



EUROPEAN
COMMISSION

Brussels, 26.9.2019
COM(2019) 428 final

2019/0201 (NLE)

Proposal for a

COUNCIL DECISION

**on the position to be taken on behalf of the European Union in the Eighth Session of the
Governing Body of the International Treaty on Plant Genetic Resources for Food and
Agriculture**

EXPLANATORY MEMORANDUM

SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be taken on the Union's behalf in the eighth session of the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture in connection with the envisaged adoption of a revised Standard Material Transfer Agreement (SMTA) and amendment to Annex I to the Treaty concerning the expansion of coverage of the Multilateral System of Access and Benefit-sharing (MLS).

1. CONTEXT OF THE PROPOSAL

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

The International Treaty on Plant Genetic Resources for Food and Agriculture ('the Agreement') aims at establishing a global system to provide farmers, plant breeders and scientists with access to plant genetic materials, ensuring that recipients share benefits they derive from the use of these genetic materials and recognizing the enormous contribution of farmers to the diversity of crops that feed the world. The Agreement entered into force on 29 June 2004.

The European Union and all its Member States are party to the Agreement¹.

- **The Governing Body**

The Governing Body is composed of representatives of all Contracting Parties and has as a main objective to promote the full implementation of the Treaty, including the provision of policy guidance on the implementation of the Treaty.

The Governing Body holds regular sessions at least once every two years. The decisions are taken by consensus unless it is decided (by consensus) to employ another method to arrive at decisions on certain measures. Consensus is always required for amendments of the Treaty and its annexes. Each Contracting Party has one vote and may be represented at the sessions of the Governing Body by a single delegate, who may be accompanied by an alternate, experts and advisers. It is necessary to have a quorum, which is constituted by the majority of delegates.

Coordinated positions are established in a Council Working Party before each Governing Body and details of these positions are adjusted on the spot if needed. For each Governing Body a declaration of voting rights is adopted.

- **The envisaged act of the Governing Body**

On 11-16 November 2019, during its eighth session, the Governing Body is to adopt a resolution regarding the Standard Material Transfer Agreement, the Multilateral System of Access and Benefit-sharing and Annex I to the Agreement ('the envisaged act').

The purpose of the envisaged act is to revise the SMTA, as referred to in Article 12.4 of the Agreement, and amend Annex I to the same Agreement in order to expand the coverage of the MSA, as referred to in Article 10 of the Agreement, on the plant genetic resources for food and agriculture listed in that Annex.

¹ Council Decision 2004/869/EC of 24 February 2004 concerning the conclusion, on behalf of the European Community, of the International Treaty on Plant Genetic Resources for Food and Agriculture (OJ L 378, 23.12.2004, p. 1–2).

Article 23 of the Agreement provides that amendments of the Treaty shall be adopted by consensus of the Contracting Parties present at the session of the Governing Body and shall come into force among Contracting Parties having ratified, accepted or approved it on the ninetieth day after the deposit of instruments of ratification, acceptance or approval by two-thirds of the Contracting Parties. According to Article 24.2 of the Agreement Article 23 of that Agreement shall apply to the amendment of annexes.

The envisaged act will become binding on the parties in accordance with Articles 4 of the Agreement which provides that each Contracting Party shall ensure the conformity of its laws, regulations and procedures with its obligations as provided in the Agreement.

2. POSITION TO BE TAKEN ON THE UNION'S BEHALF

In its fifth session in 2013, the Governing Body adopted Resolution 2/2013 establishing an Ad Hoc Open-ended Working Group to Enhance the Functioning of the Multilateral System of Access and Benefit-sharing, with the task to develop a range of measures that will (a) increase user-based payments and contributions to the Benefit-sharing Fund (BSF) in a sustainable and predictable long-term manner, and (b) enhance the functioning of the MLS by additional measures.

In Resolution 2/2017, the Working Group was requested to elaborate criteria and options for possible adaptation of the coverage of the MLS, coming with a package of measures to enhance the MLS: 1) a revised SMTA, with special emphasis on the Subscription System; (2) an amendment of Annex I of the International Treaty to expand the coverage of the MLS.

The Ad Hoc Open-ended Working Group to Enhance the Functioning of the Multilateral System of Access and Benefit-sharing agreed during its 9th meeting (17-21 June 2019) on a proposal for a package of measures that simultaneously adopts the revised SMTA and the amendment of Annex 1, which will be presented to the eighth session of the Governing Body for discussion and adoption.

The proposed revision of the SMTA consists in requiring mandatory payment from recipients of plant genetic resource for food and agriculture under the Multilateral System with the aim to develop new varieties to support a sustainable income to the BSF. The mandatory payments are to be implemented by a subscription system based on a percentage of the yearly turnover from plant genetic resources for food and agriculture. This system is to be complemented by a single-access option for occasional users of the MLS.

The proposed amendment of Annex I to the Agreement is linked to the revision of the SMTA and consists in substantive extension of this Annex, allowing broader access to plant genetic resource for food and agriculture.

The Union should therefore support this proposal because it is in line with the Union's position. It is therefore necessary for the Council to take a decision for the purpose of establishing the position to be adopted on behalf of the Union with a view to the eighth session of the Governing Body with regard to the proposal for an amendment.

The proposal for amendment will not require a change of existing Union law.

3. LEGAL BASIS

- **Procedural legal basis**

Principles

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides for decisions establishing ‘the positions to be adopted on the Union’s behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement.’

The concept of ‘acts having legal effects’ includes acts that have legal effects by virtue of the rules of international law governing the body in question. It also includes instruments that do not have a binding effect under international law, but that are ‘capable of decisively influencing the content of the legislation adopted by the EU legislature’².

