



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



**International Treaty
on Plant Genetic Resources
for Food and Agriculture**

**INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES
FOR FOOD AND AGRICULTURE**

**ELEVENTH MEETING OF THE AD HOC OPEN-ENDED WORKING
GROUP TO ENHANCE THE FUNCTIONING OF THE
MULTILATERAL SYSTEM**

Rome, Italy, 16–18 April 2024

The three “hotspots”: options paper by the Co-Chairs

Executive Summary

At its Tenth Session, the Governing Body considered the Checkpoint Report of the Co-Chairs on progress regarding the process for the enhancement of the functioning of the Multilateral System, and requested the Co-Chairs to give early attention to the three identified “hotspots”, namely digital sequence information/genetic sequence data (DSI/GSD), expansion of Annex I, and payment structure and rates. This document contains the options paper prepared by the Co-Chairs to facilitate consideration of the three “hotspots” by the Working Group. The Co-Chairs describe options for each of the three “hotspots”, sequentially. They also recall the main elements of the “June 2019 draft package” in relation to the “hotspots” and relevant work in the previous phase of the process.

Guidance Sought

The Working Group is invited to provide input on possible options to address the three “hotspots”. In addition, the Working Group is invited to provide recommendations for a Co-Chairs’ draft negotiating text, focusing on addressing the three “hotspots” and on further refining the “June 2019 draft package.”

OPTIONS PAPER BY THE CO-CHAIRS

I. INTRODUCTION

1. As Co-Chairs we prepared this options paper for the eleventh meeting of the Ad Hoc Open-ended Working Group to Enhance the Functioning of the Multilateral System (Working Group), to have a basis for discussing concepts and approaches for the key areas for further negotiation.
2. This is in response to the request by the Governing Body to the Co-Chairs, at the Tenth Session in 2023, to give early attention to the three identified “hotspots”, namely digital sequence information/genetic sequence data (DSI/GSD), expansion of Annex I, and payment structure and rates.¹
3. In the same Resolution, the Governing Body also welcomed the indicative timeline that we developed with inputs and suggestions by the Working Group at its tenth meeting² and requested us as Co-Chairs to publish an updated version together with a package of relevant information in relation to the process.³
4. The updated timeline and a package of background information, including the “June 2019 draft package of measures”, is now available on the website of the International Treaty at www.fao.org/plant-treaty/areas-of-work/the-multilateral-system/enhancement-process/en/.
5. In the timeline, the eleventh meeting of the Working Group is a critical step in the process towards the Eleventh Session of the Governing Body:
 - Eleventh meeting (this meeting) to discuss options to address the three hotspots and build on the “June 2019 draft package” of measures;
 - Twelfth meeting to discuss the Co-Chairs’ draft negotiating text with a view to adapting it, so that it would become a Working Group draft package, for further refinement;
 - Thirteenth meeting to refine the draft package of measures;
 - Fourteenth meeting to finalise the package of measures and to prepare the Working Group report to the Eleventh Session of the Governing Body.
6. The discussions of options to address the three “hotspots”, together with a review of the starting point for the negotiations (the “June 2019 draft package”), will inform the preparations of a draft negotiating text that we will prepare as Co-Chairs for the twelfth meeting of the Working Group later this year.
7. As we stated in our Checkpoint Report to the Tenth Session of the Governing Body, the Multilateral System is a functioning access and benefit-sharing system. Nevertheless, the Multilateral System can be enhanced to make it work even better and to live up to our common expectations and aspirations that have not yet been met.⁴
8. It is the task and mandate of the Working Group to present a draft package of measures to the Eleventh Session of the Governing Body,⁵ tentatively scheduled for 24–29 November 2025.
9. When re-establishing the Working Group at its Ninth Session, the Governing Body listed the shared aims that should guide the work of improving the Multilateral System beyond its current operations:⁶
 - Increase the benefits that arise from the Multilateral System for all Contracting Parties and users, both monetary and non-monetary;

¹ [Resolution 3/2023](#)

² [IT/OWG-EFMLS-10/23/Report](#)

³ [Resolution 3/2023](#), para. 5

⁴ [IT/GB-10/23/9.2](#)

⁵ [Resolution 3/2022](#)

⁶ [Resolution 3/2022](#)

- Increase user-based income to the Benefit-sharing Fund in a sustainable and predictable long-term manner;
- Expand the crops and plant genetic diversity available through the Multilateral System;
- Improve the availability of plant genetic resources for food and agriculture in the Multilateral System;
- Make the Multilateral System more dynamic given that there are developments and emerging issues in science, innovation, plant breeding and global policy environment;
- Create legal certainty, administrative simplicity and transparency for everyone participating in the Multilateral System.

10. We consider the shared aims to be the key framework for the Working Group's consideration of options to address the three "hotspots" and overall balance of the package of measures. These are key areas of the process, where commitment, constructive engagement and creative thinking by all of us are particularly warranted.

II. The "June 2019 draft package"

11. At its tenth meeting, the Working Group agreed that the "June 2019 draft package" should serve as the starting point for further work.⁷ The Governing Body endorsed this suggestion at its Tenth Session.⁸

12. The "June 2019 draft package" consists of three main elements:

- A draft revised Standard Material Transfer Agreement;
- A draft text for an amendment of Annex I;
- A draft Resolution.

13. We plan to prepare the draft negotiating text for the twelfth meeting of the Working Group by keeping this structure of the "June 2019 draft package" and particularly by building on text that had been agreed "ad referendum" in June 2019, with the understanding that nothing is agreed until everything is agreed.

14. In addition to addressing the three "hotspots" as the key areas for further work, some provisions of the draft revised Standard Material Transfer Agreement will need to be finalized.

15. In the document, IT/OWG-EFMLS-11/24/3, we briefly describe the main elements of the "June 2019 draft package" as well as the further work needed. The complete "June 2019 draft package" is contained in the document, [IT/OWG-EFMLS-9/19/Interim Report](#) (pages 19--42), which is available in all six UN languages at www.fao.org/plant-treaty/meetings/meetings-detail/en/c/1106601/.

III. Addressing the three "hotspots"

16. The Governing Body requested the Co-Chairs to give early attention to the three identified "hotspots": digital sequence information/genetic sequence data, expansion of Annex I, and payment structure and rates.⁹

17. We believe that these are the key areas for further work. Progress on the three "hotspots" will be crucial for advancing on developing a full package of measures.

