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The International Treaty
ON PLANT GENETIC RESOURCES
FOR FOOD AND AGRICULTURE

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Item 9.1 of the Provisional Agenda

NINTH SESSION OF THE GOVERNING BODY

New Delhi, India, 19 – 24 September 2022

Report on Possible Measures to Encourage Natural and Legal Persons to Include Material in the Multilateral System and other Reviews and Assessments under the Multilateral System

Executive Summary

This document contains two related reports requested by the Governing Body at its Eighth Session, namely: (1) a report on the reviews and assessments under Article 11.4 of the International Treaty and on possible measures to encourage natural and legal persons to include material in the Multilateral System, and (2) a report on the reviews in Article 13.2d(ii) of the International Treaty regarding payment rates and mandatory payments.

Guidance Sought

The Governing Body is invited to consider the reports contained in this document and to adopt a Resolution on (1) possible measures to encourage natural and legal persons to include material in the Multilateral System, and (2) the reviews and assessments foreseen under Articles 11.4 and 13.2d(ii) of the International Treaty.

I. INTRODUCTION

1. The Multilateral System of the International Treaty contains specific in-built review mechanisms and milestones, explicitly giving the Governing Body the capacity to assess the status of the Multilateral System and progress in its implementation, and to adopt measures and decisions to enhance its operations.
2. The Governing Body has repeatedly postponed these reviews and assessments, as well as the related decisions.
3. Nevertheless, the issues underlying the reviews and assessments have been part of the broader efforts, discussions, and negotiations to enhance the functioning of the Multilateral System, initiated in 2013.
4. At its Eighth Session, the Governing Body decided to postpone the reviews and assessments to its Ninth Session, and requested the Secretary to prepare two reports, with inputs from Contracting Parties and stakeholders: (1) a report on the reviews and assessments in Article 11.4 of the International Treaty and on possible measures to encourage natural and legal persons to include material in the Multilateral System, and (2) a report on the reviews in Article 13.2d(ii) of the International Treaty regarding payment rates and mandatory payments.
5. These two reports are provided in different sections of this document.
6. In an effort to gather more information and strive for inclusiveness, the Secretary issued a notification in September 2020 inviting contributions from Contracting Parties and relevant stakeholders.¹
7. Sixteen submissions were received. Of those, Contracting Parties from the European Region submitted eight,² three from Latin America and the Caribbean Region,³ two from the Near East Region,⁴ and one from Africa Region.⁵ The North America Region provided a regional submission. One stakeholder group made a submission, namely the seed industry. All submissions are compiled in the document, IT/GB-9/22/9.1/Inf.1 Rev.1.
8. These submissions were an important source of input for preparing the reports.

II. REPORT ON ARTICLE 11.4 OF THE INTERNATIONAL TREATY AND ON POSSIBLE MEASURES TO ENCOURAGE NATURAL AND LEGAL PERSONS TO INCLUDE MATERIAL IN THE MULTILATERAL SYSTEM

a. Introduction

9. At its Eighth Session, the Governing Body “decide[d] to postpone the reviews and assessments foreseen under Article 11.4 to the Ninth Session and request[ed] the Secretary to prepare a report, with inputs from Contracting Parties and relevant stakeholders, on possible measures to be considered by the Governing Body to encourage natural and legal persons to include material in the Multilateral System.”⁶
10. This section of the document provides a brief overview of the assessment and potential decision relating to facilitated access for natural and legal persons, as foreseen in Article 11.4 of the International Treaty, information on the modalities used by natural and legal persons to

¹ Notification NCP GB9-011 – MLS – reviews/assessments, www.fao.org/3/cb1028en/cb1028en.pdf.

² Belgium, Germany, France, Poland, Spain, Sweden, Switzerland, United Kingdom.

³ Brazil, Ecuador, Nicaragua.

⁴ Jordan, Syria.

⁵ Madagascar.

⁶ Resolution 2/2019, para. 16. www.fao.org/3/nb779en/nb779en.pdf

voluntarily include material, and inputs provided by Contracting Parties and relevant stakeholders during the biennium on experiences made, measures taken and suggestion of possible further measures.

b. Background

11. According to Article 11.3 of the International Treaty -

Contracting Parties [...] agree to take appropriate measures to encourage natural and legal persons within their jurisdiction who hold plant genetic resources for food and agriculture listed in Annex I to include such plant genetic resources for food and agriculture in the Multilateral System.

12. Article 11.4 of the International Treaty provides that -

Within two years of the entry into force of the Treaty, the Governing Body shall assess the progress in including the plant genetic resources for food and agriculture referred to in paragraph 11.3 in the Multilateral System. Following this assessment, the Governing Body shall decide whether access shall continue to be facilitated to those natural and legal persons referred to in paragraph 11.3 that have not included these plant genetic resources for food and agriculture in the Multilateral System, or take such other measures as it deems appropriate.