Application to the present case

The Governing Body is a body set up by an agreement, namely the International Treaty on Plant Genetic Resources for Food and Agriculture.

The act which the Governing Body is called upon to adopt constitutes an act having legal effects. The envisaged act will be binding under international law in accordance with Articles 12.4, 23 and 24.2 of the International Treaty on Plant Genetic Resources for Food and Agriculture.

The envisaged act does not supplement or amend the institutional framework of the Agreement.

Therefore, the procedural legal basis for the proposed decision is Article 218(9) TFEU.

- **Substantive legal basis**

Principles

The substantive legal basis for a decision under Article 218(9) TFEU depends primarily on the objective and content of the envisaged act in respect of which a position is taken on the Union's behalf. If the envisaged act pursues two aims or has two components and if one of those aims or components is identifiable as the main one, whereas the other is merely incidental, the decision under Article 218(9) TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

With regard to an envisaged act that simultaneously pursues a number of objectives, or that has several components, which are inseparably linked without one being incidental to the other, the substantive legal basis of a decision under Article 218(9) TFEU will have to include, exceptionally, the various corresponding legal bases.

Application to the present case

The envisaged act pursues objectives and has components in the area of agriculture and the protection of the environment. These elements of the envisaged act are inseparably linked without one being incidental to the other.

² Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraphs 61 to 64.

Therefore, the substantive legal basis of the proposed decision comprises the following provisions: Articles 43(2) TFEU and 192(1) TFEU.

- **Conclusion**

The legal basis of the proposed decision should be Articles 43(2) TFEU and 192(1) TFEU, in conjunction with Article 218(9) TFEU.

4. PUBLICATION OF THE ENVISAGED ACT

As the act of the Governing Body will amend Annex I to the Treaty and the standard material transfer agreement, it is appropriate to publish it in the *Official Journal of the European Union* after its adoption.

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the Eighth Session of the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 43(2) and 192(1), in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The International Treaty on Plant Genetic Resources for Food and Agriculture ('the Agreement') was concluded by the Union by Council Decision 2004/869/EC¹ and entered into force on 29 June 2004.
- (2) Pursuant to Articles 23 and 24.2 of the Agreement, the Governing Body may adopt amendments to the Agreement and its annexes.
- (3) The Governing Body, during its eighth session on 11-16 November 2019, is to adopt a resolution on the revision of the Standard Material Transfer Agreement (SMTA), which should establish mandatory payments of users of the Multilateral System of Access and Benefit-sharing (MLS). Such a resolution should be adopted on the basis of a proposal for amendments by the Ad Hoc Open-ended Working Group to Enhance the Functioning of the Multilateral System of Access and Benefit-sharing agreed during its 9th meeting on 17-21 June 2019.
- (4) It is appropriate to establish the position to be taken on the Union's behalf in the Governing Body, as the resolution will be binding on the Union.
- (5) The Union should support the adoption of the resolution as it is in accordance with the Union's position. The revision of the SMTA and the amendment to Annex I to the Agreement to expand the MLS should contribute to achieving the main objectives of the Agreement, should provide for an incentive for conserving and using plant genetic resources of a wider range of species and should generate increased user-based income to invest in crop diversity leading to increased food security.
- (6) The revision of the SMTA and the amendment to Annex I to the Agreement to expand the MLS would not require any change in Union law,

¹ Council Decision 2004/869/EC of 24 February 2004 concerning the conclusion, on behalf of the European Community, of the International Treaty on Plant Genetic Resources for Food and Agriculture (OJ L 378, 23.12.2004, p. 1).

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the eighth session of the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture to be held between 11 and 16 November 2019, as regards the adoption of a revised Standard Material Transfer Agreement and the amendment to Annex I to that Treaty concerning the expansion of coverage of the Multilateral System of Access and Benefit-sharing shall be based on the draft revised Standard Material Transfer Agreement and the draft amendment to Annex I to the Treaty set out in Annexes 1 and 2 to this Decision.

Article 2

Where the position referred to in Article 1 is likely to be affected by new scientific or technical information presented after the adoption of this decision and before or during the eighth session of the Governing Body or where new proposals are made at that meeting on which there is not yet a Union position, the Union position shall be established by means of on the spot co-ordination before the Governing Body is called to decide on those proposals.

Article 3

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President.*



Brussels, 26.9.2019
COM(2019) 428 final

ANNEXES 1 to 2

ANNEXES

to the

Proposal for a Council Decision

**on the position to be taken on behalf of the European Union in the Eighth Session of the
Governing Body of the International Treaty on Plant Genetic Resources for Food and
Agriculture**

STANDARD MATERIAL TRANSFER AGREEMENT

ARTICLE 1 — PARTIES TO THE AGREEMENT

- 1.1 The present Standard Material Transfer Agreement (hereinafter referred to as “**this Agreement**”) is the Standard Material Transfer Agreement referred to in Article 12.4 of the **Treaty**.
- 1.2 This Agreement is:
- BETWEEN: (name and address of the provider or providing institution, name of authorized official, contact information for authorized official*) (hereinafter referred to as “the **Provider**”),
- AND: (name and address of the recipient or recipient institution, name of authorized official, contact information for authorized official*) (hereinafter referred to as “the **Recipient**”).
- 1.3 The parties to **this Agreement** hereby agree as follows:

ARTICLE 2 — DEFINITIONS

In **this Agreement** the expressions set out below shall have the following meaning:

“**Available without restriction**”: a **Product** is considered to be available without restriction to others for further research and breeding when it is available for research and breeding without any legal or contractual obligations, or technological restrictions, that would preclude using it in the manner specified in the **Treaty**.