18. A significant amount of work was already done on the three "hotspots" in the earlier phase of the enhancement process and several substantive proposals were made to find compromise solutions. Nevertheless, we request all Regions and stakeholder groups to fully commit and constructively engage, to actively develop creative, simple, and workable solutions that are agreeable to all.

⁷ [IT/OWG-EFMLS-10/23/Report](#), para. 12

⁸ [Resolution 3/2023](#), para. 1

⁹ [Resolution 3/2023](#), para. 2

a. Digital sequence information/genetic sequence data (DSI/GSD)

Approach in the “June 2019 draft package”

19. In the June 2019 draft package, the draft Resolution and the revised SMTA include bracketed text addressing monetary and non-monetary benefit-sharing from the use of DSI/GSD.¹⁰
20. We would like to emphasize that these elements of the draft Resolution and revised SMTA were not agreed, so that there is no agreed ad ref text on DSI/GSD in the “June 2019 draft package.”
21. With regard to non-monetary benefit-sharing from the use of DSI/GSD, the draft Resolution includes bracketed text dealing with the exchange of information, access to and transfer of technology and capacity-building. This text was not agreed or extensively discussed by the Working Group.
22. With regard to monetary benefit-sharing from the use of DSI/GSD, the Working Group at its last meeting discussed that the subscription option may provide a promising possibility, whereas the single access option would require a different approach. The draft Resolution includes bracketed text setting forth that mandatory payments under the revised SMTA reflect the sales of information generated from the material from the Multilateral System that is commercialized. The revised SMTA includes bracketed text in the benefit-sharing provisions of the subscription option and related definitions.

Table 1. Working Group discussion on DSI/GSD in the “June 2019 draft package”

Text for Amendment	Revised SMTA¹¹	Resolution¹²
–	<ul style="list-style-type: none"> Working Group discussed that subscription option (Subscription System)¹³ may provide for a solution to monetary benefit-sharing from the use of DSI/GSD. DSI/GSD in relation to a single access option, if agreed, will require further work.¹⁴ 	<ul style="list-style-type: none"> Working group discussed promoting the exchange of information, access to and transfer of technology and capacity-building in relation to DSI/GSD.

Mapping the options available to the Working Group

23. We have previously noted a high level of engagement and strong willingness to find new solutions for DSI/GSD, especially considering the recent developments in other relevant fora. Our understanding from these discussions is that there are basically two blocks of positions within Contracting Parties in relation to dealing with DSI/GSD; one which concentrates on developing a specialized approach and integrating DSI/GSD into the three main elements of the package of measures for consideration at GB-11 (and monitoring progress at the Convention on Biological Diversity (CBD) and other fora to ensure mutually supportive approaches), and the other which envisages dealing with the hotspot mostly by cooperation with the CBD in its development of a multilateral mechanism for benefit-sharing from the use of DSI on genetic resources, including a global fund. These two options have been reflected in *Figure 1*.

24. Below, we discuss the process to discern how to advance work on this hotspot with the idea of developing some principles/criteria to help the Working Group define the scope of their work, but before that provide a short summary of decisions at the last Governing Body and on-going developments at the CBD.

¹⁰ www.fao.org/3/ca5578en/ca5578en.pdf, paragraphs 31-35.

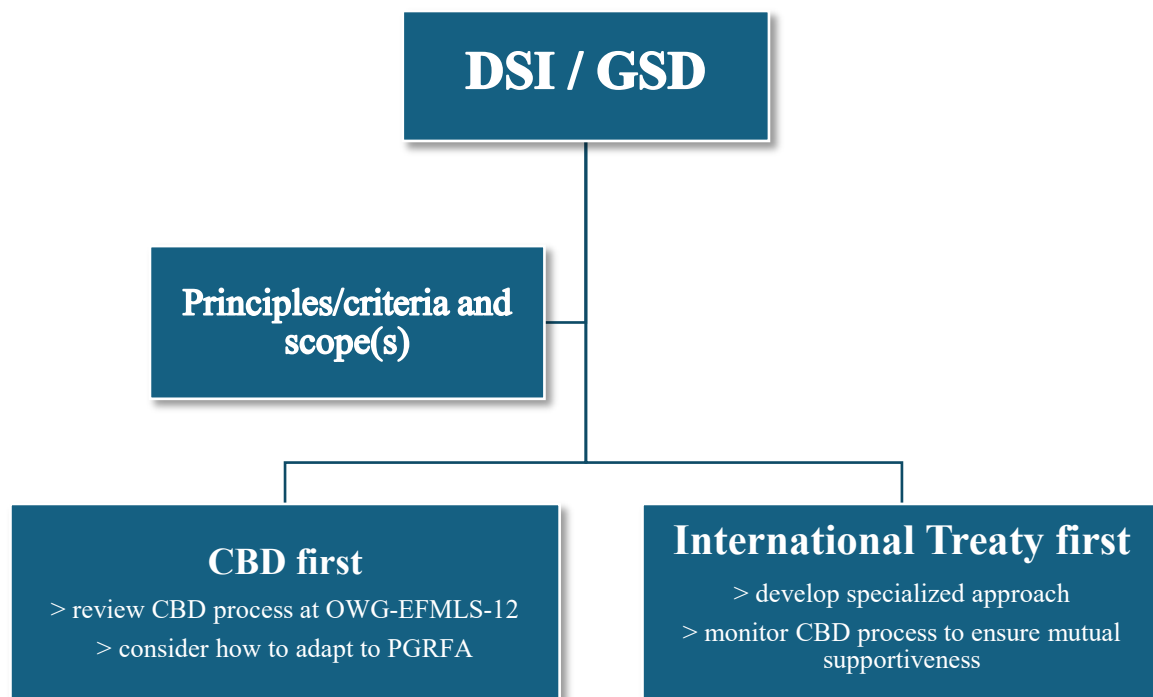
¹¹ [IT/OWG-EFMLS-9/19/Interim Report](#), pages 25-41.

¹² [IT/OWG-EFMLS-9/19/Interim Report](#), pages 19-24.

¹³ The “June 2019 draft package” uses the terms “Subscription System” and “single access system”. In the report of its tenth meeting, the Working Group uses the terms “subscription option” and “single access option”, which the Co-Chairs accordingly used in their checkpoint report to the Tenth Session of the Governing Body and – whenever possible – in this document.

