use the concept of the Working Group to start with the rate for the Subscription System and to then apply multipliers to reach agreement on the rates for the single access. The group considered several concrete proposals including the following:

- (1) Subscription System 0.015%, (2) single access 0.2% minus 30% for the revised Article 6.8 payments, (3) 2.0% minus 30% for the revised Article 6.7 payments (Co-chairs of the Working Group);
- Subscription System should have a rate in the range between 0.01% and 0.1% (Working Group October 2019)
- Subscription System 0.1% (Africa Region at the GB-8 informal group)
- (1) Subscription System 0.02%, (2) single access 0.25% minus 30% for the revised Article 6.8 payments, (3) 2.5% minus 30% for the revised Article 6.7 payments (Co-chairs of the GB-8 informal group)

A new proposal discussed by the GB-8 informal group was the idea of an incremental rate or staggered rates to incentivise subscriptions and to make early subscription more attractive:

- Subscription System: 0.015% (years 1 and 2), 0.03% (for new Subscribers in years 3 to 5), 0.06% (for new Subscribers as of year 6);
- It was also proposed to possibly make the incremental rates part of the review process (see above).

It needs to be noted that rates cannot be discussed without finalizing other matters related to benefit-sharing and that are discussed in the **yellow** section. A problem may in particular be that the payment basis still needs to be finalized.

Relevant text: draft revised SMTA (IT/GB-8/19/8.2 Rev.1, page 11): Articles 6.7, 6.8; Annex 2, Articles 1 and 2; Annex 3, Articles 3.1 to 3.3 (several alternatives).

2. PROGRESS MADE, BUT SOME WORK REMAINS TO REACH AGREEMENT

There are a number of items where we worked hard to reach agreement and we almost succeeded. We may need some more time to finalize these items, but the contours of a possible compromise are already there.

A. Amendment text

The first of these items is the text for an amendment of Annex I of the International Treaty. This is a major achievement of our deliberations, considering the complex and lengthy discussions we had and the very thorough considerations we made, based also on input by experts and the Secretariat.

Our draft text incorporates different approaches to the questions at stake and especially a number of “safeguards”, so that we could reach an agreement that everyone could live with.

In the last meeting of the Working Group, we included farmers’ varieties and landraces in the draft text, and this is the only item that we still need to finally approve to have the amendment text agreed “ad ref”.

In order to be able to proceed, we were always clear that agreeing on the draft text for a possible amendment of Annex I is different from agreeing on how to the whole package of measures will enter into force. The latter question was included in the “red items” above.

Relevant text: Amendment text (IT/GB-8/19/8.2 Rev.1, page 29), draft resolution for GB-8 (IT/GB-8/19/8.2 Rev.1, page 8)

B. Resolution

i. Proposal for funds to be allocated to CPs/ Region

There is a proposal from one region that 60%-80% of the amount effectively transferred into the mechanism established by the Governing Body will immediately be allocated to finance projects for the implementation of the International Treaty in the region. Further to discussions during the last session of the Governing Body, this proposal seemed, in principle, to be acceptable by all, but still needs to be finalized.

C. SMTA

i. Finalize benefit-sharing

A lot of progress was made in the complex bulk of provisions dealing with monetary benefit-sharing, both under the Subscription System and under the single access option. In order to have a well-informed basis for our discussions, comprehensive studies and background papers were developed or commissioned by the Secretariat; we got the reports from two Friends of the Co-chairs groups dealing with this matter; and we received a lot of inputs through submissions. This gave us the possibility to develop concepts and advanced formulations on monetary benefit-sharing in the revised SMTA.

Since this is a core area in the enhancement process, we will need to dedicate some more time and efforts for developing a consensus.

The overall approach was to create a system with mandatory payment obligations only, while defining exemptions.

The GB could not yet agree on a funding target for the BSF within the overall Funding Strategy. The determination of the potential income that may be generated from the MLS and then channelled to the BFS compared to other multilateral systems operating in the field of plant genetic resources for food and agriculture as stated in the Funding Strategy might be a relevant criterion when considering the level of the rates. Advice from the Standing Committee on the Funding Strategy and Resource Mobilization might be helpful in this regard.