13. The Governing Body has repeatedly urged natural and legal persons to include their plant genetic resources for food and agriculture listed in Annex I to the International Treaty in the Multilateral System. It has also urged Contracting Parties to take appropriate incentive measures, in accordance with Article 11.3 of the International Treaty.⁷

14. Regarding the measures to encourage natural and legal persons to voluntarily place material in the Multilateral System, an opinion was issued by the *Ad Hoc* Technical Advisory Committee on the Standard Material Transfer Agreement and the Multilateral System (Committee). In this opinion, the Committee stated that “*the decision on what measures to establish under Article 11.3 of the International Treaty is left to the discretion of Contracting Parties. Those measures may include, but are not [...] limited to, financial or fiscal incentives to holders of material (e.g. eligibility for public funding schemes). They might also consist of policy and legal measures, administrative actions setting up domestic procedures for inclusions, or awareness raising efforts (especially at the level of farmers).*”⁸

15. The Governing Body has repeatedly postponed the assessment and decision under Article 11.4 of the International Treaty.

c. Notification of material by natural and legal persons

16. The voluntary inclusion of material in the Multilateral System by natural and legal persons involves notifying the Secretary of the willingness to make available plant genetic resources in the Multilateral System. The Secretary publishes all such notifications through the “Notification Facility” on the website of the International Treaty.⁹

17. Further mechanisms were developed by the Secretary within the information systems of the International Treaty to facilitate the notification process for natural and legal persons. This

⁷ Resolution 2/2006, para. 7, www.fao.org/3/a-be006e.pdf; Resolution 4/2009, para. 10, www.fao.org/3/a-be010e.pdf; Resolution 4/2011, para. 5, www.fao.org/3/a-be454e.pdf; Resolution 1/2013, paras. 14, 16, www.fao.org/3/a-be594e.pdf; Resolution 1/2015 paras. 10, 11 and 12, www.fao.org/3/a-bl138e.pdf; Resolution 1/2017, para. 6, www.fao.org/3/a-mv083e.pdf; Resolution 4/2017, para. 3, www.fao.org/3/a-mv085e.pdf; Resolution 2/2019, para. 2, www.fao.org/3/nb779en/nb779en.pdf

⁸ IT/AC-SMTA-MLS 1/10/Report, Appendix 4. www.fao.org/3/a-be052e.pdf

⁹ www.fao.org/plant-treaty/areas-of-work/the-multilateral-system/collections/en/

was in response to the needs of users to find easily, at accession level, what is available in the Multilateral System and to make some basic passport and related information searchable.

18. Through the assignments of Digital Object Identifiers (DOIs), users can voluntarily indicate the availability of plant genetic resources for food and agriculture in the Multilateral System. DOIs offer a possibility to streamline the notification process and obtain more detailed information on the material available. DOIs are a standardized mechanism for all holders of plant genetic resources for food and agriculture – including natural and legal persons – to inform about material available in the Multilateral System accurately and reliably and following internationally agreed standards. Since the Global Information System (GLIS) Portal became operational in October 2017, it has recorded more than 1.2 million materials.

19. The GLIS Portal may be consulted to retrieve data with the value “voluntary” selected in the descriptor R07 “MLS status”.

20. Several partners undertaking projects under the Benefit-sharing Fund (BSF) have included germplasm from their projects in the Multilateral System by assigning DOIs. The GLIS Portal provides statistics specifically related to DOIs related to BSF projects.¹⁰

21. Other BSF partners specify in their terminal reports how they included the project germplasm in the Multilateral System, for example, in a national genebank, in a CGIAR genebank or in their institution’s genebank that is part of the Multilateral System. Similar options were chosen by partners of earlier projects that could not yet benefit from the DOI registration facility.

22. Pursuant to Resolution 3/2009, plant genetic resources for food and agriculture listed in Annex I of the International Treaty resulting from projects funded by the BSF shall be made available according to the terms and conditions of the Multilateral System. Hence, furthering collaboration through the BSF may help encourage natural and legal persons to include germplasm in the Multilateral System.

23. Finally, it should be noted that some Contracting Parties report that natural and legal persons donate their plant genetic resources for food and agriculture to the national genebank for their availability under the Multilateral System.¹¹ By being part of a collection that is under the management and control of a Contracting Party and in the public domain, these plant genetic resources become automatically available in the Multilateral System.