¹⁴ [IT/OWG-EFMLS-10/23/Report](#).

Figure 1. Basic options DSI/GSD



Resolution 3/2023 and Resolution 16/2023

25. In Resolution 3/2023, the Governing Body requested the Co-Chairs to give early attention to three identified “hotspots”, of which one is digital sequence information/genetic sequence data (DSI/GSD). The Governing Body also took note of decision 15/9 of the Conference of the Parties to the Convention on Biological Diversity on Digital Sequence Information on Genetic Resources and urged the Working Group to take this decision and related developments into account when addressing the issue in the context of the process to enhance the functioning of the Multilateral System.¹⁵

26. In Resolution 16/2023, the Governing Body acknowledged that aspects of DSI/GSD are among the matters under consideration by the Working Group and invited the Working Group to examine possible ways to address DSI/GSD in the package of measures, taking into account the recent developments in the CBD, including progress in the development of the multilateral mechanism, as well as initiatives in other relevant fora.¹⁶

CBD developments

27. In decision 15/9, the CBD Conference of the Parties (COP) established a process to undertake further development of the multilateral mechanism for benefit-sharing from the use of DSI on genetic resources, including a global fund. The process consists of: the establishment of the Ad Hoc Open-Ended Working Group on Benefit-Sharing (WG); the compilation of lessons learned from other international funding mechanisms; two studies, one to analyze and model the multilateral mechanism, and another on options for revenue-generating measures at different points along the value chain.¹⁷

28. At the first meeting of the WG, which took place in November 2023, a summary of the compilation of lessons learnt was made available.¹⁸

29. The WG developed possible elements of a multilateral mechanism, and organized its work in five clusters, namely: i) contributions to the fund; ii) disbursement from the fund; iii) non-monetary benefit-sharing; iv) governance; and v) relations to other approaches and systems. For each of the

¹⁵ www.fao.org/3/no027en/no027en.pdf, paragraphs 2 and 4.

¹⁶ www.fao.org/3/no041en/no041en.pdf, paragraphs 7-8.

¹⁷ www.cbd.int/doc/decisions/cop-15/cop-15-dec-09-en.pdf.

¹⁸ www.cbd.int/doc/c/614a/6fec/ae55835cbe586f697f9bcc99/wgdsi-01-02-add2-rev1-en.pdf.

clusters, the WG listed elements on which there is potential convergence, and elements for further discussion.

30. With regard to other approaches and systems, elements on which there is potential convergence include on-going coordination and cooperation with the other forums that are considering benefit-sharing from the use of DSI or related issues, to ensure legal clarity and enable the multilateral mechanism to be mutually supportive of and adaptable to the other instruments while recognizing that other forums may develop specialized approaches. The “other forums” are listed, and the International Treaty features in such a list.

31. Elements for further discussion within the WG include: whether and how an inter-forum body or process on ABS for DSI could facilitate coordination among the forums; whether the scope of the multilateral mechanism, either initially or in the future, should be extended to include genetic resources.¹⁹

32. The WG is scheduled to hold its second meeting in August 2024. Informal, on-line work before the second meeting is being conducted by an Informal Advisory Group (IAG). A representative of the Secretariat of the International Treaty attends the on-line, monthly meetings of the IAG.²⁰

Co-Chairs’ proposals on the way forward

33. Based on the evident interlinkages between the topics at hand at the CBD and those that have been relevant to the enhancement of the Multilateral System (e.g. in relation to contributions into a multilateral fund), we invite the Working Group to consider how to advance its mandate and work towards the design of a mutually supportive relationship between a reformed Multilateral System and the new CBD multilateral mechanism for benefit-sharing from the use of DSI.

34. The Working Group may wish to consider how to time its work in relation to the CBD process leading to COP 16 in October 2024. It could opt for designing a specialized approach and monitoring the CBD process to ensure mutual supportiveness or, evaluate from time to time how to adapt the scope and practical modalities of the CBD DSI multilateral mechanism to the Multilateral System.

35. In evaluating such timing options, the Working Group may wish to determine and assess the respective trade-offs, e.g. in terms of policy governance, practical management of the system, future proof, and envisage mitigation measures to reduce such trade-offs.

36. In our view, two considerations are important. First, the International Treaty has been managing a multilateral approach to access and benefit-sharing that was designed and has been implemented for seventeen years to meet the specific features and needs of the PGRFA sector. With DSI/GSD recognized as one of the three negotiation “hotspots” determined by the Governing Body, the Working Group may wish to understand better how such information/data are generated, stored, accessed and utilized for research and breeding for food and agriculture.

37. Second, DSI/GSD issues should not be managed in isolation, but rather in a systemic perspective that embraces the two other identified “hotspots”. The Working Group may wish to approach DSI/GSD with a view to generating a mutually reinforcing system for PGRFA and PGRFA information that leads to feasible payment structure and rates, and an expanded Annex I.

38. Irrespective of the approach taken, we see value in discussing principles/criteria for an approach to benefit sharing from the use of DSI/GSD that could either guide development of a specialist approach or cooperation with the CBD in its development of a multilateral mechanism. The Working Group may also wish to take the general benefit-sharing criteria of COP decision 15/9 (Box 1) as a baseline, examine if and how they fit the PGRFA sector, and whether there are additional criteria of relevance in the context of the International Treaty and the enhancement process.

¹⁹ www.cbd.int/doc/c/8531/d3e3/739fe0f4c5931b46dab505f3/wgdsi-01-03-en.pdf.

²⁰ www.cbd.int/dsi-gr/iag-2024.shtml.

Box 1. General benefit-sharing criteria of CBD COP decision 15/9

9. *Agrees* that a solution for fair and equitable benefit-sharing on digital sequence information on genetic resources should, inter alia:

- (a) Be efficient, feasible and practical;
- (b) Generate more benefits, including both monetary and non-monetary, than costs;
- (c) Be effective;
- (d) Provide certainty and legal clarity for providers and users of digital sequence information on genetic resources;
- (e) Not hinder research and innovation;
- (f) Be consistent with open access to data;
- (g) Not be incompatible with international legal obligations;
- (h) Be mutually supportive of other access and benefit-sharing instruments;
- (i) Take into account the rights of indigenous peoples and local communities, including with respect to the traditional knowledge associated with genetic resources that they hold;

39. We invite the Working Group to start discussing these questions and options at this meeting. While this is a hotspot which was less developed in the “June 2019 draft package”, the Working Group can benefit now from much information that has been generated in this policy area since then, including through several studies commissioned for the CBD process, some of which are already available, and others would be in the next months. These studies can be coupled with specific information about PGRFA.