“**Genetic material**” means any material of plant origin, including reproductive and vegetative propagating material, containing functional units of heredity.

“**Governing Body**” means the **Governing Body** of the **Treaty**.

“**Multilateral System**” means the **Multilateral System** established under Article 10.2 of the **Treaty**.

* *Insert as necessary. Not applicable for shrink-wrap and click-wrap Standard Material Transfer Agreements.*

A “shrink-wrap” Standard Material Transfer Agreement is where a copy of the Standard Material Transfer Agreement is included in the packaging of the **Material**, and the **Recipient’s** acceptance of the **Material** constitutes acceptance of the terms and conditions of the Standard Material Transfer Agreement.

A “click-wrap” Standard Material Transfer Agreement is where the agreement is concluded on the internet and the **Recipient** accepts the terms and conditions of the Standard Material Transfer Agreement by clicking on the appropriate icon on the website or in the electronic version of the Standard Material Transfer Agreement, as appropriate.

“*Plant Genetic Resources for Food and Agriculture*” means any **genetic material** of plant origin of actual or potential value for food and agriculture.

“*Plant Genetic Resources for Food and Agriculture under Development*” means material derived from the **Material**, and hence distinct from it, that is not yet ready for **commercialization** and which the developer intends to further develop or to transfer to another person or entity for further development. The period of development for the **Plant Genetic Resources for Food and Agriculture under Development** shall be deemed to have ceased when those resources are **commercialized** as a **Product**.

“*Product*” means **Plant Genetic Resources for Food and Agriculture** that incorporate¹ the **Material** or any of its genetic parts or components that are ready for **commercialization**, excluding commodities and other products used for food, feed and processing.

“*Sales*” means the gross income received by the **Recipient** and its affiliates in the form of license fees for **Plant Genetic Resources for Food and Agriculture** and from **commercialization**.

“*To commercialize*” means to exchange **Plant Genetic Resources for Food and Agriculture** for monetary consideration on the open market, and “*commercialization*” has a corresponding meaning. **Commercialization** shall not include any form of transfer of **Plant Genetic Resources for Food and Agriculture under Development**, nor shall it include the sale of commodities and other products used for food, feed and processing.

ARTICLE 3 — SUBJECT MATTER OF THE MATERIAL TRANSFER AGREEMENT

The **Plant Genetic Resources for Food and Agriculture** specified in *Annex 1* to **this Agreement** (hereinafter referred to as the “**Material**”) and the available related information referred to in Article 5b and in *Annex 1* are hereby transferred from the **Provider** to the **Recipient** subject to the terms and conditions set out in **this Agreement**.

ARTICLE 4 — GENERAL PROVISIONS

- 4.1 **This Agreement** is entered into within the framework of the **Multilateral System** and shall be implemented and interpreted in accordance with the objectives and provisions of the **Treaty**.
- 4.2 The parties recognize that they are subject to the applicable legal measures and procedures, that have been adopted by the Contracting Parties to the **Treaty**, in conformity with the **Treaty**, in particular those taken in conformity with Articles 4, 12.2 and 12.5 of the **Treaty**.²

¹ As evidenced, for example, by pedigree or notation of gene insertion.

² In the case of the International Agricultural Research Centres of the Consultative Group on International Agricultural Research (CGIAR) and other international institutions, the Agreement between the **Governing Body** and the CGIAR Centres or other relevant institutions will be applicable.

- 4.3 The parties to **this Agreement** agree that the Food and Agriculture Organization of the United Nations acting on behalf of the **Governing Body** of the **Treaty** and its **Multilateral System**, is the third party beneficiary under **this Agreement**.
- 4.4 The third party beneficiary has the right to request the appropriate information as required in Articles 5e, 6.5c, 8.3, *Annex 2*, paragraph 5, and *Annex 3*, Article 3.5, to **this Agreement**.
- 4.5 The rights granted to the Food and Agriculture Organization of the United Nations above do not prevent the **Provider** and the **Recipient** from exercising their rights under **this Agreement**.

ARTICLE 5 — RIGHTS AND OBLIGATIONS OF THE PROVIDER

The **Provider** undertakes that the **Material** is transferred in accordance with the following provisions of the **Treaty**:

Access shall be accorded expeditiously, without the need to track individual accessions and free of charge, or, when a fee is charged, it shall not exceed the minimal cost involved;

All available passport data and, subject to applicable law, any other associated available non-confidential descriptive information, shall be made available with the Plant Genetic Resources for Food and Agriculture provided;

Access to Plant Genetic Resources for Food and Agriculture under Development, including material being developed by farmers, shall be at the discretion of its developer, during the period of its development;

Access to Plant Genetic Resources for Food and Agriculture protected by intellectual and other property rights shall be consistent with relevant international agreements, and with relevant national laws;

The **Provider** shall inform the **Governing Body** at least once every two calendar years, or within an interval that shall be, from time to time, decided by the **Governing Body**, about the Material Transfer Agreements entered into,³

either by:

Option A: Transmitting a copy of the completed Standard Material Transfer Agreement,⁴

or

³ This information should be submitted by the Provider to:
The Secretary International Treaty on Plant Genetic Resources for Food and Agriculture Food and Agriculture Organization of the United Nations I-00153 Rome, Italy
Email: ITPGRFA-Secretary@FAO.org or through EasySMTA: <https://mls.planttreaty.org/itt/>.

⁴ In the event that the copy of the completed Standard Material Transfer Agreement that is transmitted is shrink-wrap, in accordance with Article 10, Option 2 of the Standard Material Transfer Agreement, the **Provider** shall also include information as to (a) the date on which the shipment was sent, and (b) the name of the person to whom the shipment was sent.