24. The Secretary provides regular updates and information on the material known to be available under the Multilateral System, particularly in the biennial reports to the Governing Body. These updates and reports also include information on plant genetic resources for food and agriculture held by natural and legal persons and voluntarily made available in the Multilateral System. They draw on the notifications and information received from Contracting Parties, and natural and legal persons, as well as on information systems, online catalogues, databases and other sources.¹²

d. Measures taken and experiences made by Contracting Parties

25. Contracting Parties have taken a variety of measures to encourage natural and legal persons within their jurisdiction to include the plant genetic resources for food and agriculture

¹⁰ ssl.fao.org/glis/stats/by-project

¹¹ For example, Spain notified the Secretary in 2018 about PGRFA available under the Multilateral System, including material voluntarily shared by (public) legal persons, www.fao.org/3/CA2274ES/ca2274es.pdf. See also, IT/GB-9/22/14, *Report of the Compliance Committee*, Appendix 2, para. 36, www.fao.org/3/ni529en/ni529en.pdf

¹² See for example the documents prepared for the Eighth and Seventh Sessions of the Governing Body, IT/GB-8/19/8.1 Rev.1, *Report on the Implementation and Operations of the Multilateral System*, www.fao.org/3/na911en/na911en.pdf; IT/GB-7/17/9, *Implementation and Operations of the Multilateral System*, www.fao.org/3/a-mu380e.pdf; IT/GB-7/17/Inf.4, *Report on Availability of Material in the Multilateral System*, www.fao.org/3/a-bs796e.pdf

they hold in the Multilateral System. The following section provides an overview of measures described by Contracting Parties in their national reports and of measures reported by Contracting Parties and stakeholders during the biennium in reply to a notification issued by the Secretary. Information on some challenges shared in these sources is also provided.

i. Measures reported in the national reports

26. In their national reports,¹³ 22 out of 79 reporting Contracting Parties (or 28 percent), report measures to encourage natural and legal persons within their jurisdictions who hold Annex I Plant Genetic Resources for Food and Agriculture (PGRFA), to include those resources in the Multilateral System. The only region where a majority of reporting Contracting Parties replied positively is the European Region (with 13 positive replies out of 21 reporting Contracting Parties in this Region).

27. The measures include developing awareness-raising materials and organizing workshops with stakeholder groups, mainly universities, research centres, and plant breeders' associations and groups. One Contracting Party indicates the support of a national initiative of plant breeders with the aim of including material in the Multilateral System. Another notes that the national genebank is encouraging private companies to make material available for transfer, including those over which they have applied for intellectual property rights, and that it is maintaining material which will be made available once the plant variety protection (PVP) expires. A third country reports that NGOs and natural persons are making the material available through donations to the national genebank and that there are ongoing discussions to make an entire private collection available. By proceeding in this way, the donation contributes to both the Multilateral System and the national genebank material which has previously not been under the management or control of the government in that country.

28. In some cases, Contracting Parties provide the list of institutions, including private companies that have already agreed to make their material available under the terms and conditions of the Multilateral System. Several Contracting Parties indicate that the support of national initiatives or activities with plant breeders with the specific aim to include material in the Multilateral System has resulted in more material being available. In most Contracting Parties of this group, the existence and the role of the national genebank is central in implementing the measures.

29. A few Contracting Parties report that despite the information provided, stakeholders – mainly private seed companies – did not show interest in making their material available to the Multilateral System directly, because they do not see direct benefits, or they do not wish to disclose what PGRFA they hold. Other Contracting Parties report that although some efforts have been made so far, no stakeholders have yet made material available in the Multilateral System.

30. Several Contracting Parties report they have not taken action in this regard for the following reasons: The legal framework has not yet been put in place to guide the different stakeholders or provide a legal basis for them to act; only the national genebank is operating with PGRFA, and there are no other ex situ collections; there is no inventory of private PGRFA holders, which makes obtaining the necessary information difficult; the obligations of entering PGRFA in the Multilateral System “may exceed” the capacity of the natural and legal persons to handle the incoming requests of the PGRFA from their collections; and lack of financial resources.

¹³ IT/GB-9/22/14, *Report of the Compliance Committee*, Appendix 2, www.fao.org/3/ni529en/ni529en.pdf.

All national reports are available on the International Treaty website at www.fao.org/plant-treaty/areas-of-work/compliance/compliance-reports/en/.

ii. Measures reported by Contracting Parties and stakeholders during the biennium in reply to Notification GB9-011

31. In order to gather inputs from Contracting Parties and relevant stakeholders, as requested by the Governing Body in Resolution 2/2019, the Secretary issued a notification in September 2020. The notification contained a voluntary template for inputs on the continued facilitated access to the Multilateral System for natural and legal persons, to facilitate the submission and analysis of inputs.¹⁴

32. All submissions are compiled in the document, IT/GB-9/22/9.1/Inf.1 Rev.1. The regional distribution of submissions received is given in para. 7 above.