40. Building on new information available, the Working Group could further explore previously raised questions, for example whether monetary benefit-sharing from the use of DSI/GSD should be coupled with better access to physical PGRFA, whether there should be any special considerations for ex situ collections in relation to DSI/GSD, what data governance approach could be most suitable for DSI/GSD from PGRFA, and if there are any trends in access to PGRFA (especially from the MLS) that should be considered.

41. To facilitate these discussions, as a first step, we plan to invite one or two technical experts to make a presentation at the eleventh meeting and to get an update from a representative of the Secretariat of the CBD.

42. As critical information to support discussions is likely to be missing, we propose that a policy brief on DSI/GSD on PGRFA be prepared for discussion by the Working Group at its twelfth meeting. The Working Group could provide input on the questions to be dealt with by a policy brief.

b. Amendment of Annex I

Approach in the “June 2019 draft package”

43. Since the Seventh Session of the Governing Body, the Working Group kept developing its proposal for an amendment on the basis of an expansion to “all PGRFA” and looked into ways of addressing concerns expressed by some Contracting Parties and Regions.

44. The focus of the Working Group has been on establishing additional conditions or specifications that ranged from limiting the coverage of the extended Annex I to ex situ material only; giving the Governing Body the capacity to add further crops (“progressive” in terms of *Figure 2* below); allowing Contracting Parties to exempt certain species (“immediate” with “negative list at national level” in terms of *Figure 2*, for example in the “June 2019 draft package”); to creating a mechanism to link the implementation of the expansion with effective monetary benefit-sharing (the draft Resolution element of the package of measures).

45. We believe that these efforts allowed the Working Group to make significant progress, leading to the advanced proposal of a draft amendment of Annex I in the “June 2019 draft package.”

46. The draft text for an amendment to Annex I of the International Treaty²¹ in the “June 2019 draft package” expands the coverage to all PGRFA with several significant safeguards:
- A clarification that the Multilateral System covers only those resources that are under the management and control of the Contracting Parties and in the public domain;
 - The expanded coverage relates only to resources found in ex situ conditions;
 - A Contracting Party may declare a limited number of species native to its territory that it will not make available (with further details) at the time of ratification.

Table 2. Annex I amendment in the “June 2019 draft package”

Text for Amendment ²²	Revised SMTA	Resolution ²³
<ul style="list-style-type: none"> Adding text in Annex I Expanding coverage of the Multilateral System to “all PGRFA” Safeguards: ex situ only; Contracting Parties can declare exemptions at time of ratification (negative list) 	–	<ul style="list-style-type: none"> Procedure and further details on exemptions (negative list), if option provided (<i>paras. 18-22</i>) Text to manage transition and to review progress (<i>paras. 36, 38-40</i>) Text for consequences in case no entry into force of amended Annex I (<i>para. 37</i>)

47. The Working Group had developed this proposal for an amendment of Annex I after extensively and constructively discussing different approaches and possible modalities. It had also thoroughly considered expert advice, written submissions, formal and informal discussions at the Governing Body Sessions, as well as reports from informal meetings that we held with Regions, stakeholders and Contracting Parties.²⁴

48. A summary of the most important documents leading to the proposal in the “June 2019 draft package” is available at www.fao.org/plant-treaty/areas-of-work/the-multilateral-system/enhancement-process/en/.

Mapping the options available to the Working Group

49. While the “June 2019 draft package” of measures has a substantial body of agreed ad referendum text, Working Group members have expressed a desire to discuss the options available for expanding coverage of the MLS. In *Figure 2*, we present an overview of the basic approaches for an expansion of the coverage of the Multilateral System through an amendment of Annex I.

50. Partial. The first option is to add a limited number (one or several) of plant genetic resources for food and agriculture (PGRFA) to the list contained in Annex I to the International Treaty with any further expansion to be subject to future negotiations. For example, the amended Annex I could include, in addition to the current 64 crops, “soybean” and “tomato”. Another example would be the deletion of exceptions contained in the current list of crops.

51. In full. The second option is to amend Annex I in such a way that it includes all other PGRFA (possibly with further detailed language to clearly describe and limit the coverage). Article 3 of the International Treaty provides: “This Treaty relates to plant genetic resources for food and agriculture.” While the list would cover all PGRFA, the actual coverage would be narrower, as is the case now already (only

²¹ [IT/OWG-EFMLS-9/19/Interim Report](#), page 42

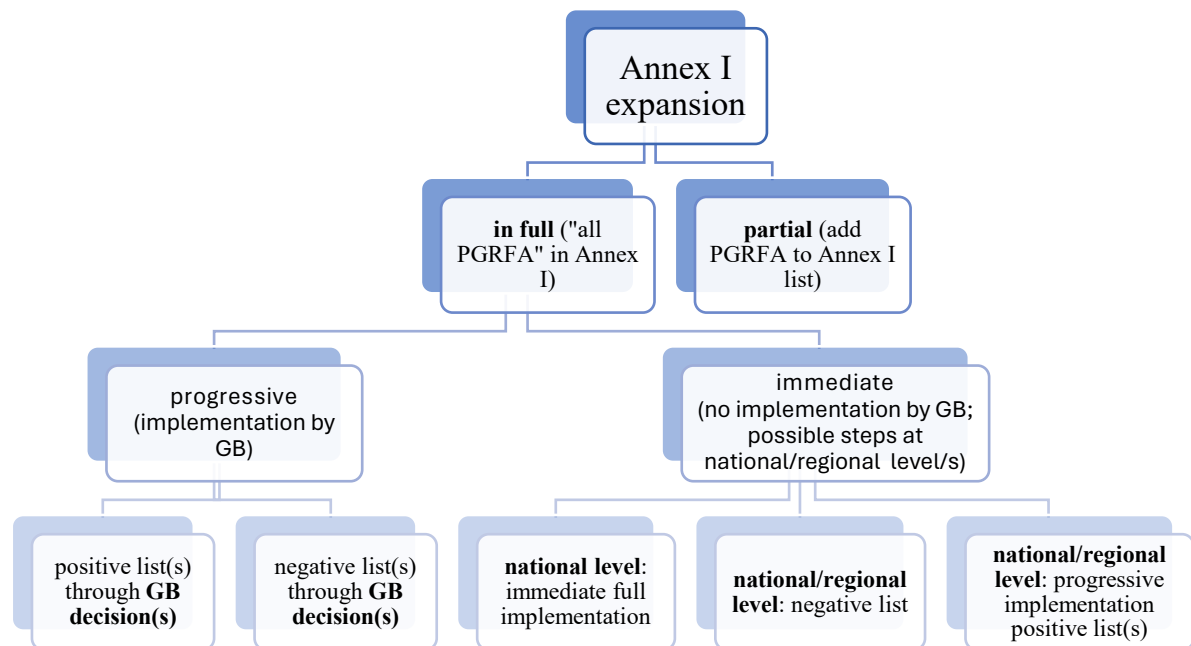
²² [IT/OWG-EFMLS-9/19/Interim Report](#), page 42.

