



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



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

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

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

Rome, Italy, 16–19 September 2024

**Explanatory Notes on the Co-Chairs' Proposal for a Package of Measures to
Enhance the Functioning of the Multilateral System**

Executive Summary

This document contains the explanatory notes prepared by the Co-Chairs on their draft proposal for a package of measures to enhance the functioning of the Multilateral System, contained in the document IT/OWG-EFMLS-12/24/3.1. It is intended to be read together with the Co-Chairs' proposal.

The Co-Chairs describe the general approach (Section II), provide an overview of the specific approach on the three "hotspots", namely digital sequence information/genetic sequence data, amendment of Annex I, and payment structure and rates (Section III), and then list in detail the major changes they made to the draft Resolution (Section IV), the revised Standard Material Transfer Agreement (Section V), and the Amendment of Annex I (Section VI). The Co-Chairs conclude the document by making a number of recommendations regarding next steps (Section VII).

Guidance Sought

The Working Group is invited to consider the information provided in this document when agreeing on the negotiating text to be considered at its thirteenth meeting and when discussing further documents or advice needed in preparation for its thirteenth meeting.

EXPLANATORY NOTES ON THE CO-CHAIRS' PROPOSAL FOR A PACKAGE OF MEASURES TO ENHANCE THE FUNCTIONING OF THE MULTILATERAL SYSTEM

I. INTRODUCTION

1. We prepared these explanatory notes to facilitate consideration of our proposal for a package of measures to enhance the functioning of the Multilateral System (IT/OWG-EFMLS-12/24/3.1). We provide a short overview of the package of measures and explain our general approach (Section II), describe how we approached the three “hotspots” in the package of measures (Section III), before listing in detail all the changes we made to the “June 2019 draft package” (Sections IV, V and VI).
2. We recall that the Governing Body decided, at its Ninth Session, that the resumed process for the enhancement of the Multilateral System should build upon previous progress and achievements both in terms of structure and content and address, in a balanced manner, all three blocks of the package of measures developed previously (revised SMTA; expansion of Annex I; implementation measures through a Resolution).¹
3. The Working Group, at its tenth meeting, agreed that the “June 2019 draft package” should serve as the starting point for further work, complemented with additional ideas and revisions, as needed.² This suggestion was endorsed by the Governing Body at its Tenth Session.³
4. We encourage the Working Group to not only bear in mind the substantive progress but to also remember the crucial level of commitment, willingness to compromise and mutual trust, that ultimately led to the “June 2019 draft package.”
5. Therefore, the “June 2019 draft package” was an outcome of these efforts and signified already a compromise proposal. One example is the agreement in principle that the revised Standard Material Transfer Agreement (SMTA) will only contain mandatory payment provisions. Another example are the clauses that bring obligations under the SMTA to an end, like the minimum incorporation thresholds and the withdrawal provisions.
6. At its eleventh meeting, the Working Group reviewed the main elements and concepts of the “June 2019 draft package”, providing several specific suggestions to the Co-Chairs for updating the package to prepare a negotiating text for the twelfth meeting of the Working Group.⁴
7. In addition, through a notification, Regions, all Contracting Parties, and relevant stakeholders were invited to provide written submissions on elements of the “June 2019 draft package” other than the three “hotspots”.⁵ The submissions received are compiled in the document, IT/OWG-EFMLS-12/3/Inf.3.
8. Considering the inputs by the Working Group at its eleventh meeting on the three “hotspots” and on the “June 2019 draft package”, the submissions received on issues other than the three “hotspots”, and our own review of the “June 2019 draft package”, we revised the text of the “June 2019 draft package” to develop our draft proposal contained in the document, IT/OWG-EFMLS-12/3.1.
9. We would again like to recall that 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:
 - Increase the benefits that arise from the Multilateral System for all Contracting Parties and users, both monetary and non-monetary;

¹ [Resolution 3/2022](#)

² [IT/OWG-EFMLS-10/23/Report](#)

³ [Resolution 3/2023](#)

⁴ [IT/OWG-EFMLS-11/24/Report](#), paras. 6, 7

⁵ [NCP GB11-005](#)

- 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.⁶

10. We also invite the Working Group to continue considering the ample background information, summaries and links to relevant documents available on the dedicated website.⁷ This website also contains the timeline for the process for this biennium, which we as Co-Chairs keep updating.