Option B: In the event that a copy of the Standard Material Transfer Agreement is not transmitted,

- i. ensuring that the completed Standard Material Transfer Agreement is at the disposal of the third party beneficiary as and when needed;
- ii. stating where the Standard Material Transfer Agreement in question is stored, and how it may be obtained; and
- iii. providing the following information:
 - a) The identifying symbol or number attributed to the Standard Material Transfer Agreement by the **Provider**;
 - b) The name and address of the **Provider**;
 - c) The date on which the **Provider** agreed to or accepted the Standard Material Transfer Agreement, and in the case of shrink-wrap, the date on which the shipment was sent;
 - d) The name and address of the **Recipient**, and in the case of a shrink-wrap agreement, the name of the person to whom the shipment was made;
 - e) The identification of each accession in Annex 1 to the Standard Material Transfer Agreement, and of the crop to which it belongs.

This information shall be made available by the **Governing Body** to the third party beneficiary. Such information shall be treated as confidential business information and shall be used to develop aggregated reporting only, subject to national legislation, as appropriate.

ARTICLE 6 — RIGHTS AND OBLIGATIONS OF THE RECIPIENT

- 6.1 The **Recipient** undertakes that the **Material** shall be used or conserved only for the purposes of research, breeding and training for food and agriculture. Such purposes shall not include chemical, pharmaceutical and/or other non-food/feed industrial uses.
- 6.2 The **Recipient** shall not claim any intellectual property or other rights that limit the facilitated access to the **Material** provided under **this Agreement**, or its genetic parts or components, in the form received from the **Multilateral System**.
- 6.3 In the case that the **Recipient** conserves the **Material** supplied, the **Recipient** shall make the **Material**, and the related information referred to in Article 5b, available to the **Multilateral System** using the Standard Material Transfer Agreement.
- 6.4 In the case that the **Recipient** transfers the **Material** supplied under **this Agreement** to another person or entity (hereinafter referred to as “the **subsequent recipient**”), the **Recipient** shall
do so under the terms and conditions of the Standard Material Transfer Agreement, through a new Standard Material Transfer Agreement; and
notify the **Governing Body**, in accordance with Article 5e.
On compliance with the above, the **Recipient** shall have no further obligations regarding the actions of the **subsequent recipient**.

- 6.5 In the case that the **Recipient** transfers a **Plant Genetic Resource for Food and Agriculture under Development** to another person or entity, until a period of twelve years after signing or accepting of **this Agreement** has lapsed, the **Recipient** shall:
- a) do so under the terms and conditions of the Standard Material Transfer Agreement, through a new Standard Material Transfer Agreement, provided that Article 5a of the Standard Material Transfer Agreement shall not apply;
 - b) identify, in Annex 1 to the new Standard Material Transfer Agreement, the **Material** received from the **Multilateral System**, and specify that the **Plant Genetic Resources for Food and Agriculture under Development** being transferred are derived from the **Material**;
- notify the **Governing Body**, in accordance with Article 5e; and
- d) have no further obligations regarding the actions of any **subsequent recipient**.
 - e) The obligations in this Article 6.5 do not apply to **Plant Genetic Resources for Food and Agriculture under Development**, for which both of the following applies: does contain a genetic contribution of less than 12.5% by pedigree of the **Material** and does not contain a trait of commercial value that was contributed by the **Material**.
- 6.6 Entering into a Standard Material Transfer Agreement under paragraph 6.5 shall be without prejudice to the right of the parties to attach additional conditions, relating to further product development, including, as appropriate, the payment of monetary consideration.
- 6.7 The **Recipient** may, at the time of signing of **this Agreement** or at the time of acceptance of **this Agreement** or at any time after that, opt for the **Subscription System**, as set out in *Annex 3* to **this Agreement**, by returning the **Registration Form** contained in *Annex 4* to **this Agreement**, duly completed and signed, to the **Governing Body** of the **Treaty**, through its Secretary ("**Subscription**"). If the **Registration Form** is not received by the Secretary, the modality of payment specified in Articles 6.7 and 6.8 will apply unless the **Recipient** has already opted for the **Subscription System** earlier.
- 6.8 Should the **Recipient** opt for the **Subscription System**, the terms and conditions of the **Subscription System**, as set out in *Annex 3* to **this Agreement**, apply. In this case, *Annex 3* to **this Agreement** constitutes an integral part of **this Agreement** and any reference to **this Agreement** shall be understood, where the context permits and *mutatis mutandis*, to also include *Annex 3*.
- 6.9 By opting for the **Subscription System**, the **Recipient**, as **Subscriber**, shall have no payment obligations with regard to the **Material** received, during the term of the **Subscription**, and the **Product** that incorporates the **Material**, other than the payment obligations provided for under the **Subscription System**.
- 6.10 In the case that the **Recipient** does not opt for the **Subscription System** and the **Recipient** or any of its affiliates **commercializes** a **Product** that is a **Plant Genetic Resource for Food and Agriculture** and that incorporates **Material** as referred to in Article 3 of **this Agreement**, and where such **Product** is **not available without restriction** to others for further research and breeding, the **Recipient** shall pay, for the period for which the restriction is applicable, a fixed percentage of the **Sales** of

the **commercialized Product** into the mechanism established by the **Governing Body** for this purpose, in accordance with *Annex 2* to **this Agreement**.

