



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



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

Item 11 of the Provisional Agenda

SEVENTH SESSION OF THE GOVERNING BODY

Kigali, Rwanda, 30 October – 3 November 2017

Report on the Operations of the Third Party Beneficiary

Executive Summary

In accordance with Article 9 of the *Third Party Beneficiary Procedures* and the request of the Governing Body at its Sixth Session, this document contains the report on the operations of the Third Party Beneficiary for the biennium 2016-2017. The document includes information on the status of the Third Party Beneficiary Operational Reserve and the technical implementation of the Third Party Beneficiary Procedures through the daily operations of the Easy-SMTA Data Store.

Guidance Sought

The Governing Body is invited to note the report and give any further guidance it considers appropriate for the effective operation of the Third Party Beneficiary, taking into account the draft elements for a Resolution provided for its consideration.



Table of Contents

	Paragraphs
I. Introduction.....	1 – 3
II. Cases handled by the Third Party Beneficiary	4 – 7
III. Status of the Third Party Beneficiary Operational Reserve	8 – 11
IV. Technical implementation of the Third Party Beneficiary Procedures.....	12 – 15
V. Possible elements of a decision by the Governing Body	16
APPENDIX - Draft elements for a resolution	

I. Introduction

1. At its Third Session, by Resolution 5/2009, the Governing Body adopted the *Procedures for the Operation of the Third Party Beneficiary* (Third Party Beneficiary Procedures).¹
2. In accordance with Article 9 of the *Third Party Beneficiary Procedures*, the Third Party Beneficiary shall submit to the Governing Body, at each of its Regular Sessions, a report setting forth certain information regarding the fulfilment of its roles and responsibilities. Consequently, the Governing Body has, at each Regular Session, requested the Secretary to provide such a report. This document provides the report on the activities of the Third Party Beneficiary and relevant developments since the last Session of the Governing Body.
3. As a matter arising from a potential case for the Third Party Beneficiary, the Governing Body, at its Sixth Session, requested the Secretary, in cooperation with CGIAR Centres and related institutions and mechanisms, to gather information on the content of additional conditions attached to the transfer of Plant Genetic resources for Food and Agriculture under Development (PGRFAuD) and to report back to this Session. A separate document has been prepared in response to the request of the Governing Body.²

II. Cases handled by the Third Party Beneficiary

4. At the Sixth Session of the Governing Body, the Third Party Beneficiary reported on progress made with a potential case that was brought to its attention. The case centred on the transfer of germplasm in potential violation of the provisions of the International Treaty.
5. Following a series of consultations and interaction with the concerned institutions, FAO acting as the Third Party Beneficiary received final detailed information regarding the conclusion of SMTAs regularizing the potential violations. As a result, the Third Party Beneficiary issued a letter to the two concerned international institutions to close the case, based on the understanding that the signed SMTAs cover all the germplasm transfers made in the relevant period of time to the concerned Recipient. The fruitful cooperation of the concerned international institutions to take such corrective action was acknowledged.
6. At its Sixth Session, the Governing Body recalled that, in accordance with Article 4.2 of the Procedures, the Third Party Beneficiary may receive information on possible non-compliance with the obligations of the provider and the recipient under an SMTA from the parties to such an SMTA or any other natural or legal person. Accordingly, it stressed the importance of the provisions of Article 4.2 for the effective functioning of the Third Party Beneficiary.³
7. In the current biennium, the Third Party Beneficiary did not receive any information on possible cases of non-compliance with an SMTA, from any source.

III. Status of the Third Party Beneficiary Operational Reserve

8. The Financial Rules of the Governing Body stipulate that the Third Party Beneficiary Operational Reserve (Reserve) shall be maintained at a level to be determined by the Governing Body for each biennium. An adequate part of the contributions to the Core Administrative Budget is to be credited as priority to the Reserve.⁴

¹ Annex to Resolution 5/2009.

² IT/GB-7/17/11, *Report on the Practice of the CGIAR Centres for Plant Genetic Resources under Development*.

³ Resolution 1/2015, para. 15.

⁴ Rule VI.5, Financial Rules of the Governing Body.

9. At its Sixth Session, the Governing Body decided to maintain the Reserve for the 2016-2017 biennium at the level of USD 283,280, and to review such a level at this Session.⁵

10. At the date of this document, USD 269,772 or 95% of the amounts due to the Reserve, had been received from seventy-four Contracting Parties leaving a balance of USD 13,508 still payable.

