



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



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

Item 9.1.i of the Provisional Agenda

NINTH SESSION OF THE GOVERNING BODY

New Delhi, India, 19–24 September 2022

**Submission by the European Union and its Member States on the
Implementation of Article 12.3a of the International Treaty**

Note by the Secretary

On 29 July 2022, the Presidency of the European Union (EU), on behalf of the EU and its Member States, submitted the information contained in this document to the Secretary for consideration under this agenda item in relation to the implementation of Article 12.3a of the International Treaty. The text of the submission is presented as received, with only formatting adjustments to align with standard Treaty document layout

Background document on agenda item 9.1.i submitted by the Presidency on behalf of the EU and its Member States

The inclusion and utilization of multiple-use crops as addressed in Article 12.3.a¹ of the International Treaty within the MLS generates legal uncertainties within the EU and its Member States, in particular in view of a reinforcement of Article 8 of the SMTA, and in view of a potential new EFMLS process. Therefore, we would like to seek an advice in policy direction from the Governing Body. In this regard, we requested the Secretariat to include this issue on the provisional agenda of GB-9 under the items regarding the implementation of the MLS, to provide space for exchange of views, discussion, and guidance.

1. The EU and its Member States first wish to stress again the urgent and increasing global need for better access to and use of as wide range as possible of plant genetic resources for food and agriculture (PGRFA), which is necessary for research and breeding for adaptation of agriculture to climate change and to secure peoples livelihoods and food security.
2. The suspension of formal consultations on the Enhancement of the Functioning of the Multilateral System (EFMLS) of the International Treaty at GB-8 in November 2019 provided the opportunity to take a step back and thoroughly take stock of unresolved issues in the enhancement process and of the MLS as such.
3. The implementation of the Multilateral System (MLS) is well advanced in a range of EU countries. European breeders consider the MLS as a key resource for their breeding programs. The EU and its Member States have identified a number of unresolved issues concerning the MLS as such and its enhancement, which they consider necessary to be addressed in order to resume consultations. Among these issues are the legal uncertainties related to the utilization of multiple-use crops. The reinforcement of article 8 of the SMTA on damages for breaches related to SMTA articles 6.1 and 6.2, which had been proposed during the EFMLS consultation process, was considered very critical, as it would further increase uncertainties related to the use of those crops, and a strong need for clarification was expressed during EFMLS negotiations.
4. Multiple-use crops are addressed in Article 12.3.a of the International Treaty. Multiple-use crops are those crops that can be used for food/feed purposes as well as or for non-food/feed purposes such as renewable raw materials (e.g. starch-potatoes) or biofuels. According to Article 12.3.a, the inclusion of multiple-use crops in the MLS depends on their importance for food security. The term food security is not defined within the ITPGRFA and this raises some challenges and generates legal uncertainties regarding the use of crops that can be considered multiple-use crops. Therefore, guidance on how to safely implement Article 12.3.a is sought.
5. Explaining practical aspects in more detail, most multiple-use crops currently do not have specific breeding programs for non-food/feed purpose and the crop can be equally used for food/feed and non- food/feed uses. In the few cases that they do, a food/feed use still remains possible (examples: starch quality in corn/maize used for food purposes and paper production; high erucic oil content varieties of oilseed rape for animal feed and colors industry).
6. Access to a genetic resource by breeders, and agreement on conditions for use and benefit-sharing, occur at the beginning of the breeding process, while the use by farmers is far subsequent to the breeders' activity. The breeder and in many cases even the farmer have no control

¹ *Article 12.3.a) of the International Treaty: Access shall be provided solely for the purpose of utilization and conservation for research, breeding and training for food and agriculture, provided that such purpose does not include chemical, pharmaceutical and/or other non-food/feed industrial uses. In the case of multiple-use crops (food and non-food), their importance for food security should be the determinant for their inclusion in the Multilateral System and availability for facilitated access.*

whatsoever of what use in the end is made of a multiple-use crop variety developed with MLS material.

7. Breeding aims may also change throughout the breeding process. This implies that in a specific situation a new permission on access and/or use according to ABS national laws would be needed in the middle of the breeding process if a strict approach were applied regarding the differentiation according to the aim of breeding.

8. The regime of access to the genetic resource (through a SMTA) is linked to the intended use declared by the requesting party at the very beginning of the use process and should not be dependent on any final use of a breeding product. A breeder can only be responsible for his or her own activity. Moreover, a breeder can neither anticipate nor influence what a farmer or any other entity further in the user chain will eventually do with a variety. Linking the access regime to the end use hence appears practically not feasible.

9. Furthermore, the EU and its Member States would like to point out that food security cannot be achieved exclusively through sustainably increasing food production. One further important contribution to food security in the context of farmers' livelihoods and the use of PGRFA is income generation by farmers through the selling of non-food/feed agricultural products. The eventual non-food/feed use of a multiple-use crop variety produced by including material from the MLS, and aimed for food production or the cultivation and selling of agricultural non-food/feed products, will contribute to food security. Hence it should be in our view included also in the term food security. Furthermore, non-food/feed agricultural uses of multiple-use crops might require increasing research, breeding and training, to address climate change and challenges of food security.

10. That is why the EU and its Member States would like to ask the Governing Body for advice in policy direction or guidance of the safe implementation of Article 12.3.a and the related term food security, in order to enhance the use of multiple-use crops by relieving the legal uncertainties that induce users to refrain from obtaining those crops from the MLS.

11. The EU and its Member States understand and aim to implement Article 12.3.a based on the understanding that the importance for food security of PGRFA – including multiple-use crops – is determined by their use for agricultural production of food and feed, and/or by their use for generating income through the selling of food and feed products as well as of selling agricultural non-food/feed products.

12. The unequivocal inclusion into the International Treaty's MLS of multiple-use crops would enhance their use for the benefit of farmers worldwide.

13. It is the view of the EU and its Member States that addressing this matter, as it is one important element that, contributes to the improvement of the overall functioning of the MLS, will contribute to advancing revisions of the SMTA in a coherent manner.