- 6.11 In the case that the **Recipient** does not opt for the Subscription System and the **Recipient** or any of its affiliates **commercializes a Product** that is a **Plant Genetic Resource for Food and Agriculture** and that incorporates **Material** as referred to in Article 3 of **this Agreement** and where that **Product** is **available without restriction** to others for further research and breeding, the **Recipient** shall pay for a period of ten years a fixed percentage of the **Sales** of the **commercialized Product** into the mechanism established by the **Governing Body** for this purpose, in accordance with *Annex 2* to **this Agreement**.
- 6.12 The **Recipient** shall make available to the **Multilateral System**, through the information system provided for in Article 17 of the **Treaty**, all non-confidential information that results from research and development carried out on the **Material**, and is encouraged to share through the **Multilateral System** non-monetary benefits expressly identified in Article 13.2 of the **Treaty** that result from such research and development. The **Recipient** is encouraged to place a sample of any **Product** that incorporates the **Material** into a collection that is part of the **Multilateral System**, for research and breeding.
- 6.13 A **Recipient** who applied for or obtains intellectual property rights on any **Products** developed from the **Material** or its components, obtained from the **Multilateral System**, and assigns such application or intellectual property rights to a third party, shall transfer the benefit-sharing obligations of **this Agreement** to that third party.

ARTICLE 7 — APPLICABLE LAW

The applicable law shall be the General Principles of Law, including the UNIDROIT Principles of International Commercial Contracts 2016 and as subsequently updated, the objectives and the relevant provisions of the **Treaty**, and, when necessary for interpretation, the decisions of the **Governing Body**.

ARTICLE 8 — DISPUTE SETTLEMENT

- 8.1 Dispute settlement may be initiated by the **Provider** or the **Recipient** or the third party beneficiary acting on behalf of the **Governing Body** of the **Treaty** and its **Multilateral System**.
- 8.2 The parties to **this Agreement** agree that the Food and Agriculture Organization of the United Nations, representing the **Governing Body** and the **Multilateral System**, has the right, as a third party beneficiary, to initiate dispute settlement procedures regarding rights and obligations of the **Provider** and the **Recipient** under **this Agreement**.
- 8.3 The third party beneficiary has the right to request that the appropriate information, including samples as necessary, be made available by the **Provider** and the **Recipient**, regarding their obligations in the context of **this Agreement**. Any information or samples so requested shall be provided by the **Provider** and the **Recipient**, as the case may be.
- 8.4 Any dispute arising from **this Agreement** shall be resolved in the following manner:

Amicable dispute settlement: The parties shall attempt in good faith to resolve the dispute by negotiation.

Mediation: If the dispute is not resolved by negotiation, the parties may choose mediation through a neutral third party mediator, to be mutually agreed.

Arbitration: If the dispute has not been settled by negotiation or mediation, any party may submit the dispute for arbitration under the Arbitration Rules of an international body as agreed by the parties to the dispute. Failing such agreement, the dispute shall be settled under the Rules of Arbitration of the International Chamber of Commerce, by one or more arbitrators appointed in accordance with the said Rules. Either party to the dispute may, if it so chooses, appoint its arbitrator from such list of experts as the Governing Body may establish for this purpose; both parties, or the arbitrators appointed by them, may agree to appoint a sole arbitrator, or presiding arbitrator as the case may be, from such list of experts. The result of such arbitration shall be binding.

Aggrieved parties may avail themselves of opportunities made available under the provisions of Article 12.5 of the Treaty.

ARTICLE 9 — ADDITIONAL ITEMS

Warranty

- 9.1 The **Provider** makes no warranties in **this Agreement** as to the safety of or title to the **Material**, nor as to the accuracy or correctness of any passport or other data provided with the **Material**. Neither does it make any warranties as to the quality, viability, or purity (genetic or mechanical) of the **Material** being furnished. The phytosanitary condition of the **Material** is warranted only as described in any attached phytosanitary certificate. The **Recipient** assumes full responsibility for complying with the recipient nation's quarantine, invasive alien species and biosafety regulations and rules as to import or release of **genetic material**.

Withdrawal from this Agreement

- 9.2 The **Recipient** may withdraw from **this Agreement** in accordance with Annex 3 (Subscription System) or Annex 2 (single access system), respectively.

Amendments to the Standard Material Transfer Agreement

- 9.3 If the **Governing Body** amends the terms and conditions of the Standard Material Transfer Agreement, the **Recipient** shall, as of the date decided by the **Governing Body**, utilize the amended SMTA for subsequent transfers of the **Material** to third parties. The other rights and obligations of the **Recipient** shall remain unchanged, unless the **Recipient** explicitly agrees in writing to the amended Standard Material Transfer Agreement.

ARTICLE 10 — SIGNATURE/ACCEPTANCE

The **Provider** and the **Recipient** may choose the method of acceptance unless either party requires **this Agreement** to be signed.

Option 1 –Signature*

I, (*Full Name of Authorized Official*), represent and warrant that I have the authority to execute **this Agreement** on behalf of the **Provider** and acknowledge my institution’s responsibility and obligation to abide by the provisions of **this Agreement**, both by letter and in principle, in order to promote the conservation and sustainable use of **Plant Genetic Resources for Food and Agriculture**.

I understand and expressly agree that the third party beneficiary shall have the rights provided in Articles 4 and 8 of **this Agreement**.

Signature.....Date.....

Name of the **Provider**

I, (*Full Name of Authorized Official*), represent and warrant that I have the authority to execute **this Agreement** on behalf of the **Recipient** and acknowledge my institution’s responsibility and obligation to abide by the provisions of **this Agreement**, both by letter and in principle, in order to promote the conservation and sustainable use of **Plant Genetic Resources for Food and Agriculture**.

I understand and expressly agree that the third party beneficiary shall have the rights provided in Articles 4 and 8 of **this Agreement**.