For the Subscription System, the Working Group was already able to clean-up Article 6.11 in the main body of the SMTA, so that our efforts could now focus on finalizing the relevant part of the Subscription Terms (Annex 3 for the SMTA). We have clear technical concepts in front of us, which we were able to develop on the basis of well-founded information received, so that the remaining issues are now a matter of negotiation:

- a) The payment basis
- b) Single/flat rate or differentiated rates (see above)
- c) Options for concrete rates (see above)
- d) The threshold for exemptions from payment
- e) In the context of the exemptions from payment, we could discuss the related issues in the draft resolution we prepared for GB-8 (e.g. farmers, public institutions).

For the single access option, the Working Group was also able to clean-up the relevant articles in the main body of the SMTA, although some work is still needed (see especially below for the period of payment under Article 6.8). Therefore, we are almost there for the single access option, with the main remaining issue being the rates (see above).

Relevant text: draft revised SMTA (IT/GB-8/19/8.2 Rev.1, page 11): Articles 6.7, 6.8, 6.8bis, 6.8quater; Annex 2, Articles 1 and 2; Annex 3, Articles 3.1 to 3.3 (several alternatives). Draft Resolution (IT/GB-8/19/8.2 Rev.1, page 5): Paras. 14, 14bis, 4bis (coming right before para. 14.).

ii. Termination

While the provisions on withdrawal are finalized (“ad ref”) for both the Subscription System and the single access option, which is a further major achievement of our work, some of our discussions related to a termination right for the third party beneficiary (or the Governing Body) still need to be finalized. We also have to finalize our discussions on a proposal to possibly give a similar right to the subscriber under specific circumstances.

Relevant text: draft revised SMTA (IT/GB-8/19/8.2 Rev.1, page 11): Annex 3, Articles 4.5 and 4.5bis.

iii. Period of payment obligations under Art. 6.8

At the Working Group meeting in June 2019, we were close to an agreement in terms of the formulations for the key provisions of Articles 6.7 and 6.8 of the SMTA. At the subsequent meeting, we had to open some issues again, one of which is the period of payment obligations under Article 6.8. We had discussed this issue several times during our deliberations and at the June meeting we reached a compromise on using the concept and formulation of “10 years”, which we thought was attractive, not least because of its simplicity and straightforward enforceability. The October 2019 meeting then brought some alternatives back again and further language was added, which was accordingly part of the report to GB-8. The Co-chairs of the GB-8 informal group suggested to keep “for the period of commercialization”, but the group didn’t have a chance to actually discuss it.

Relevant text: draft revised SMTA (IT/GB-8/19/8.2 Rev.1, page 11): Articles 6.8, 6.8bis, 6.8ter, 6.8quater. Draft revised SMTA (IT/OWG-EFMLS-9/19/Interim Report, page 25): Articles 6.8, 6.8bis.

iv. Confidentiality of reports (only last sentence of Art. 5e)

We also came close to a consensus on the various provisions dealing with confidentiality, where our main concern was to draft a revised SMTA that would be attractive to users while ensuring continued

monitoring and compliance. Only one aspect is open in this regard, namely the provision dealing with the confidentiality of reports on SMTAs that need to be submitted regularly by the provider to the Governing Body (the third party beneficiary). We seem to have agreed to apply a general rule of confidentiality for these reports except for dispute settlement and aggregated reporting purposes. This aspect might therefore need little further work before we can agree on it “ad ref”.

Relevant text: draft revised SMTA (IT/GB-8/19/8.2 Rev.1, page 11): Article 5e last sentence.

v. Dual system: Subscription System plus single access option

Although there seems to be an agreement, in principle, on working towards a dual system that would include a Subscription System plus a Single Access option, some further discussions are still needed to reach a final agreement on the details .