²³ [IT/OWG-EFMLS-9/19/Interim Report](#), pages 19-24.

²⁴ See for example, [IT/OWG-EFMLS-9/19/4](#), *Enhancing the functioning of the Multilateral System: note by the Co-Chairs*; [IT/OWG-EFMLS-6/17/Inf.5](#), *Report from the Friends of the Co-Chairs Group on Scope of the Multilateral System*; ; [IT/OWG-EFMLS-6/17/Inf.3 Add.1](#), *Report of the Standing Group of Legal Experts: outcomes of the second meeting*; [IT/OWG-EFMLS-8/18/Report](#), *Report of the eighth meeting of the Working Group*; [IT/OWG-EFMLS-6/17/6](#), *Expansion of the Access and Benefit-sharing Provisions of the Treaty*; [IT/OWG-EFMLS-2/14/4](#), *Policy and Legal Study on the Feasibility and Effects of Changes to the Multilateral System*; [IT/OWG-EFMLS 3/15/Inf.4](#), *Expansion of the Access and Benefit-sharing Provisions of the International Treaty: Legal Options*.

material under the management and control of Contracting Parties and in the public domain; in situ material only in accordance with national legislation or with standards set by the Governing Body).

Figure 2. Options amendment Annex I



52. For the “in full” option, we distinguish two sub-options, referring to the multilateral level, one of which provides for Governing Body decisions (“progressive” at multilateral level) and the other solely provides for implementation at national or regional levels (“immediate” at multilateral level):

- a. **Progressive.** In this case, the Governing Body would be given the capacity to establish either positive or negative lists with additional PGRFA. For example, the Governing Body could adopt a resolution deciding to add “soybean” and “tomato”; at its subsequent session, it could further add “coffee”; so that all three crops would then be covered by the Multilateral System (positive lists). Or the Governing Body could adopt a resolution deciding to exempt “carrot” and “apple” from the “all PGRFA” list (negative list).
- b. **Immediate.** Under this sub-option, specific steps to give effect to the expansion to “all PGRFA” would (only) be undertaken at national or regional levels. The amendment text could follow the current approach of the International Treaty, so that all Contracting Parties agree to provide access to the crops covered by Annex I (immediate full implementation). Or alternatively, each Contracting Party could be given the option to exempt crops (negative list) or to progressively add crops to their national list until it covers “all PGRFA” (positive list), respectively. A similar option for regions could also be included. The amendment text and resolution could provide further details and criteria for the positive or negative lists.

Assessment of options

53. The shared aims for the process listed in Resolution 3/2022 include the following:

- “Expand the crops and plant genetic diversity available through the Multilateral System”;
- “Create legal certainty, administrative simplicity and transparency for everyone participating in the Multilateral System”;
- “Increase the benefits that arise from the Multilateral System for all Contracting Parties and users, both monetary and non-monetary”.

54. Co-Chairs initial assessment of partial expansion. With regard to these shared aims, we note that a partial expansion (adding only some PGRFA to the list in Annex I):

- Would allow the Governing Body to carefully assess and justify each addition of a crop to the list in Annex I, possibly based on interdependence and other metrics;
- At the same time, however, would require lengthy and complex negotiations as well as a ratification process for each addition of crops, which is a challenge by itself but would additionally lead to an additional layer of administrative complexity by the existence of several different versions of the International Treaty;
- May not by itself guarantee increased monetary benefit-sharing;
- Is less likely to generate the amount of benefits (both monetary and non-monetary) that a full expansion could create.

55. The following is an adapted version of an analysis of advantages versus disadvantages of the partial expansion undertaken by the Friends of the Co-Chairs Group on Scope of the Multilateral System:

Table 3. Partial expansion. Advantages and disadvantages.²⁵

Advantages	Disadvantages
<ul style="list-style-type: none"> • Stepwise approach, possibly by individual decisions of the Governing Body • A measurable justification for inclusion of certain crops possibly based upon interdependence and other metrics that currently are not contemplated on the Treaty text • Potential for increased funding for the additional (non-Annex 1) PGRFA identified • Potential for increased international research for the additional (non-Annex 1) PGRFA identified. 	<ul style="list-style-type: none"> • May require complex and lengthy negotiations for uncertain limited gains • Likely requires multiple rounds of negotiation • Requires several rounds of ratification • May not by itself guarantee increased benefit-sharing • Less funding for crops not included in the limited expanded coverage.

56. We recall that there did not seem to be any support for a stepwise expansion through a series of amendments of Annex I, with necessary ratification processes for each of the amendments.²⁶

57. Co-chairs initial assessment of expansion in full. At its previous meetings, the Working Group discussed that the wider the coverage of the Multilateral System, the greater the potential for the Treaty to contribute to meet the Sustainable Development Goals and other commitments related to food security, sustainable agriculture and biodiversity, if effective benefit-sharing is attained.²⁷

58. It also stressed the need to identify the most effective, clear, simple and rapid modality to give effect to a possible expansion.²⁸

59. We also recall the interlinkages between any expansion of the coverage and effective benefit-sharing arrangements and vice versa.²⁹

60. With regard to the shared aims of the process, we note that a full expansion (“all PGRFA”):

- Has the greatest potential for increasing benefits arising from the Multilateral System, both monetary and non-monetary, by providing the most comprehensive pool of germplasm;
- Expands the crops and plant genetic diversity available through the Multilateral System to the widest extent, providing the basis for facilitated access for purposes of research, breeding and training, for conservation and sustainable use;
- Would therefore allow the Multilateral System to contribute to reaching all three main objectives of the International Treaty;