- (Only for Subscribers) I hereby declare that the **Recipient’s Sales** do not exceed US\$ [xx] in accordance with *Annex 3*, Article 3.3. The **Recipient** commits to making annual payments and submit annual reports as of the time that its **Sales** exceed US\$ [xx]. The right of the third party beneficiary to request the appropriate information in accordance with Article 4.4 of **this Agreement** is understood and expressly acknowledged.

Signature.....Date.....

Name of the **Recipient**.....

Option 2 – Shrink-wrap Standard Material Transfer Agreements*

The **Material** is provided conditional on acceptance of the terms of **this Agreement**. The provision of the **Material** by the **Provider** and the **Recipient’s** acceptance and use of the **Material** constitutes acceptance of the terms of **this Agreement**.

The **Recipient** understands and expressly agrees that the third party beneficiary shall have the rights provided in Articles 4 and 8 of **this Agreement**.

* Where the **Provider** chooses signature, only the wording in Option 1 will appear in the Standard Material Transfer Agreement. Similarly where the **Provider** chooses either shrink-wrap or click-wrap, only the wording in Option 2 or Option 3, as appropriate, will appear in the Standard Material Transfer Agreement. Where the “click-wrap” form is chosen, the **Material** should also be accompanied by a written copy of the Standard Material Transfer Agreement.

(Only for Subscribers) If the **Recipient** is a Subscriber and its **Sales** do not exceed US\$ [xx], it shall submit the following statement in writing and duly signed to the **Governing Body** through its Secretary, or otherwise the exemption provided in *Annex 3*, Article 3.3 does not apply: “I hereby declare that the **Recipient’s Sales** do not exceed US\$ [xx] in accordance with *Annex 3*, Article 3.3. The **Recipient** commits to making annual payments and submit annual reports as of the time that its **Sales** exceed US\$ [xx]. The right of the third party beneficiary to request the appropriate information in accordance with Article 4.4 of **this Agreement** is understood and expressly acknowledged.”

Option 3 – Click-wrap Standard Material Transfer Agreement*

- I hereby agree to the above conditions.
- I understand and expressly agree that the third party beneficiary shall have the rights provided in Articles 4 and 8 of **this Agreement**.
- (Only for Subscribers) I hereby declare that the **Recipient’s Sales** do not exceed US\$ [xx] in accordance with *Annex 3*, Article 3.3. The **Recipient** commits to making annual payments and submit annual reports as of the time that its **Sales** exceed US\$ [xx]. The right of the third party beneficiary to request the appropriate information in accordance with Article 4.4 of **this Agreement** is understood and expressly acknowledged.

*Where the **Provider** chooses signature, only the wording in Option 1 will appear in the Standard Material Transfer Agreement. Similarly where the **Provider** chooses either shrink-wrap or click-wrap, only the wording in Option 2 or Option 3, as appropriate, will appear in the Standard Material Transfer Agreement. Where the “click-wrap” form is chosen, the **Material** should also be accompanied by a written copy of the Standard Material Transfer Agreement.

Annex 1

LIST OF MATERIALS PROVIDED

This *Annex* lists the **Material** provided under **this Agreement**, including the associated information referred to in Article 5b.

The following information is included, or the source indicated from which it may be obtained, for each **Material** listed: all available passport data and, subject to applicable law, any other associated, available, non-confidential descriptive information.

Table A

Materials:

Crop:

Accession number or other identifier	Associated information, if available, or source from which it may be obtained (URL)

Table B

Materials that are Plant Genetic Resources for Food and Agriculture under Development:

Crop:

Accession number or other identifier	Associated information, if available, or source from which it may be obtained (URL)

In accordance with Article 6.5b, the following information is provided regarding the materials received under an SMTA or which were brought into the **Multilateral System** by an agreement pursuant to Article 15 of the **Treaty**, from which the **Plant Genetic Resources for Food and Agriculture under Development** listed in Table B are derived:

Crop:

Accession number or other identifier	Associated information, if available, or source from which it may be obtained (URL)

Annex 2

Terms and conditions of the “single access system” (Articles 6.7 and 6.8)

1. If a **Recipient** or any of its affiliates **commercializes a Product or Products** that are not **available without restriction** to others for further research and breeding in accordance with Article 2 of **this Agreement**, the **Recipient** shall pay each year one point zero percent (1.0 %) of the annual **Sales** of the **Product or Products** less thirty percent (30%).
2. If a **Recipient** or any of its affiliates **commercializes a Product or Products** that are **available without restriction** to others for further research and breeding in accordance with Article 2 of **this Agreement**, the **Recipient** shall pay each year zero point one percent (0.1 %) of the annual **Sales** of the **Product or Products** less thirty percent (30%).
3. No payment shall be due from the **Recipient** when the **Product or Products**:
 - (a) have been purchased or otherwise obtained from another person or entity who has already made payment on the **Product or Products**;
 - (b) are sold or traded as a commodity; or
 - (c) contains a genetic contribution of less than 6.25% by pedigree of the **Material** and does not contain a trait of commercial value that was contributed by the **Material**.
4. Where a **Product** contains a **Plant Genetic Resource for Food and Agriculture** accessed from the **Multilateral System** under two or more material transfer agreements based on the Standard Material Transfer Agreement only one payment shall be required under paragraphs 1 and 2 above.
5. The **Recipient** shall submit to the **Governing Body**, within sixty (60) days after closure of accounts each financial year, an annual report setting forth:
 - (a) the **Sales** of the **Product or Products** by the **Recipient**, and any of its affiliates, for the twelve (12) month period preceding the annual closure of accounts;
 - (b) the amount of the payment due;
 - (c) information that allows for the identification of the applicable payment rate or rates; and
 - (d) the verifiable source of the information provided.