11. Finally, we are considering the possible implications for Farmers' Rights across the three hotspots in developing our proposal, as requested by the Governing Body⁸, and will draw them to the Working Group's attention and liaise with the Ad Hoc Technical Expert Group on Farmers' Rights (AHTEG-FR) as appropriate.

II. OVERVIEW OF THE PACKAGE OF MEASURES AND GENERAL APPROACH

12. Building on the "June 2019 draft package", our proposal for a package of measures to enhance the functioning of the Multilateral System covers all three elements referred to in Resolution 3/2022: (1) a draft resolution of the Governing Body including proposed implementation measures (IT/OWG-EFMLS-12/24/3.1, Annex 1), (2) a draft revised Standard Material Transfer Agreement (IT/OWG-EFMLS-12/24/3.1, Appendix 1), and (3) a draft text for an amendment to Annex I of the International Treaty (IT/OWG-EFMLS-12/24/3.1, Appendix 2).

13. Details on each of these elements and the changes we made with regard to the "June 2019 draft package" are provided below (Sections IV, V and VI).

14. The Working Group had worked – and continues to work – based on the principle that nothing is agreed until everything is agreed. We hope that by committing to this principle, progress on text can be made at our twelfth meeting, in the sense that any agreement (ad ref) on any provision or paragraph is not considered final, but dependent on agreement in other areas and – ultimately – the whole package of measures.

15. At the eleventh meeting, the Working Group requested us, as a general principle, to avoid rewriting text marked as *AGREED AD REF* in the "June 2019 draft package", in order to preserve the progress and achievements of the previous phase of the process.⁹ Based on this request, whenever text is marked as *AGREED AD REF* in our Co-Chairs' proposal, we generally didn't change the language or only undertook minor editorial changes or updates, where necessary (for example, updating years/dates, correcting spelling errors, inserting lacking spaces, clarifying that we are referring to the current SMTA or Annex I, etc.). We simplified the preambular paragraphs 1 and 5 by deleting text. We accordingly decided to keep *AGREED AD REF* in the respective paragraphs, to signify preliminary consensus reached in the previous phase of the process, so that the Working Group could focus its work on the remaining parts of our proposal.

16. Following this principle, we deleted the *AGREED AD REF*, whenever we made more significant changes to a previously *AGREED AD REF* paragraph. This includes:

⁶ [Resolution 3/2022](#)

⁷ www.fao.org/plant-treaty/areas-of-work/the-multilateral-system/enhancement-process/en/

⁸ [Resolution 7/2023](#), para. 8

⁹ [IT/OWG-EFMLS-11/24/Report](#), para. 7

- Paragraph 17 in the draft Resolution: where we added additional text;
- Articles 6.11 and 6.11bis in the revised SMTA: we had to adapt these Articles to the suggested changes regarding the payment mechanism, primarily by deleting text;
- The chapeau of Article 3.5 of the Subscription Terms: where clarified that the reports would be sent to the Secretary rather than the Governing Body, see explanations below;
- Article 4.1 of the Subscription Terms: we added the reference to Article 8 and deleted the reference to a termination right by the Governing Body; and;
- The Registration Form in Annex 3: change was required following the introduction of the differentiated payment option for the Subscriber and other changes.

17. Following another request by the Working Group at its eleventh meeting, we provide clean text without alternative texts for a given paragraph.¹⁰ We eliminated all square brackets with only a few exceptions, basically where numbers are still needed: payment rates, definition of the yearly sales and number of accessions for payment exemptions, open dates/years, number of days for the Subscriber to choose in the transition phase. There are no alternative texts for the same provision or paragraphs in our proposal. Whenever there were alternative texts in the “June 2019 draft package”, we chose one of the options and explained our choice in the detailed notes below.

18. We suggest a thorough legal reading be done at a later stage, especially of the revised SMTA and the text for an amendment of Annex I. A small group of legal experts could be tasked to prepare a legal reading for the Working Group’s consideration. We may also need advice from the FAO Legal Office in concrete areas or include them in this small group of legal experts.

III. APPROACHES TO THE THREE “HOTSPOTS”

19. 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 rates¹¹), which the Working Group continues to consider as the key areas for further work.¹²

20. As Co-Chairs we reiterate that progress on these three “hotspots” will be crucial for advancing on developing a full package of measures, for adoption by the Eleventh Session of the Governing Body end of next year.

21. We therefore start with an overview of our approach to addressing each of the three “hotspots” in our proposal for a draft package of measures.