3. PRACTICALLY DONE: THE MANY AGREEMENTS “AD REFERENDUM” AND OTHERS

The following provides an overview of issues for which agreement has been practically reached or which require minimal further discussions are needed to arrive at full/ firm compromises.

A. SMTA

i. Definitions

The concepts underling the definitions of “Sales” and “to commercialize”, though not agreed “ad ref” in the text of the SMTA are mostly agreed upon. These definitions may only require some minimum legal brushing, but are in principle agreed upon substantively.

Relevant text: draft revised SMTA (IT/GB-8/19/8.2 Rev.1, page 13, article 2

ii. Withdrawal clauses

Provisions on withdrawal are finalized (“ad ref”) for both the Subscription System and the single access option, which constitutes a major achievement in the negotiations.

Relevant text: draft revised SMTA (IT/GB-8/19/8.2 Rev.1, page 19, article 9.2 Annex 3 (Subscription System) and Annex 2 (single access system)

iii. Minimum incorporation threshold (PGRFAuD. payments under single access)

There is agreement of minimal incorporation threshold for PGRFuD. There is also agreement that payment obligations are not required below an incorporation threshold, which also constituted good progress in the negotiations.

Relevant text: draft revised SMTA (IT/GB-8/19/8.2 Rev.1, page 16, article 6.5

iv. Enforceability, dispute settlement, damages

In terms of enforceability, agreement has been reached in relation to the role of the Third Party Beneficiary in terms of the right to initiate dispute settlement procedures. There is also agreement on how damages would be evaluated in case of a proven breach.

Relevant text: draft revised SMTA (IT/GB-8/19/8.2 Rev.1, page 18, article 8

v. Improved reporting, monitoring and transparency

Agreement has been reached on improved proved reporting, monitoring and transparency, while agreement subject to confidentiality considerations

Relevant text: draft revised SMTA (IT/GB-8/19/8.2 Rev.1, Annex 1

4. Possible way forward

The discussions and negotiations on a viable solution to enhance the functioning of the Multilateral System have come very far. We could almost reach a consensus at GB-8 and we should now continue to use the many opportunities of informal consultations to figure out how best to proceed.

The specific red blocks may benefit most from efforts during our further informal consultations. Above is a suggestion of what these blocks or areas could be.

We could try to tackle them one by one. We may want to focus first on reaching a certain level of agreement on concepts. Based on the concepts, we could then delve into language formulations.

It is believed that only if we succeed in the red blocks could we then move to the yellow blocks in further informal consultations.

In all these efforts, we will have to develop ideas, concepts and solutions jointly, in a constructive spirit and based on a much-needed willingness to enhance the functioning of the Multilateral System.

During the informal stocktaking consultation of January 21, 2021, several participants presented issues that were not discussed during negotiations. These issues are listed in the annex to this document.

Lausanne/Switzerland, 9 March 2021

Annex: Issues raised during informal consultations not being part of past negotiations**Shared vision of an enhanced Multilateral System:**

This “blue box” presents elements presented by some participants in the informal consultations to define a common vision for the enhanced Multilateral System. These elements could be discussed in relation to the process of the enhancement of the Multilateral System or in any other appropriate context.

- **Primary role of the MLS in the context of bigger efforts relating to food security, climate change and sustainable agriculture**
- **Balance between monetary and non-monetary benefits**
- **Use purposes of additional funds in the BSF**
- **Share of the BSF within the overall funding target of the FS**
- **Incentives for participating and including materials into the MLS? Role of non-CPs?**
- **Conservation of crops for future needs: sustainable agriculture, multiple-purpose crops etc.**

Additional items raised

This box presents items proposed by some participants at the informal consultations for further discussion:

- **Multipurpose crops: damages under Art. 8 for breach of Arts. 6.1 and 6.2 of the SMTA**
- **Availability of material under an expanded Annex I**
- **Facilitated access by non-CPs and CPs who haven't made their material available**
- **Balance between monetary and non-monetary benefit-sharing in the Funding Strategy**