Such information shall be treated as confidential business information, to the extent specified by the **Recipient** within the limits set by **this Agreement**, and shall be made available to the third party beneficiary, in the context of dispute settlement, as provided for in Article 8 of **this Agreement**, and to the **Governing Body** for aggregated reporting purposes on income to the fund established by the **Governing Body** in accordance with Article 19.3f of the **Treaty**.

6. Payment shall be due and payable upon submission of each annual report. All payments due to the **Governing Body** shall be payable in *United States dollars (US\$)* at the exchange rate that prevailed at the date of closure of accounts for the following account established by the **Governing Body** in accordance with Article 19.3f of the **Treaty**:

FAO Trust Fund (USD) GINC/INT/031/MUL,

IT-PGRFA (Benefit-sharing),

Citibank

399 Park Avenue, New York, NY, USA, 10022,

**Swift/BIC: CITIUS33, ABA/Bank Code: 021000089, Account No.
36352577**

7. A **Recipient** who has not opted for the **Subscription System** may withdraw from **this Agreement** upon six months written notice to the **Governing Body** through its Secretary, not less than ten years from the date of signing of **this Agreement** by the **Provider** or the **Recipient**, whichever date is later, or from the date of acceptance of **this Agreement** by the **Recipient**.
8. In the case that the **Recipient** has begun before withdrawal to **commercialize** a **Product**, in respect of which payment is due in accordance with Articles 6.7, 6.8 and 6.8 BIS and *Annex 2* of **this Agreement**, such payment shall continue while that **Product** is **commercialized** and in accordance with the terms of Articles 6.7, 6.8 and 6.8 BIS and *Annex 2* of **this Agreement**.
9. Upon withdrawal from **this Agreement**, the **Recipient** shall no longer use the **Material**. The Recipient may conserve the Material and make it available to the Multilateral System in accordance with Article 6.3. The Recipient may also offer to return any remaining Material in its possession to the **Provider**. If this is not possible or the **Provider** declines the offer, the **Recipient** shall offer to transfer the **Material** to an international institution that has signed an agreement with the **Governing Body** under Article 15 of the **Treaty** or any other genbank that operates under the terms and conditions of the Multilateral System. If the offer is declined or such transfer is not possible, as a last resort, the Material may be destroyed and evidence of its destruction is provided to the third party beneficiary.
10. Notwithstanding the above, only Articles 4, 6.2, 6.3, 6.9, 6.10 and 8 of **this Agreement** shall continue to apply after the withdrawal has taken effect.

TERMS AND CONDITIONS OF THE SUBSCRIPTION SYSTEM (ARTICLE 6.11)

ARTICLE 1 — SUBSCRIPTION

- 1.1 The **Recipient**, who opts for the **Subscription System** in accordance with Article 6.11 (hereinafter referred to as the “**Subscriber**”), agrees to be bound by the following additional terms and conditions (the “**Subscription Terms**”).
- 1.2 The **Subscription** shall take effect upon receipt by the Secretary of the **Governing Body** of the duly signed **Registration Form** contained in *Annex 4*. The Secretary shall notify the **Subscriber** of the date of receipt. The **Subscriber** shall not be required to sign *Annex 4* of any subsequent Standard Material Transfer Agreement, during the period of **Subscription**.
- 1.3 The **Subscriber** shall be relieved of any obligation to make payments under any previously signed Standard Material Transfer Agreement, and only the payment obligations in these **Subscription Terms** shall apply.
- 1.4 The **Governing Body** may amend the **Subscription Terms** at any time. Such amended Subscription Terms shall not apply to any existing **Subscription**, unless the **Subscriber** notifies the **Governing Body** of its agreement to be subject to the amended **Subscription Terms**. Should the **Subscriber** agree to the amended **Subscription Terms**, such agreement shall not affect the date on which the **Subscription** had taken effect.

ARTICLE 2 — REGISTER

The **Subscriber** agrees that its full name, contact details and the date at which **Subscription** took effect, shall be placed on a public register (the “**Register**”), and undertakes to immediately communicate any changes to this information to the **Governing Body** of the **Treaty**, through its Secretary.

ARTICLE 3 — MONETARY BENEFIT-SHARING

- 3.1 In order to share the monetary benefits from the use of **Plant Genetic Resources for Food and Agriculture** under the **Treaty**, the **Subscriber** shall make annual payments based on the **Sales** of products that are **Plant Genetic Resources for Food and Agriculture** listed in Annex I of the **Treaty**.
- 3.2 The following rates of payment shall apply to **Sales** of products that are **Plant Genetic Resources for Food and Agriculture** listed in Annex I of the **Treaty**:
 - 0.01% when such products are available without restriction, and
 - 0.015% when such products are not available without restriction.
- 3.3 At the request of the **Subscriber**, the higher rate of payment shall apply to **Sales** without distinction.

- 3.4 Notwithstanding the above, no payment shall be required for a **Subscriber** in a year in which its payments due on **Sales** referred to in article 3.1 do not exceed US\$ 1,000 .
- 3.5 Payment shall be made within sixty (60) days after closure of accounts each financial year, for the previous year. Whenever the **Subscription** took effect during the year, the **Recipient** shall make a proportionate payment for the first year of its **Subscription**.
- 3.6 The **Subscriber** shall submit to the **Governing Body** of the **Treaty**, through its Secretary, within sixty (60) days after closure of accounts each financial year a statement of account, including in particular the following:
- (a) Information on the **Sales** for which payment was made;
 - (b) Information that allows for the identification of the applicable payment rate or rates; and
 - (c) the verifiable source of the information provided;

or a signed declaration showing that it is exempted from payment in accordance with Article 3.3 above.