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

22. We recall that the Working Group agreed to consider the possibility of developing a specialized approach for DSI/GSD on PGRFA under the International Treaty, while monitoring the relevant processes under the Convention on Biological Diversity (CBD), to ensure mutual supportiveness.¹³

23. Our general approach for addressing the key issue of digital sequence information/genetic sequence data (DSI/GSD) is to focus on the text of the draft Resolution. A decision on DSI/GSD by the Governing Body when adopting the package of measures can be a powerful tool, while offering the benefit of a high degree of flexibility that legal texts like the SMTA or the amendment text cannot provide.

24. Additionally, we are aware that “DSI/GSD” are placeholder terms since there is not yet an agreed definition of, or official terminology.¹⁴ The lack of a clear definition makes the use of the terms in a legally binding contract difficult.

¹⁰ [IT/OWG-EFMLS-11/24/Report](#), para. 7

¹¹ [Resolution 3/2023](#), para. 2

¹² [IT/OWG-EFMLS-11/24/Report](#), para. 7

¹³ [IT/OWG-EFMLS-11/24/Report](#), para. 22

¹⁴ [Resolution 16/2023](#)

25. Because of these reasons and the approach chosen for the payment mechanism in the revised SMTA, we opted for addressing this “hotspot” in the draft Resolution directly, while incorporating it into the revised SMTA indirectly.
26. This approach follows the recommendation of the Working Group at its eleventh meeting to include provision for a section on DSI/GSD in the draft Resolution.¹⁵
27. Our approach is supportive of open access to DSI/GSD and recognizes that benefit-sharing payments under the revised SMTA reflect the range of contributions from the use of PGRFA from the Multilateral System, especially the use of DSI/GSD on PGRFA.
28. We acknowledge that tracking and tracing of DSI/GSD is generally impractical so that the contribution of DSI/GSD is unquantified and may, in some cases, be zero. Nevertheless, we suggest inviting database managers to use a tag to identify the Multilateral System as the source of the PGRFA that was used to generate DSI/GSD in their database (see details below).
29. We also recall that the Working Group agreed, at its eleventh meeting, that any approach for DSI/GSD on PGRFA should seek to exclude double payments by users.¹⁶ Further work may be needed between the International Treaty and the CBD to ensure mutual recognition of monetary benefit-sharing payments under the enhanced Multilateral System under any solution developed under the CBD. As the field of multilateral benefit-sharing regarding DSI/GSD is an evolving one, focusing on working in the draft Resolution seems the most practical to us.
30. Finally, the Working Group agreed to focus first on the subscription option in the revised SMTA, and only subsequently assess the possible need for a specific solution in the context of a single access option, if still required.¹⁷

b. Amendment of Annex I

31. For the amendment of Annex I, we only made minor changes to the text of the “June 2019 draft package”, given the significant progress made in this area in the first phase of the process and the strong support for the resulting language, at our last meeting.
32. Rather, we focused on ensuring that there are strong safeguards in place, addressing the needs of all Regions and Contracting Parties. The draft Resolution is, again, an appropriate place to further strengthen the concepts in the amendment text.
33. The general approach is an expansion to cover not only the PGRFA listed in the current Annex I, but additionally all other PGRFA. However, robust safeguards are in place, so that the extended coverage only applies to:
- a. PGRFA under the management and control of the Contracting Parties;
 - b. PGRFA in the public domain;
 - c. PGRFA found in ex situ conditions;
34. Additional safeguards also include a recognition that the responsibility for identifying the plant genetic resources for food and agriculture that are available under the Multilateral System rests with national governments. A final safeguard enables Contracting Parties to develop, if necessary, a list to exclude a limited number of species native to its territory that it will not make available.
35. In addition, we inserted language requesting the Secretary to support Contracting Parties in their implementation of the amended Annex I, following the discussions at our last meeting on difficulties that Contracting Parties may experience when trying to understand the precise meaning of “all other PGRFA” and for National Focal Points and others to communicate to decision-makers involved in the ratification or implementation of the amendment.

¹⁵ [IT/OWG-EFMLS-11/24/Report](#), para. 7

¹⁶ [IT/OWG-EFMLS-11/24/Report](#), para. 22

¹⁷ [IT/OWG-EFMLS-11/24/Report](#), para. 23

36. As Co-Chairs we believe that this approach contributes well to reaching the aims of the enhancement process, both those defined by the Governing Body and those set by the Working Group.