33. Most Contracting Parties highlight that they have continued to encourage natural and legal persons to include their material in the Multilateral System. In particular, Contracting Parties keep raising awareness about the Multilateral System and the possibility for natural and legal persons to include their PGRFA voluntarily, including through information notes and other communication materials, capacity development activities and workshops. Also, holders of relevant collections are approached directly, to inform them about the Multilateral System and encourage them to share their PGRFA through the Multilateral System.

34. Further measures reported by Contracting Parties are examples of public-private partnerships, through which material held by natural and legal persons is made available to the Multilateral System, for example, by putting it into the national genebank.

35. These measures led to concrete examples of the voluntary inclusion of PGRFA into the Multilateral System by natural and legal persons. Since several initiatives aim at facilitating the inclusion through national genebanks, data on these inclusions are not always available.

36. The following concrete examples of successful partnerships to include materials in the Multilateral System were additionally shared in the submissions:

- a. Material-in-transition project (Sweden): A private company shares protected material with a public genebank, which is allowed to make it available under the Multilateral System once the protection expires (several hundreds of advanced breeding lines).
- b. Varieties for Diversity (Germany): Plant breeders, through their national association, make improved varieties available under the Multilateral System through the national inventory (more than 300 varieties).
- c. Plan of Action for the Conservation and Sustainable Use of PGRFA (Switzerland): This public-private partnership comprises more than 50 organizations that include their PGRFA in the national genebank and subsequently in the Multilateral System, while benefiting from the long-term conservation and description of material by the federal government.
- d. German Fruit Genebank (Germany): Private companies participate in the German Fruit Genebank, a decentralized network, making all material available to the Multilateral System.
- e. British Society of Plant Breeders collection at the John Innes Centre: Plant breeders deposit material of new cereal varieties into a special collection, from which it is transferred to a collection that is accessible under the Multilateral System (approximately 100 lines annually).
- f. Provision of previously protected varieties to national genebanks (USA, Canada, Australia): In the USA, once the PVP term expires, the previously protected varieties enter the public domain and are distributed by the national genebank; thus through

¹⁴ Notification NCP GB9-011 – MLS – Reviews/Assessments, www.fao.org/3/cb1028en/cb1028en.pdf.

the Multilateral System. In Canada and Australia, previously protected varieties are shared with the national genebanks on a voluntary basis.

- g. Private breeding companies provide material to the genebank (Netherlands): The Centre for Genetic Resources regularly receives accessions of both Annex I and non-Annex I crops from Dutch breeding companies (1440 accessions).
- h. Breeders share new PGRFA with the national genebank (Czech Republic): Plant breeders provide new PGRFA directly to the national genebank (630 PGRFA).

37. Another example is the availability in the Multilateral System of material that was collected or pre-bred with support by the Crop Trust in the framework of the Crop Wild Relatives Project.¹⁵

38. The submissions also mention problems that natural and legal persons encounter with the inclusion of material in the Multilateral System. A basic problem raised in the submissions is the lack of awareness about the possibility of including material into the Multilateral System. There is insufficient information available, including on the objectives of the Multilateral System and the International Treaty.

39. One problem reported is that the Multilateral System and the Standard Material Transfer Agreement (SMTA) are being perceived as complex, so that natural and legal persons may have difficulties understanding them and the overall functioning of the International Treaty. Equally, it is difficult for genebank managers to explain the International Treaty and the Multilateral System. Some natural and legal persons also perceive a risk of commercial exploitation as soon as they share their material with the Multilateral System.

40. The payment provisions of the SMTA are mentioned as a problem, as are perceived flaws or uncertainties regarding the SMTA and its benefit-sharing clauses. In some cases, other access and benefit-sharing obligations seem to be a problem, especially when a particular genetic resource is the product of different resources falling under different regimes.

41. Several submissions state that companies do not see the direct benefits or advantages they may get from including material in the Multilateral System, and that incentive measures are lacking. A general lack of interest in sharing PGRFA through the Multilateral System is also reported.

e. Possible further measures

42. Based on the above measures already taken and the perceived challenges with encouraging natural and legal persons to include material into the Multilateral System, the following measures could additionally be implemented. The proposed measures are primarily based on the submissions received. Some of them are of practical nature; others may have policy implications.

43. Awareness-raising efforts may promote public interest in the International Treaty and its objectives, to create further impetus to encourage natural and legal persons to include their material, including through national action plans. Awareness-raising efforts could provide information on the importance of the conservation and sustainable use of PGRFA, the benefits and objectives of the Multilateral System and the practical modalities and conditions of the inclusion.

¹⁵ IT/GB-9/22/16.2.2, *Report of the Global Crop Diversity Trust to the Governing Body*, www.fao.org/3/ni847en/ni847en.pdf; CGRFA-18/21/15/Inf.3, *Report from the Global Crop Diversity Trust*, p. 7, www.fao.org/3/ng849en/ng849en.pdf

44. Capacity development activities on the Multilateral System undertaken by the Secretary usually contain a segment on the voluntary inclusion of material by natural and legal persons.¹⁶ Various activities have also been undertaken by the Secretary in the framework of the Benefit-sharing Fund (BSF), to support project partners in including project germplasm in the Multilateral System.¹⁷ These efforts could be expanded and capitalized on, in capacity development efforts by the Secretary, Contracting Parties, Regions and stakeholders.