²⁵ Slightly adapted from [IT/OWG-EFMLS-6/17/Inf.5](#), *Report from the Friends of the Co-Chairs Group on Scope of the Multilateral System*

²⁶ [IT/OWG-EFMLS-8/18/4](#), *Enhancing the Functioning of the Multilateral System: Note by the Co-Chairs*, para. 50

²⁷ For example, [IT/GB-7/17/7](#), *Report of the Open-ended Working Group to Enhance the Functioning of the Multilateral System*, para. 7

²⁸ [IT/GB-7/17/7](#), *Report of the Open-ended Working Group to Enhance the Functioning of the Multilateral System*, para. 8

²⁹ [IT/OWG-EFMLS-8/18/Report](#), Report of the eighth meeting of the Working Group

- Would make the Multilateral System more attractive to a range of users and enhance the likelihood of a higher number of subscriptions;
- Would be easier to administer and enhance legal certainty;
- Could be agreed once, with the possibility of ensuring flexibility and safeguards, either at the level of the Governing Body or at national level.

61. The following is an adapted version of an analysis of advantages versus disadvantages of the full expansion (“all PGRFA”) undertaken by the Friends of the Co-Chairs Group on Scope of the Multilateral System:

Table 4. Full expansion (“all PGRFA”). Advantages and disadvantages.³⁰

Advantages	Disadvantages
<ul style="list-style-type: none"> • Broadest possible basis for access and benefit-sharing • In line with the full scope of the International Treaty (Art. 3) • Avoid lengthy negotiations regarding individual crops • Potential for increased international funding for (currently) non-Annex I crops • Potential for increased activities in research, conservation and sustainable use • Potential for increased benefits, including non-monetary, for smallholder farmers • One time fix or a definitive solution to deciding on the expansion of the coverage of the MLS • Flexible in relation to changing crop use, food security challenges and technological developments • As an inclusive system, easier to manage administratively • Expanding the range and number of users of the Multilateral System • Could make a “Subscription System” (subscription option) more attractive. 	<ul style="list-style-type: none"> • Clear understanding of “all PGRFA” is needed • Politically less likely to be agreed in the absence of an effective benefit-sharing system or robust safeguards • Could reduce potential for <i>bilateral</i> benefit-sharing, whether monetary or non-monetary

62. Immediate. The sub-option of agreeing immediately to a full expansion has all the advantages listed above. In our overview of options (*Figure 2*), it could be coupled with flexibility at national or regional levels, thereby potentially mitigating many of the disadvantages listed above. The possibility for Contracting Parties to establish a negative list could be included in the amendment text (as is the case in the “June 2019 draft package”) or in the draft Resolution adopting the amendment. This could also include a similar possibility for regions. The progressive implementation at national or regional levels through positive list(s) would give a high degree of flexibility to Contracting Parties (or Regions) but may lead to administrative challenges and be less user-friendly, since users would not easily understand what PGRFA would be available in a specific country at the time of access. Also, in this case, the “immediate” “full” expansion at multilateral level may turn out to become (only) a goal to be achieved over time.

³⁰ Slightly adapted from [IT/OWG-EFMLS-6/17/Inf.5](#), Report from the Friends of the Co-Chairs Group on Scope of the Multilateral System

63. **Progressive.** Similar considerations apply to the other sub-option, the “progressive” implementation through Governing Body decisions, comprising either positive lists or negative lists. An additional challenge would result from the need to agree by consensus on these lists at sessions of the Governing Body. The question may also be what criteria the Governing Body would be requested to apply when agreeing on either positive or negative lists (degree of interdependence? Significance of a crop to meet specific global challenges? Level of demand for a crop? Significance of a crop for breeding purposes?).

Co-Chairs’ proposals on the way forward

64. Considering the above and guidance from the Governing Body in Resolution 3/2023, we believe that the most promising option continues to be the expansion “in full”, as elaborated in the “June 2019 draft package” of measures, potentially with additional conditions and specifications, together with a certain level of flexibility at national or regional levels.

65. New information has become available that may help the Working Group move forward in this hotspot. In October 2023, the International Treaty released a study, *The plants that feed the world – Baseline data and metrics to inform strategies for the conservation and use of plant genetic resources for food and agriculture*, bringing together crucial data on over 350 food and agricultural crops, made possible in collaboration with the Alliance of Bioversity International and CIAT and the Global Crop Diversity Trust. This is the first time that databases from various global sources have been pooled to create a comprehensive set of metrics to help inform decision-making in managing PGRFA. We have invited the lead author of the study to provide a short presentation at this eleventh meeting of the Working Group, to support the deliberations.

66. Consistent with the guidance of the Governing Body in Resolution 3/2023 we will continue to progress development of an approach for expansion of Annex I based on the “June 2019 draft package”, unless there is a clear consensus for an alternative to the approach. In order to facilitate the development of a Co-Chairs’ negotiating text ahead of the twelfth meeting, we expect the Working Group to provide clear guidance on potential additional or alternative conditions and specifications for expansion.

67. Given the vast body of information already available and records of extensive previous discussions of the Working Group, we do not see any benefit in requesting further expert advice on an expansion of Annex I at this stage.

68. Nevertheless, we would like to discuss other possible follow up, for example gathering information from the seed industry on crops of most interest and other points that could be elaborated on in submissions before the twelfth meeting of the Working Group.

c. Payment structure and rates

Approach in the “June 2019 draft package”

69. The revised SMTA in the “June 2019 draft package” comprises a single access system/option (Articles 6.7 and 6.8, and Annex 2) and the Subscription System/option (Article 6.11 and Annex 3). The Co-Chairs note the “June 2019 draft package” includes agreed ad referendum text related to the subscription system/option and bracketed text related to the single access system/option.

Table 5. Overview of payment systems in the revised SMTA of the “June 2019 draft package”

Text for Amendment	Revised SMTA ³¹	Resolution ³²
–	<ul style="list-style-type: none"> Option to subscribe; basic provisions (<i>Article 6.11</i>) Further details on Subscription System (“<i>Subscription Terms</i>”, <i>Annex 3</i>) 	<ul style="list-style-type: none"> PGRFA available under the Subscription (<i>para. 3</i>) Payment basis for Subscribers during transition phase (<i>para. 3</i>) Exemptions from benefit-sharing payments

³¹ [IT/OWG-EFMLS-9/19/Interim Report](#), pages 25-41.

