



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



The International Treaty
ON PLANT GENETIC RESOURCES
FOR FOOD AND AGRICULTURE

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

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

Rome, Italy, 14–17 March 2017

THE LAUNCH MECHANISM

Executive Summary

The Working Group decided, at its fifth meeting, to explore launch mechanisms that would support building commitment and trust between Contracting Parties and with stakeholder groups, including by increasing user-based income to the Benefit-sharing Fund. This document largely draws on the work of the Friends of the Co-chairs on Access Mechanisms and Payment Rates, which at its second meeting, addressed matters related to a launch mechanism for the enhanced Multilateral System of Access and Benefit-sharing of the International Treaty. The Working Group is requested to consider the objectives and key elements of the launch mechanisms and provide recommendations for its further development.

1. INTRODUCTION

1. At the fifth meeting, the Working Group discussed ways of increasing the attractiveness of the Multilateral System, which would require building commitment and trust between Contracting Parties and with stakeholder groups, including by increasing user-based income to the Benefit-sharing Fund. It decided to further discuss this matter at the current meeting, and in this context to explore launch mechanisms.¹

2. The Friends of the Co-chairs on Access Mechanisms and Payment Rates (FoCC) accordingly considered the Launch Mechanism, as is reflected in the report of their second meeting. This document draws largely on their work.²

2. OBJECTIVES OF THE LAUNCH MECHANISM

3. The process to enhance the Multilateral System currently discusses two mutually dependent objectives:

1. Generation of an adequate and sustainable flow of funds to the Treaty's Benefit-sharing Fund.
2. Expansion of the Treaty's crop coverage, potentially to the scope of the Treaty, namely plant genetic resources for food and agriculture in general.

4. Contracting Parties have recognized that a balance is to be struck in achieving these two objectives. However, proponents of both sides of the debate have recognized that this creates a "first mover dilemma", that is, how to be certain that agreeing to realize one of these mutually dependent objectives, ensures that the other will also be realized. This is the dilemma that the Launch Mechanism seeks to overcome.

5. In particular, the Launch Mechanism aims to overcome the current hesitations of a number of developing countries, who may only agree to expansion of the Treaty's crop coverage *after* benefit-sharing has been shown to work, and of developing and developed countries, who maintain that adequate, user-based income for the Benefit-sharing Fund can only be achieved *if and once* the Treaty's crop coverage has been expanded, preferably to all plant genetic resources for food and agriculture.

6. It aims at achieving this by introducing an element of conditionality, so groups can have a high degree of certainty that their objective will be *simultaneously* realized. It follows the logic of the negotiating maxim: "Nothing is agreed until everything is agreed".

7. The Launch Mechanism also introduces a time element, so as to ensuring that the enhanced Multilateral System can begin to function in the near future, because if a mutually agreed solution to the first mover dilemma is not found and implemented in the very near future, it will be very difficult to realize the enhancement of the Multilateral System in practice.

8. The Launch Mechanism is intended to directly support the practical realization of a Subscription System that can provide a sustained flow of substantial, user-based income for

¹ IT/OWG-EFMLS-5/16/Report, para. 16.

² IT/OWG-EFMLS-6/17/6, *Enhancing the functioning of the Multilateral System: note by the Co-chairs on the outcome of the Friends of the Co-chairs Groups and the Standing Group of Legal Experts* and IT/OWG-EFMLS-6/17/Inf.4, *Report of the Friends of the Co-Chairs on Access Mechanisms and Payment Rates*.

benefit-sharing in accordance with the Treaty, leveraged by predictable Contracting Party contributions to augment user-based income.

9. The Friends of the Co-chairs agreed that a Launch Mechanism could provide a framework for the implementation of the Subscription System, which could attract the support of both providers and users of plant genetic resources, and help to the negotiations to enhance the Multilateral System to a successful conclusion.