45. A practical suggestion, which could be part of a general awareness-raising effort, is to prepare a briefing note as a supportive tool for those interested in including their material and those being asked about the inclusion of material. The briefing note could be prepared by the Secretary and be made available to interested users. National Focal Points could use the briefing note as a basis and, if needed, adapt it to their specific national circumstances and priorities. It could include information on the objectives, operations and main elements of the Multilateral System, practical suggestions on how natural and legal persons can contribute to reaching its goals, and practical information about the inclusion of material by natural and legal persons.

46. Another activity that could be part of a more significant awareness-raising effort is the organization of conferences, dialogues or workshops, with broad participation of natural and legal persons who might be interested in including their material in the Multilateral System. Such activities could capitalize on similar efforts already made by Contracting Parties and the Secretary, with the participation of relevant stakeholders and, for example, BSF partners, as reported in other documents prepared for this Session.

47. Another proposal on a practical level is to provide technical and legal support to collection holders so that they will have the capacity to include material, as well as financial support for the regeneration and multiplication, or financial and technical support to threatened collections. Also, technical assistance and capacity development efforts may be needed to address problems, especially small collections, to issue phytosanitary or export certificates.

48. Similar to the above example of the BSF, crop-specific or multi-crop projects for PGRFA conservation could be developed, with an obligation to include the resulting material in the Multilateral System.

49. In order to create a further incentive for inclusion, financial support could be prioritized for collections that have included and notified the availability of their materials to the Multilateral System.

50. At the policy level, it is suggested to create advantages for those natural and legal persons that include their material in the Multilateral System, for example, by providing technical assistance or by enhancing rights relating to access.

51. A further suggestion made is to award BSF projects to Contracting Parties that have not yet received any support from the BSF so far, to create an incentive for farmers and companies in these countries to include their material.

52. Finally, a potential expansion of Annex I to the International Treaty is perceived as an incentive for private companies to share their material through the Multilateral System, directly or through a national genebank.

¹⁶ IT/GB-9/22/9.1, *Report on the Implementation and Operations of the Multilateral System*, www.fao.org/3/ni825en/ni825en.pdf.

¹⁷ IT/GB-9/22/10/Inf.2, *The Benefit-sharing Fund: 2020-2021 Report*.

III. REPORT ON ARTICLE 13.2d(ii) OF THE INTERNATIONAL TREATY: PAYMENT RATES AND MANDATORY PAYMENTS

a. Introduction

53. At its Eighth Session, the Governing Body “decide[d] to postpone the reviews under Article 13.2d(ii) of the International Treaty to the Ninth Session and request[ed] the Secretary to prepare a report, with inputs from Contracting Parties and relevant stakeholders.”¹⁸

54. This section of the document provides a brief overview of the two reviews in Article 13.2d(ii) of the International Treaty: the review of payment levels and the assessment of whether the mandatory payment requirement shall be extended. This is followed by a summary of the related discussions in the context of the process to enhance the Multilateral System and a presentation of the measures proposed by Contracting Parties and stakeholders during the biennium.

b. Background

55. Article 13.2d(ii) of the International Treaty provides that,

The Governing Body may decide to establish different levels of payment for various categories of recipients who commercialize such products; it may also decide on the need to exempt from such payments small farmers in developing countries and in countries with economies in transition. The Governing Body may, from time to time, review the levels of payment with a view to achieving fair and equitable sharing of benefits.

56. The Governing Body initially decided to review the payment levels periodically, starting from its Third Session, but has repeatedly postponed such review.

57. Additionally, Article 13.2d(ii) of the Treaty provides that the Governing Body,

May also assess, within a period of five years from the entry into force of this Treaty, whether the mandatory payment requirement in the MTA shall apply also in cases where such commercialized products are available without restriction to others for further research and breeding.

58. The Governing Body has not yet undertaken such an assessment to date. Instead, it has postponed it repeatedly, starting from the five-year period following the entry into force of the International Treaty.

c. Overview of discussions in the process to enhance the Multilateral System

59. For three biennia prior to the Eighth Session of the Governing Body, the Ad Hoc Open-ended Working Group to Enhance the Functioning of the Multilateral System (Working Group) was considering all reviews and assessments foreseen in Article 13.2d(ii) of the International Treaty in its discussions on enhancing the Multilateral System.