³² [IT/OWG-EFMLS-9/19/Interim Report](#), pages 19-24.

	<ul style="list-style-type: none"> • Option for single access (<i>Product not available without restriction: Article 6.7, Product available without restriction: Article 6.8</i>) • Further details on this “single access” (<i>Annex 2</i>) 	<p><i>(different alternatives in paras. 4, 14 to 14ALTbis)</i></p> <ul style="list-style-type: none"> • Allocation of funding to specific Contracting Parties (<i>paras 15, 15ALT</i>) • Review process and fate of payment structure if certain parameters would not be met (<i>paras. 36-38</i>)
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70. As we pointed out in our Checkpoint Report to the Tenth Session of the Governing Body, the Working Group made significant progress in the earlier phase of the process to improve the payment structure of the SMTA.³³ This was based on a comprehensive body of studies and background papers, input from two Friends of the Co-Chairs groups, and submissions by Regions, Contracting Parties, and stakeholders.³⁴ The result was a very advanced draft in the “June 2019 draft package”, especially of the Subscription System (subscription option) – a major achievement and one of the innovative ideas of the earlier phase of the process that addressed many of the major challenges posed by a single access option.

71. Given the significant progress in this area of the revised SMTA, we recall the main elements of both systems or options in the following text and tables.

Table 6. Overview of the subscription option (Subscription System) in the “June 2019 draft package”

Text for Amendment	Revised SMTA ³⁵	Resolution
–	<ul style="list-style-type: none"> • Subscriber makes yearly benefit-sharing payments based on sales (<i>Annex 3 Art. 3</i>) • No other payment obligations during Subscription term (<i>Art. 6.11ter</i>) • No payments by Subscriber if yearly sales don’t exceed a to-be-defined amount (<i>Annex 3 Art. 3.3</i>) • Minimum term of subscription: 10 years (<i>Annex 3 Art. 4.2</i>) • Withdrawal possible after 10 years (<i>Annex 3 Art. 4</i>). 	(see Table 5)

Table 7. Overview of the single access system in the “June 2019 draft package”

Text for Amendment	Revised SMTA ³⁶	Resolution
–	<ul style="list-style-type: none"> • Recipient pays when commercializing a product incorporating material from the Multilateral System (<i>Arts. 6.7, 6.8</i>); 	(see Table 5)

³³ [IT/GB-10/23/09.2](#), *Checkpoint Report of the Co-Chairs of the Ad Hoc Open-ended Working Group to Enhance the Functioning of the Multilateral System*, page 9-10

³⁴ See the overview list and short summaries provided on the website of the International Treaty at www.fao.org/plant-treaty/areas-of-work/the-multilateral-system/enhancement-process/en/.

³⁵ [IT/OWG-EFMLS-9/19/Interim Report](#), pages 25-41.

³⁶ [IT/OWG-EFMLS-9/19/Interim Report](#), pages 25-41.

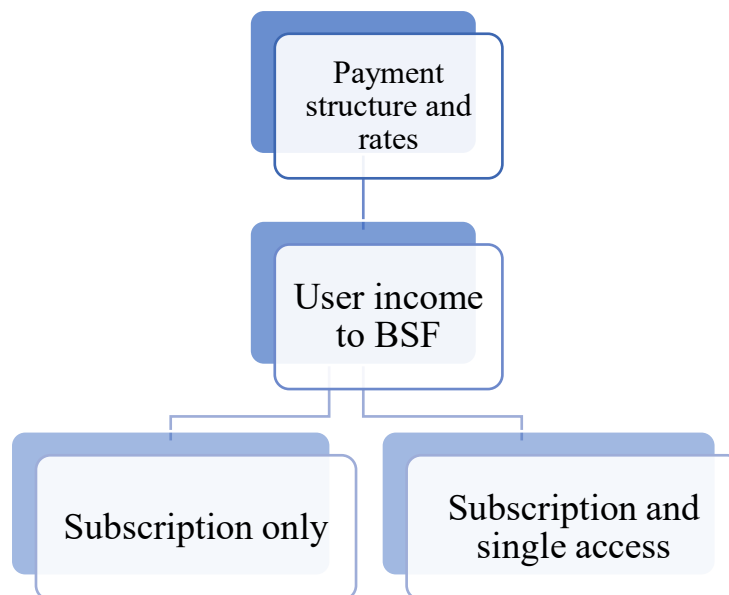
	<ul style="list-style-type: none"> • Payment for the duration of access restriction (<i>Art. 6.7</i>) or for 10 years (<i>Art. 6.8</i>), respectively; • No payment if genetic contribution less than 6.25% (<i>Annex 2 Art. 3(c)</i>); • Possibility to withdraw after ten years (<i>Annex 2 Art. 7</i>), which has no effect on payments that have begun before (<i>Annex 2 Art. 8</i>). 	
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Assessment of options

72. Conceptually, the fundamental open decision is whether to include two payment systems in the revised SMTA or rather the subscription option only. The payment rates and the few other open issues relating to monetary benefit-sharing (payment basis under the subscription option; single vs. differentiated rates under the subscription option; threshold for exemptions from payment under the subscription option; payment term under a single access option) can only be established meaningfully after this decision is made.

73. We identify the following basic options for the payment structure.

Figure 3. Basic decision payment structure



74. The shared aims for the process, as mentioned in Resolution 3/2022, include to:

- “Increase user-based income to the Benefit-sharing Fund in a sustainable and predictable long-term manner”;
- “Increase the benefits that arise from the Multilateral System for all Contracting Parties and users, both monetary and non-monetary”;
- “Create legal certainty, administrative simplicity and transparency for everyone participating in the Multilateral System”.

75. In the earlier phase of the process, the Working Group aimed at establishing a system that would support participation of the broadest range of users possible. In order to enhance user-based income, it worked towards a monetary benefit-sharing structure that would foresee mandatory payments only, while

defining a number of exemptions. There was also broad agreement to make the subscription option particularly attractive to users.³⁷

76. At its tenth meeting, the Working Group strongly supported the subscription option, while emphasizing that exemptions and thresholds will be critical to its attractiveness and effectiveness. Regarding the single access option, a range of views were expressed.³⁸

77. We recall that the presence of two payment systems in the revised SMTA necessarily requires consideration of the implications that the costs of either system have on the choice of the Recipient. At the beginning of the enhancement process, various studies were conducted to allow the Working Group to have a better understanding of those implications. Balancing the payment rates would become a crucial but complex and difficult tool, should the aim be to create an effective balance by structural economic incentives alone.³⁹

78. The Working Group in the earlier phase of the process discussed that with the aim of attracting the broadest range of users, a carefully developed set of exemptions from payments could be included in the subscription option or both payment systems may be needed.