3. KEY ELEMENTS OF THE LAUNCH MECHANISM

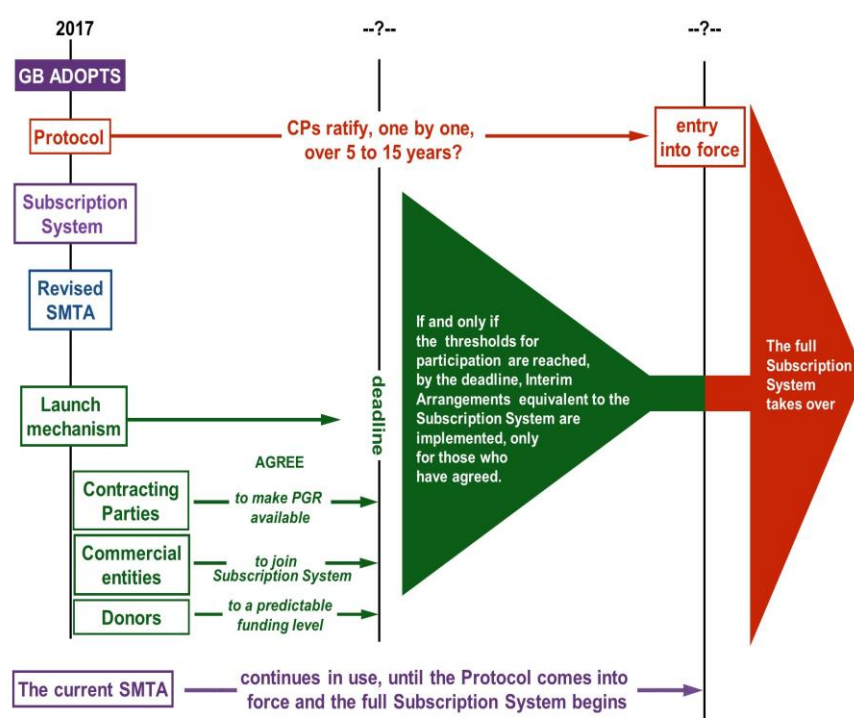
10. The Launch Mechanism aims to overcome these hesitations, by postponing implementation of both the Subscription System and the expansion of the Treaty's crop coverage, until *three clearly defined thresholds* have been reached, namely:

1. Commercial users representing a defined percentage (value) of the annual sales of the global commercial seed market have undertaken legally binding commitments to joining the Subscription System.
2. Countries holding a defined number of valuable plant genetic resources for food and agriculture of the expanded crop coverage have committed themselves to making their plant genetic resources effectively available.
3. Donor countries have undertaken to provide a pre-established annual level of voluntary funding for the Benefit-sharing Fund, in addition to user-based income.

11. A key element of the Launch Mechanism is that there must be a deadline for reaching the three thresholds: if the above commitments are not reached by this deadline, users who have committed themselves to joining the Subscription System will be released from this commitment. Should Contracting Parties wish, it would also be possible to build a similar conditionality into the Protocol or Supplementary Agreement by which the Treaty's crop coverage would be expanded.

12. Because ratification and entry into force of an international legal instrument to develop the full Subscription System may take a long time, the Launch Mechanism provides for *Interim Access and Benefit-sharing Arrangements*, whereby the commercial users and Treaty Contracting Parties that have made the relevant commitments may implement provisions equivalent to the Subscription System, once these thresholds are reached, and in so doing generate immediate income to the Benefit-sharing Fund from both users and donors (see figure 1).

Figure 1. Possible elements of the Launch Mechanism



13. The *Interim Access and Benefit-sharing Arrangements* would apply only to the countries and commercial entities that had committed themselves in reaching the threshold, and those that subsequently themselves join, before the entry into force of the full Subscription System.

4. PREDICTABILITY OF USER-BASED INCOME, AND OF ACCESS

14. In their discussion, the Friends of the Co-chairs used the estimates of the global commercial seed market that are contained in table 1.

	Maize	Soy	Rice	Wheat	Vegetables (18 major)	Others	Total
Global commercial seed market	21.5	8.2	4.3	2.5	4.7	6.3	47.5
Trait value in sales ³	7.4	3.8	0	0	0	0	11.2
Sales w/o trait value	14.1	4.4	4.3	2.5	4.7	6.3	36.3
Patented sales	17.4	7.6	0.05	0.1	0.3	0.1	25.55
Patented sales w/o trait value	10	3.8	0.05	0.1	0.3	0.1	14.35
Non-patented sales	4.1	0.6	4.25	2.4	4.4	6.2	21.95

15. The Friends of the Co-chairs did not make any specific recommendations regarding rates of payment for the Subscription System, but a table was developed at their request that projects *Total Possible Annual Incomes* for different groups of crops at different payment rates (table 2).

³ “Trait value” refers to the practice of some commercial users in some countries, where trait value is invoiced separately from the germplasm value and farmers pay a “trait / technology fee” in addition to the seed price. Sometimes the trait fee goes to a different party than the seed price. In other countries the seed and trait value are combined in one price.