60. Accordingly, it discussed various options for reviewing the payment levels currently contained in the SMTA, and establishing possible additional differentiations, such as categories of recipients or crops. The Working Group also discussed the possibility of making voluntary payments in the SMTA mandatory and of exempting certain users from mandatory payments.

61. To make well-informed decisions and prepare well-founded recommendations to the Governing Body, the Working Group considered extensive research data and comprehensive studies undertaken by teams of international experts regarding the reviews and assessments

¹⁸ Resolution 2/2019, para. 17. www.fao.org/3/nb779en/nb779en.pdf

foreseen in Article 13.2d(ii). Furthermore, two groups of experts established by the Co-chairs of the Working Group provided specific information on payments rates (Friends of the Co-chairs on Access Mechanisms and Payment Rates) and on possible user or crop categories (Friends of the Co-chairs on User and Crop Categories), respectively.

62. Therefore, the Working Group had before it several documents, reports and tools on the question of how to define and balance the payment rates under a revised SMTA, the consequences of making all payments mandatory and on the question of possible exemptions from payment, including the following:

- IT/OWG-EFMLS-2/14/3, *Synoptic Study 1: Estimating Income to Be Expected from Possible Changes in the Provisions Governing the Functioning of the Multilateral System* (see in particular the chapters, *The Parity Point: describing the dynamic inter-relation of Articles 6.7 and 6.11*, at paras. 12-24, and, *The attractiveness of the Innovative Approaches*, at paras. 80-81); www.fao.org/3/a-be635e.pdf
- IT/OWG-EFMLS-6/17/Inf.4, *Second Report from the Friends of the Co-chairs Group on Access Mechanisms and Payment Rates* (see especially the chapter, *Can rates for both a single sample access option and a Subscription System be balanced?* paras. 16-20); www.fao.org/3/a-br412e.pdf
- A background note that the Friends of the Co-chairs Group on Access Mechanisms and Payment Rates considered at its second meeting, *Balancing payment rates between options*; www.fao.org/3/a-br230e.pdf
- IT/OWG-EFMLS-5/16/Inf.5, *Report from the Friends of the Co-chairs Group on Access Mechanisms and Payment Rates*, paras. 27-34); www.fao.org/3/a-bp084e.pdf
- IT/OWG-EFMLS-5/16/Inf.4, *Report from the Friends of the Co-Chairs Group on User and Crop Categories*; www.fao.org/3/a-bp084e.pdf
- a computer tool for the calculation of rates under different scenarios, with explanations and background information contained in the document, IT/OWG-EFMLS-4/15/4, *Commentary on Structural Elements for the Development of a Subscription Model/System* (e.g. in *chapter 3: A hypothetical calculation of rates*, paras. 25–28). www.fao.org/3/a-be922e.pdf

63. Legal advice was provided by the Standing Group of Legal Experts (SGLE), who was also looking into questions of direct relevance to the reviews and assessments.¹⁹

64. In addition, the Governing Body and the Working Group invited written input from Contracting Parties and stakeholders throughout the enhancement process. The submissions included suggestions, proposals and positions on the reviews and assessments under Article 13.2d(ii) of the International Treaty. They were presented at each meeting of the Working Group and are available on the website of the International Treaty.²⁰

¹⁹ See in particular Legal Opinions 1 and 2, contained in the document, IT/OWG-EFMLS-6/17/Inf.3, *Report of the Standing Group of Legal Experts: outcomes of the First Meeting*. www.fao.org/3/a-br408e.pdf

²⁰ IT/OWG-EFMLS-9/19/Inf.3 Add.1, *Submissions from Contracting Parties and Stakeholders on matters to be discussed at the Ninth Meeting of the Working Group – Addendum*, <http://www.fao.org/3/ca5041en/ca5041en.pdf>; IT/OWG-EFMLS-9/19/Inf.3, *Submissions from Contracting Parties and Stakeholders on matters to be discussed at the Ninth Meeting of the Working Group*, www.fao.org/3/ca4962en/ca4962en.pdf; IT/OWG-EFMLS-6/17/Inf.7, *Submissions from Contracting Parties and Stakeholders on matters to be discussed in the Sixth Meeting of the Working Group*, www.fao.org/3/a-br413e.pdf; IT/OWG-EFMLS-5/16/Inf.3, *Compilation of Submissions from Contracting Parties and Relevant Stakeholders*, www.fao.org/3/a-bp086e.pdf; IT/OWG-EFMLS-4/15/Inf.3, *Submissions received by the Working Group during the Biennium, in preparation for the Subscription System and the Draft Revised Standard Material Transfer Agreement*, www.fao.org/3/a-be924e.pdf; IT/OWG-EFMLS-3/15/Inf.3, *Compilation Of Submissions Received By Working Group Members And Others*, www.fao.org/3/a-be684e.pdf; IT/OWG-EFMLS-3/15/Inf.3 Add.1, *Additional Submissions Received from Working Group Members and Others*, www.fao.org/3/a-be694e.pdf.