79. With regard to linkages with the other “hotspots”, the Working Group considered that the subscription option may provide a promising possibility to reflect DSI/GSD sufficiently, whereas the single access option would require a different approach that would still need to be developed.

80. In the following table, we summarize these points of assessment:

Table 8. Summary of assessment of payment structure options.⁴⁰

Subscription only	Subscription plus single access
<ul style="list-style-type: none"> • Simple, transparent, clear; • Predictable and sustainable income from user-based payments; • Likely to produce higher amount of monetary benefit-sharing than the status quo; • May not be economically interesting for a certain number of users who want to access only a single crop; • Exemptions could facilitate participation of broad range of users; • May provide a promising possibility to reflect DSI/GSD sufficiently. 	<ul style="list-style-type: none"> • Effectively balancing payment rates difficult; • Single access may attract additional users; • Known problems of the current single access option (Article 6.7 SMTA) would remain; • Uncertain if producing higher monetary benefit-sharing than status quo (users choosing the cheaper option?); • More difficult to manage, for Providers, Recipients and the Secretariat, and therefore higher operating costs; • Approach for DSI/GSD still to be developed for single access; no elements in “June 2019 draft package”.

³⁷ See for example [IT/OWG-EFMLS-7/17/Report](#), paras. 10 and 14

³⁸ [IT/OWG-EFMLS-10/23/Report](#), para. 23

³⁹ See for example [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*, page 5; Background Study 1: Estimating Income to be Expected from Possible Changes in the Provisions Governing the Functioning of the Multilateral System, by Nina Isabella Moeller and Clive Stannard (FAO, 2014), www.fao.org/3/bq482e/bq482e.pdf, page 6, 17

⁴⁰ We used the document [IT/OWG-EFMLS-5/16/Inf.5](#), *Report from the Friends of the Co-Chairs Group on Access Mechanisms and Payment Rates* as the basis for our assessment, as well as the information in the previous paragraphs.

Payment rates

81. For the discussion on payment rates, we remind the Working Group of the study on sales and profitability within the seed sector, which was commissioned in 2019 as a further evidence base for the process.⁴¹

82. Besides these studies and other background information, the definition of payment rates is both a political decision and a matter of negotiation. The definition of the payment rates is closely related to the two other “hotspots” and to a thorough understanding of their impact.

83. In this context, we again recall that the Working Group considered several concrete proposals for rates without coming to any final agreement. The previous Co-Chairs had proposed the following rates: (1) subscription option 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. The Working Group discussed that the rate of the subscription option should be in the range of 0.01% and 0.1%. These and other proposals for rates were briefly summarized in an information document prepared for the Ninth Session of the Governing Body.⁴²

84. We will continue to interact with the Co-Chairs of the Standing Committee on the Funding Strategy and Resource Mobilization, especially regarding the funding target for the Benefit-sharing Fund.

Co-Chairs’ proposals on the way forward

85. Consistent with the guidance of the Governing Body in resolution 3/2023, we will continue to progress development of a subscription system/option based on the “June 2019 draft package”.

86. We invite the Working Group to provide clear recommendations on the negotiating text expected for the twelfth meeting addressing questions like:

- If and how the advantages of a single access option could be considered in the design of the subscription option;
- How the subscription option could be made particularly attractive to users and how this could be done in the early phase, for example by establishing lower payment rates for early subscribers, a suggestion discussed during the Eighth Session of the Governing Body;
- Whether and how exemptions and thresholds included in the subscription option could address the needs of those users who would access material from the Multilateral System only occasionally;
- Views on how the single access option might address benefit sharing from the use of DSI/GSD;
- An indication of payment rates, if possible.

87. The final version of the study on sales and profitability in the seed sector was published before the Ninth Session of the Governing Body. As many current spokespersons are not familiar with the study, the Secretariat has been in contact with the main author to see if a short introduction could be done at the eleventh meeting of the Working Group.

88. The Working Group is invited to indicate any additional background information or evidence needed for the discussions. This could, for example, include a synthesis paper drawing on previous background studies and noting recent developments.

IV. Conclusions and next steps

89. The “June 2019 draft package” contains advanced draft proposals for two “hotspots”, namely an amendment of Annex I and for revised monetary payment structures, but further work is needed.

90. In this document, we sought to identify some of the possible options to facilitate discussions at this meeting, while recalling the main considerations and available background information that contributed to the development of the “June 2019 draft package”.

⁴¹ Analysis on sales and profitability within the seed sector: Independent Report by IHS Markit (Philipps McDougall) for the Co-Chairs of the Working Group (2019), available at <https://www.fao.org/3/ca6929en/ca6929en.pdf>; [IT/OWG-EFMLS-9/19/Inf.5](#), *Report on sales within the seed sector*.

⁴² [IT/GB-9/22/09.2/Inf.2](#), page 11

91. The third “hotspot” will require most of the Working Group’s constructive engagement, creative thinking, and commitment: digital sequence information/genetic sequence data. We propose to seek developing a solution in the framework of the process to enhance the functioning of the Multilateral System. Concurrently, developments in other relevant fora, especially the Convention on Biological Diversity, should be closely monitored, possible implications be considered, and conclusions be drawn for the ongoing discussions at the Working Group. This includes consideration of how best to sequence discussions of this “hotspot” with the timeline of the Convention on Biological Diversity.

92. Following the conclusion of this eleventh meeting, we will then invite written submissions and inputs from the Regions and stakeholder groups, outlining their views on the “June 2019 draft package” and options to address the three “hotspots”.

93. We will take into account the submissions and inputs, together with the discussions and outcomes at this meeting, in the preparation of the draft negotiating text that will be considered by the Working Group at its twelfth meeting.

94. An updated version of the timeline that we developed for the enhancement process is available at the website of the International Treaty at www.fao.org/plant-treaty/areas-of-work/the-multilateral-system/enhancement-process/en/.