Table 2. Payment rate = % of a subscriber's annual seed sales of all crops, 0.016% – 0.16%, in steps of 0.024%								
	World sales (\$)	0.016%	0.04%	0.064%	0.088%	0.112%	0.136%	0.16%
Annex 1 only	32,000,000,000	5,120,000	12,800,000	20,480,000	28,160,000	35,840,000	43,520,000	51,200,000
All crops	47,500,000,000	7,600,000	19,000,000	30,400,000	41,800,000	53,200,000	64,600,000	76,000,000
All crops less maize	25,175,000,000	4,028,000	10,070,000	16,112,000	22,154,000	28,196,000	34,238,000	40,280,000
All crops less maize & soy	14,175,000,000	2,268,000	5,670,000	9,072,000	12,474,000	15,876,000	19,278,000	22,680,000
All crops less maize, soy & Non-Annex 1 Vegetables	9,475,000,000	1,516,000	3,790,000	6,064,000	8,338,000	10,612,000	12,886,000	15,160,000

16. It must be stressed that these figures are *theoretical* projections that are most unlikely to be the case in real world conditions. They are based on the following unrealistic assumptions:

1. All plant genetic resources of the crops considered in each projection are effectively available.
2. The current global commercial seed market is as in the table 1, and income from trait value is included.
3. All natural and legal persons commercialising seeds have accepted the Subscription System, and there are *no* exemptions from payment.

17. However, such projections show that, if the Subscription System were implemented in conjunction with the Launch Mechanism, it would then become possible to make realistic projections of annual income. This is because, when one knows (1) the rates and (2) the value of the market and crops to which these rates apply, and once (3) commercial users representing a pre-established percentage of sales in that market (on the evidence of their previous sales figures), have entered into legally binding agreements to join the Subscription System, then user-based income at the time the Subscription System becomes operational is mathematically calculable, provided that, under the Subscription System, Subscribers pay on the basis of all their products, whether or not these are directly derived from materials accessed under an SMTA. The only uncertainty would derive from the fact that the value of global commercial market, and the sales of individual subscribers, varies from year to year. Both predictable benefit-sharing and access to a wider set of crops would come into reality at the same time.

18. The threshold for commitments to make plant genetic resources for food and agriculture available could be based on the *ex situ* holdings identified in the *Second Report on the State of the World's Plant Genetic Resources for Food and Agriculture*. For commercial users to accept binding commitments, these resources would need to be effectively and rapidly available to subscribers.

5. FURTHER DEVELOPMENT OF THE LAUNCH MECHANISM

19. Further development of the Launch Mechanism would require careful analysis of the legal, technical, and administrative questions, on the basis of which a draft text and set of instruments could be formulated for the consideration of the Governing Body. The FoCC identified in this regard a number of issues that should be clarified:

1. The objectives of the Launch Mechanism, including in terms of income to the Benefit-sharing Fund, and the date at which this would become available.
2. How the Launch Mechanism would be implemented.
3. How Contracting Parties might legally make the commitments foreseen in such a Launch Mechanism.

4. Who the parties to any agreed Interim Access and Benefit-sharing Arrangements would be (Providers and Subscribers) as well as their respective rights and obligations, including in relation to non-parties.
5. What the relationship between users under the current system (which would continue alongside the Interim Access and Benefit-sharing Arrangements until Treaty amendment or Protocol extending the Treaty's crop coverage comes into force) would be.
6. How the subscribers under the Interim Access and Benefit-sharing Arrangements would pass to the full Subscription System, when the amendment of the Treaty or Protocol comes into force.
7. Whether, during the period before an amendment or a Protocol comes in to force, lower rates could be applied under Interim Measures than those that would apply once they came into force, so as to make the Subscription System attractive to users..
8. What the relationship to the Nagoya Protocol would be, and whether the Launch Mechanism would fall under the exceptions provided for in Article 4 of the Nagoya Protocol.
9. Whether there would be overlap with the due diligence obligations for users under legislation implementing the Nagoya Protocol.

6. GUIDANCE SOUGHT

20. The Working Group may wish to consider the objectives (section 2) and key elements (section 3) of the Launch Mechanism and request the Co-Chairs, together with the Secretariat, to prepare a full Co-Chairs proposal for the Launch Mechanisms of the Enhanced Multilateral System to be considered by the Governing Body, at its Seventh Session.