65. The Working Group provided three reports to the Governing Body at the Sixth,²¹ Seventh²² and Eighth²³ Sessions, respectively.

66. All reports comprised recommendations on the issues that are the subject of the reviews and assessments under Article 13.2d(ii) of the International Treaty; however, without final consensus by the Working Group.

67. In its report to the Eighth Session of the Governing Body, the Working Group had proposed a draft revised Standard Material Transfer Agreement, which it had not been able to fully agree upon, but which contained possible elements on the issues that are the subject of the reviews and assessments under Article 13.2d(ii).²⁴

68. Although not finally agreed, the draft revised Standard Material Transfer Agreement proposed by the Working Group to the Eighth Session of the Governing Body contained the following (bracketed) elements that relate to the reviews and assessments foreseen under Article 13.2d(ii) of the International Treaty:

- All payments under the Standard Material Transfer Agreement would have been mandatory; in particular, mandatory payment requirements would have applied in cases where commercialized products are available without restriction to others for further research and breeding;
- The Standard Material Transfer Agreement would have included reviewed payment levels; the Working Group made progress on the payment structures and the relationship between the rates for different access and payment mechanisms; it also considered proposals for concrete payment rates but could not reach final agreement;
- The Standard Material Transfer Agreement would not have comprised crop categories or user categories to determine different levels of payment;
- However, it would have provided for exemptions from payment for small users whose yearly sales fell below a certain threshold, especially small scale farmers, small breeding companies and public research institutions (further clarified in the accompanying – bracketed – draft resolution for consideration of the Governing Body²⁵).

69. The Governing Body was unable to reach consensus on any of these proposals at its Eighth Session.²⁶

d. Measures proposed by Contracting Parties and stakeholders during the biennium

70. The notification mentioned above also contained a voluntary template for inputs on (1) the assessment of whether the mandatory payment requirement shall be extended; and (2) the review of payment levels.²⁷ This is in reply to the decision by the Governing Body in Resolution 2/2019 requesting the Secretary to gather inputs from Contracting Parties and relevant

²¹ IT/GB-6/15/06 Rev.2, Consolidated Report on the Deliberations of the Ad Hoc Open-Ended Working Group to Enhance the Functioning of the Multilateral System, during the 2014–2015 Biennium. www.fao.org/3/a-mo743e.pdf

²² IT/GB-7/17/07, Report of the Ad Hoc Open-ended Working Group to Enhance the Functioning of the Multilateral System, www.fao.org/3/a-mt935e.pdf; IT/GB-7/17/07 Add.1, Report of the Seventh Meeting of the Ad Hoc Open-ended Working Group to Enhance the Functioning of the Multilateral System, www.fao.org/3/a-mu766e.pdf.

²³ IT/GB-8/19/08.2 Rev.1, *Report of the Ad Hoc Open-ended Working Group to Enhance the Functioning of the Multilateral System*. www.fao.org/3/na617en/na617en.pdf

²⁴ IT/GB-8/19/08.2 Rev.1, *Report of the Ad Hoc Open-ended Working Group to Enhance the Functioning of the Multilateral System*, Appendix 1 to the Draft Resolution. www.fao.org/3/na617en/na617en.pdf

²⁵ IT/GB-8/19/08.2 Rev.1, *Report of the Ad Hoc Open-ended Working Group to Enhance the Functioning of the Multilateral System*, Annex 1. www.fao.org/3/na617en/na617en.pdf

²⁶ IT/GB-8/19/Report, *Report of the Eighth Session of the Governing Body*, para. 31.

²⁷ Notification NCP GB9-011 – MLS – reviews/assessments. www.fao.org/3/cb1028en/cb1028en.pdf

stakeholders for the preparation of a report on the reviews under Article 13.2d(ii) of the International Treaty.

71. All submissions received are compiled in the document, IT/GB-9/22/9.1/Inf.1 Rev.1. The regional distribution of submissions received is given in para. 7 above.

(1) Assessment of whether the mandatory payment requirement shall be extended

72. Submissions generally highlight the importance of the Multilateral System and of the overall objectives of the International Treaty.

73. Some submissions emphasize the benefits of voluntary payments foreseen in the SMTA for products available without restriction for further research and breeding as an incentive for plant breeders to make materials available, thus stimulating innovation and progress in plant breeding. Voluntary payments by the private sector are mentioned, such as the annual contribution of the French seed sector, SEMAE²⁸. It is pointed out that making products available without restriction to others for further research and breeding is a form of non-monetary benefit-sharing that generates greater benefits for conservation and sustainable use of PGRFA and contributes to enhanced food security.

74. Consequently, the possible extension of the mandatory payment requirement is considered in several submissions as difficult to justify without any further accompanying measures and likely leading to detrimental effects, such as reluctance by users to access material from the Multilateral System.