Such information shall be treated as confidential business information, to the extent specified by the **Subscriber** within the limits set by **this Agreement**, and shall be made available to the third party beneficiary, in the context of dispute settlement, as provided for in Article 8 of **this Agreement**, and to the **Governing Body** for aggregated reporting purposes on income to the fund established by the **Governing Body** in accordance with Article 19.3f of the **Treaty**.

- 3.7 All payments due to the **Governing Body** shall be payable in *United States dollars (US\$)* at the exchange rate that prevailed at the date of closure of accounts for the following account established by the **Governing Body** in accordance with Article 19.3f of the **Treaty**:

FAO Trust Fund (USD) GINC/INT/031/MUL,

IT-PGRFA (Benefit-sharing),

Citibank

399 Park Avenue, New York, NY, USA, 10022,

Swift/BIC: CITIUS33, ABA/Bank Code: 021000089, Account No. 36352577

ARTICLE 4 — WITHDRAWAL FROM AND TERMINATION OF THE SUBSCRIPTION

- 4.1 The **Subscription** shall be in force until the **Subscriber** withdraws from it, or the **Governing Body** terminates it as provided for in Article 4.5 below.
- 4.2 The **Subscriber** may withdraw from its **Subscription** upon six months written notice to the **Governing Body** through its Secretary, not less than 10 years from the date that the **Subscription** took effect.
- 4.3 Upon withdrawal from its **Subscription**, the **Subscriber** shall no longer use the **Material**. The **Subscriber** may conserve the **Material** and make it available to the Multilateral System in accordance with Article 6.3. The **Subscriber** may also offer to return any remaining **Material** in its possession to the **Provider**. If this is not possible or the **Provider** declines the offer, the **Subscriber** shall offer to transfer the **Material** to an international institution that has signed an agreement with the **Governing Body** under Article 15 of the **Treaty** or any other genebank that operates under the terms and conditions of the Multilateral System. If the offer is declined or such transfer is not possible, as a last resort, the **Material** may be destroyed and evidence of its destruction is provided to the third party beneficiary.

- 4.4 The monetary benefit-sharing provisions of Article 3 of these **Subscription Terms** shall continue for two years from the end of the **Subscription**. Notwithstanding the foregoing, only Articles 4, 6.1, 6.2, 6.3, 6.4, 6.9, and 8 of **this Agreement** shall continue to apply after the end of the **Subscription**.
- 4.5 In the case of a material breach of any of the obligations by the **Subscriber**, the third party beneficiary shall inform the **Subscriber** in writing of the alleged breach. If such breach is not remedied within thirty (30) days of notice being given, the third party beneficiary shall initiate dispute settlement in accordance with Article 8 of **this Agreement**. In case the dispute is not satisfactorily resolved within six months, the third party beneficiary may terminate the **Subscription** and claim damages, as appropriate. The third party beneficiary may decide that the **Subscriber** shall not have the right to opt for the **Subscription System** in any Standard Material Transfer Agreement signed by it in the future, until the **Governing Body** decides otherwise. The third party beneficiary shall bring the matter to the attention of the following session of the **Governing Body**.

Annex 4

REGISTRATION FORM

The **Recipient** hereby declares to opt for the **Subscription System**, in accordance with Article 6.11 of **this Agreement**.

It is understood and expressly agreed that **Recipient**'s full name, contact details and the date at which **Subscription** took effect, shall be placed on a public register of **Subscribers** (the "**Register**"), and that any changes to this information is communicated immediately to the **Governing Body** of the **Treaty**, through its Secretary, by the **Recipient** or its authorised official.

Signature.....

Date.....

Full name of Recipient:

.....

Address:

.....

.....

Telephone:

Email:

Recipient's authorised official:

.....

Address:

.....

Telephone:

Email:

NB: The **Subscriber** must also sign or accept **this Agreement**, as provided for in Article 10, without which **Registration** is not valid.

The **Subscriber** shall signify acceptance by returning a signed **Registration Form** to the Governing Body, through its Secretary, at the address below. A signed **Registration Form** must be accompanied by a copy of **this Agreement**.

The Secretary,

International Treaty on Plant Genetic Resources for Food and Agriculture

Food and Agriculture Organization of the United Nations

I-00153 Rome, Italy

ANNEX 2

DRAFT TEXT FOR AN AMENDMENT TO ANNEX I OF THE INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE

Article 1

Amendment

In Annex I, the following two paragraphs shall be inserted after the lists of food crops and forages:

- “1. In furtherance of the objectives and scope of this Treaty, in accordance with Article 3 of this Treaty, and without prejudice to Article 12.3 h of this Treaty, the Multilateral System shall, in addition to the Food Crops and Forages listed above, cover all other plant genetic resources for food and agriculture, including those plant genetic resources for food and agriculture previously excepted or excluded in the list above, that are under the management and control of the Contracting Parties and in the public domain and that are found in ex situ conditions.”
- “2. At the time of its ratification, acceptance or approval of this Amendment, a Contracting Party may, exceptionally, declare certain and a limited number of species native to its territory that it will not make available under the terms and conditions of the Multilateral System. Such a declaration shall not affect the rights and obligations of any other Contracting Party related to the species, nor those of the International Agricultural Research Centres or other International Institutions that concluded an agreement with the Governing Body under Article 15 of this Treaty. A Contracting Party may withdraw its declaration at any time, or eliminate plant genetic resources for food and agriculture from its list at any time, but shall not make any additional declaration.”

Article 2

Relationship with the International Treaty on Plant Genetic Resources for Food and Agriculture (2001)

After the entry into force of this Amendment, any accession, acceptance or approval of or accession to the International Treaty on Plant Genetic Resources for Food and Agriculture shall include this Amendment.