11. Similar to the previous biennium, the direct costs ensuing from the implementation of the Third Party Beneficiary Procedures in the current biennium were essentially those incurred to cover the contract for the hosting of the SMTA server by the United Nations International Computing Centre (UNICC). For the 2015-16 biennium, this amounted to USD 51,000 (i.e. USD 6,375 charged on a quarterly basis under the Core Administrative Budget).

IV. Technical implementation of the Third Party Beneficiary Procedures

12. At its Sixth Session, the Governing Body welcomed the functional and cost-effective information technology tools that the Secretary has developed to facilitate the submission, collection and storage of SMTA information in the implementation of Article 4.1 of the Third Party Beneficiary Procedures (i.e. Easy-SMTA). The Governing Body requested the Secretary to continue applying adequate measures to ensure the integrity of information and, where required, the confidentiality of the information provided.⁶

13. During the biennium, Easy-SMTA has been maintained and further developed to simplify the extraction and presentation of SMTA data and statistics. A new function has been introduced whereby such data and statistics can be presented in a convenient summary page. System maintenance has resulted in a new hosting agreement with UNICC which provides higher performance, improved security as well as reduced costs.

14. The XML-based reporting protocol has continued to be adopted by major Providers, namely by the National Institute of Agro-biological Sciences in Japan and the International Institute for Tropical Agriculture in Nigeria. More CGIAR Centres have transitioned from solutions developed in-house to Easy-SMTA.

15. The integration of Easy-SMTA with the Global Information System (GLIS) has been moved to production and the Permanent Identifier (PID) Server component of Easy-SMTA now provides user account management for both Easy-SMTA and GLIS simplifying user access. Additionally, Easy-SMTA supports the germplasm transfer transaction offered by the GLIS Integration Toolkit.⁷

V. Possible elements of a decision by the Governing Body

16. Without prejudice to any guidance the Governing Body may wish to give on the matters covered in this document, draft elements of a Resolution are in the Appendix to this document.

⁵ Resolution 1/2015, para. 19.

⁶ Resolution 1/2015, para. 21.

⁷ More information on the toolkit is available in document IT/GB-7/17, *Implementation of the Global Information System*.

APPENDIX - Draft elements for a resolution

(to be integrated into DRAFT RESOLUTION **/2017 on the Multilateral System)

THE GOVERNING BODY:

Recalling that the Governing Body, at its Third Session, had approved the Third Party Beneficiary Procedures for the carrying out of the roles and responsibilities of Third Party Beneficiary as identified and prescribed in the Standard Material Transfer Agreement under the direction of the Governing Body;

Recalling further that, in accordance with Article 4.2 of the Third Party Beneficiary Procedures, the Third Party Beneficiary may receive information on possible non-compliance with the obligations of the provider and recipient under a Standard Material Transfer Agreement from any natural or legal persons;

Recognizing that the Third Party Beneficiary will require adequate financial and other resources and that FAO acting as Third Party Beneficiary shall not incur any liabilities in excess of the funds available in the Third Party Beneficiary Operational Reserve;

- 1) **Takes note** the Report on the Operation of the Third Party Beneficiary and further **requests** the Secretary and FAO to continue providing, at each Session of the Governing Body, such a report;
- 2) **Stresses the importance** for the effective functioning of the Third Party Beneficiary, of Article 4.2 of the Third Party Beneficiary Procedures, according to which the Third Party Beneficiary may receive information on possible non-compliance with the obligations of the provider and recipient under a Standard Material Transfer Agreement from the parties under the Standard Material Transfer Agreement or any other natural or legal persons;
- 3) **Decides** to maintain the Third Party Beneficiary Operational Reserve for the 2017-2018 biennium at the current level of USD 283,280 and to review same at its Eighth Session, and calls upon Contracting Parties that have not done so yet, intergovernmental organizations, non-governmental organizations and other entities to contribute to the Reserve;
- 4) **Authorizes** the Secretary to draw upon the Third Party Beneficiary Operational Reserve as may be needed for the implementation of the functions of the Third Party Beneficiary;
- 5) **Welcomes** the functional and cost-effective information technology tools and infrastructure that the Secretary has developed to facilitate the submission, collection and storage of information in the implementation of Article 4.1 of the Third Party Beneficiary Procedures and requests the Secretary to apply adequate measures to ensure the integrity and, where required, the confidentiality of information, while continuing the further development of the International Treaty information technology tools and infrastructure, including in accordance with the Vision and Programme of Work of the Global Information System of Article 17.