37. At our 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.¹⁸

38. It stressed the need to identify the most effective, clear, simple and rapid modality to give effect to a possible expansion.¹⁹

39. We also recall the interlinkages between any expansion of the coverage and effective benefit-sharing arrangements and vice versa.²⁰

40. With regard to the shared aims of the process,²¹ we reiterate our believe that an expansion covering the full basket of 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;
- 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.

41. We believe that this approach, if comprising the above mentioned conditions and specifications and a certain level of flexibility at national level, will be an important element of our package of measures.

Table 1. Amendment of Annex I in the proposal by the Co-Chairs

Text for Amendment	Revised SMTA	Draft Resolution
<ul style="list-style-type: none"> • Adding text in Annex I • Expanding coverage of the Multilateral System to “all other PGRFA” • SAFEGUARDS: <ul style="list-style-type: none"> ○ under the management and control of Contracting Parties; ○ in the public domain; ○ PGRFA found in ex situ conditions only; ○ Contracting Parties can declare exemptions. ○ National responsibility to 	–	<ul style="list-style-type: none"> • Further provisions on the safeguards (<i>paras. 23-24, 27-29, 31-32</i>) • Support and assistance by the Secretary for the ratification and implementation (<i>paras. 34-36</i>) • Text to manage transition and to review progress (<i>paras. 52, 54-56</i>) • Text for consequences in case no entry into force of amended Annex I (<i>para. 53</i>)

¹⁸ For example, [IT/GB-7/17/7](#), *Report of the Open-ended Working Group to Enhance the Functioning of the Multilateral System*, para. 7

¹⁹ [IT/GB-7/17/7](#), *Report of the Open-ended Working Group to Enhance the Functioning of the Multilateral System*, para. 8

²⁰ [IT/OWG-EFMLS-8/18/Report](#), *Report of the eighth meeting of the Working Group*

²¹ [Resolution 3/2022](#), para. 3

identify PGRFA included in MLS		
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c. Payment structure and rates

42. We would like to recall that 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”.

43. The Working Group repeatedly emphasized its support for the subscription mechanism. At its eleventh meeting, the Working Group again strongly supported the subscription mechanism, which it agreed may have the advantages of simplicity, legal certainty, transparency, and predictability of monetary benefit-sharing. On the other hand, a range of views were expressed as to whether the single access option should be kept in the revised SMTA. In that context, compromise approaches were suggested and considered.²²

44. We believe that initially focusing on the subscription mechanism will help us identify if the advantages of the single access options could be addressed under the subscription mechanism without losing the advantages of that approach, or whether there is a clear specific role for a single access option.

45. Accordingly, we introduced a set of exemptions from payments that are further specified in the draft Resolution and which we explain in detail below. At its tenth meeting, the Working Group emphasized that exemptions and thresholds will be critical to the attractiveness and effectiveness of the subscription option.²³

46. An important element in the formulation of the payment structures are the definitions of “sales” and “commercialization”, which we formulated in Article 2 of the revised SMTA, drawing on language in the “June 2019 draft package”. For the benefit-sharing payment formulation, we used some of the alternative text proposed in the “June 2019 draft package”, as is further explained below.

47. We think that conceptually, it is important to define (1) which income should be covered, (2) whose income should be covered, (3) the link to “commercialization”, (4) whether the formulations can be used for both a subscription option and a single access option (in case the necessary number of ratifications is not reached), (5) and what products/PGRFA in the portfolio of a subscriber should be covered.

48. At this stage, a single access option is retained only as a mechanism that would be revived in case the required number of ratifications will not be reached by a set date.

49. We invite the Working Group to keep these elements in mind when discussing the payment structure and related definitions. If the Working Group cannot agree on a text, the precise legal drafting could be done by a small legal expert group, with the help of the Secretariat and the FAO Legal Office.

50. Concerning the payment rates, we did not insert any percentages, as we believe these will be negotiated at a later stage.