75. Other submissions, however, anticipate positive consequences, including enhanced use of the Multilateral System, more income to the BSF, a more substantial commitment to implementing the Multilateral System at the national level and an opportunity to support farmers.

76. In general, avoiding complexity is considered an essential objective for any changes to the Multilateral System.

77. Most submissions refer to the work of the Working Group, where the possible extension of the mandatory payment requirement has been discussed as part of the package of measures (see para. 68 above). While most argue that, consequently, the issue cannot be considered in isolation, but only with other elements of the package of measures in the enhancement process, some suggest this measure alone could already have positive effects on the operations and implementation of the Multilateral System.

78. Accordingly, some submissions favour extending the mandatory payment requirement to products that are available without restriction to others for further research and breeding, whereas most other submissions state that it may be agreeable but must be part of a consensus on a whole package of measures to enhance the functioning of the Multilateral System, if agreement on this element can be reached at all.

79. It is also suggested to conduct further research to estimate possible income to the BSF that could be generated by extending the mandatory payment requirement, and to gather user experiences and expectations from these changes.

(2) Review of payment levels

80. Most submissions recommend not to establish user or crop categories and differentiated payment levels based on such categories. One submission recommends not to make any changes to the existing payment rates.

²⁸ French Interprofessional Organisation for Seeds and Plants

81. Another submission, however, suggests establishing categories of users, for example, according to their country of origin, types of activity, objectives of using the material, and categories of crops, such as staple crops.
82. Again, avoiding complexity is considered an important objective for any changes to the Multilateral System.
83. Many submissions favour including an exemption from payment obligations for small scale-farmers, some also for public research institutions, small companies, indigenous peoples or hobbyist farmers.
84. There are, however, different approaches to framing such an exemption: while some submissions favour using the term “small scale farmers”, others prefer using a threshold of yearly income instead while avoiding the term “small scale farmers”. By establishing a threshold, small-scale farmers’ income (or the payment due by them) would fall below the threshold and thus be exempted from mandatory payments. Some submissions suggest limiting the exemption to small-scale farmers in developing countries and countries with economies in transition.
85. Several submissions highlight the difficulties that the Working Group experienced when trying to define the term “small scale farmers”. In referring to the work of the Working Group, submissions point out that the draft revised SMTA proposed by the Working Group to the Eighth Session of the Governing Body included a threshold rather than the term “small scale farmers”.
86. Submissions suggest these questions should be addressed in an effort to enhance the functioning of the Multilateral System and not in isolation from other proposed measures.

IV.GUIDANCE SOUGHT

87. The Governing Body is invited to consider the reports in this document and to adopt a Resolution on the reviews and assessments foreseen under Articles 11.4 and 13.2d(ii) of the International Treaty. The Governing Body may wish to consider the elements of a draft Resolution provided in the *Appendix* to this document.
88. The Governing Body may also wish to provide further guidance to the Secretary on the support he could provide in undertaking activities to encourage natural and legal persons to include plant genetic resources for food and agriculture in the Multilateral System and in monitoring related progress.

Appendix

DRAFT RESOLUTION **/2022
IMPLEMENTATION AND OPERATIONS OF THE MULTILATERAL
SYSTEM OF ACCESS AND BENEFIT-SHARING

THE GOVERNING BODY,

[...]

**PART [X]: REVIEWS AND ASSESSMENTS UNDER THE MULTILATERAL SYSTEM
AND OF THE IMPLEMENTATION AND OPERATION OF THE STANDARD
MATERIAL TRANSFER AGREEMENT**

- 1) ***Thanks*** Contracting Parties and stakeholders who provided information about measures taken to encourage natural and legal persons to include PGRFA in the Multilateral System;
- 2) ***Requests*** the Secretary to continue capacity development activities and awareness raising efforts on the voluntary inclusion of plant genetic resources for food and agriculture in the Multilateral System by natural and legal persons, with the participation of National Focal Points and relevant stakeholders, subject to the availability of financial resources; and to prepare a briefing note to support natural and legal persons who are interested in including their plant genetic resources for food and agriculture in the Multilateral System;
- 3) ***Invites*** Contracting Parties to capitalize on the measures already taken to encourage and support natural and legal persons to make material available in the Multilateral System and to adopt additional ones;
- 4) ***Requests*** the Secretary to monitor progress on the voluntary inclusion of material in the Multilateral System by natural and legal persons and to report to the Governing Body at its [Eleventh] Session so that it could undertake the assessments and make the decisions foreseen under Article 11.4 of the International Treaty;
- 5) ***Decides*** to further postpone the reviews and assessments foreseen under Article 13.2d(ii) of the International Treaty, to its [Tenth] Session.
- 6) ***[...]***