Table 2. Overview of payment mechanism in the revised SMTA proposed by the Co-Chairs

Text for Amendment	Revised SMTA	Draft Resolution
–	<ul style="list-style-type: none"> • Subscription as the sole payment mechanism; basic 	<ul style="list-style-type: none"> • Start of the subscription (<i>paras. 7, 10</i>)

²² [IT/OWG-EFMLS-11/24/Report](#), para. 24

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

	<p>provisions (<i>Articles 6.11, 6.11bis</i>)</p> <ul style="list-style-type: none"> • Further details on Subscription System ("<i>Subscription Terms</i>", <i>Annex 2</i>): <ul style="list-style-type: none"> ○ Benefit-sharing payment, yearly payments based on sales of PGRFA (Art. 3) ○ General payment rate (Art. 3.2) ○ Optional differentiated rate (Art. 3.2bis) ○ Exemptions from payment (Art. 3.3) ○ Minimum term of subscription: 10 years (Art. 4.2) ○ Withdrawal possible after 10 years (Art. 4) • <i>Option for single access only if certain requirements are (not) met, as provided under Article 9.4, and following the review process by the Governing Body (Article 9.4 and Annex 4)</i> 	<ul style="list-style-type: none"> • Payment basis for Subscribers during transition phase (<i>para. 7</i>) • Exemptions from benefit-sharing payments based on a threshold of yearly sales, especially farmers and public institutions (<i>para 8</i>) • Suggestion of criteria to the Funding Committee for the allocation of funds from the BSF (<i>para. 20</i>) • Recognition that rights of farmers shall not be limited by the revised SMTA (<i>para. 11</i>) • Review process and fate of payment structure if certain parameters would not be met (<i>paras. 52-54</i>)
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IV. NOTES ON THE DRAFT RESOLUTION

51. The draft Resolution of the Co-Chairs' proposal is contained in the document, IT/OWG-EFMLS-12/24/3.1, *Annex 1* (pages 2 to 8).

52. It comprises four parts, relating to:

- a. The preambular paragraphs;
- b. The revised SMTA (*paragraphs 1 to 22*);
- c. The amendment of Annex I (*paragraphs 23 to 38*)
- d. DSI/GSD (*paragraphs 39 to 51*)
- e. Implementation and review (*paragraphs 52 to 57*)

53. We provide the following list of major changes, grouped under these four parts. The Working Group may want to use this list when reading the Co-Chairs' proposal, to understand our reasons for changes to specific provisions.

54. **Preambular paragraphs:**

- The Co-Chairs rearranged the paragraphs to improve the flow of information.

- We included references to relevant developments since 2019, notably Governing Body Resolutions 3/2022 and 3/2023,
- We included some additional paragraphs on the Multilateral System at the beginning and simplified two paragraphs that had been AGREED AD REF.

55. **Revised SMTA section of the draft Resolution:**

- Paras. 1 and 2 were added, recalling relevant principles in the International Treaty;
- Para. 6 was added as a proposal for consideration, following discussion at the eleventh meeting, and suggestions in two submissions, to clarify/interpret that PGRFA from the Multilateral System can be made available for direct use in cultivation by farmers and, in one submission, for direct use in production. We suggest that following discussion at this twelfth meeting an expert group might be an appropriate mechanism to draft any text for subsequent consideration.
- Para. 7BIS of the “June 2019 draft package” was deleted, based on discussions at our last meeting and as also suggested in one submission;
- Para. 8 (para. 14 in the “June 2019 draft package”) was reformulated building on language from the October 2019 meeting; we deleted the ALT and ALT BIS, because we found the language of para. 8 (formerly para. 14) more concise and clearer; for the exemptions from payment under the revised SMTA, see explanations on the payment provisions below;
- We reformulated current para. 11, using language from the October 2019 meeting;
- We reformulated current para. 12 on intellectual property rights and inserted para. 13 on the new WIPO Treaty;
- Para. 19 was also added, as requested at the eleventh meeting of the Working Group;
- Para. 20 (paras. 15 and 15ALT in the “June 2019 draft package”) has been edited to clarify the text, but ultimately will need to be coordinated with the Standing Committee on the Funding Strategy and Resource Mobilization and the resolution they are expected to bring forward regarding the Funding Strategy;

56. **Amendment of Annex I section of the draft Resolution:**

- Paras. 23 and 24 were added, recalling relevant principles in the International Treaty;
- Para. 27 (para. 18 in the “June 2019 draft package”): We deleted the first and the last parts because we did not see any reason to repeat the amendment text in the draft Resolution; we replaced it with a shorter and more general reference; we then added a reference to the safeguards at the beginning;
- For the same reason, we deleted para. 27 of the “June 2019 draft package” (same as Article 2 of the amendment text);
- Para. 28: This text was previously included in the text for an amendment of Annex I; at our last meeting, we discussed that the amendment text should be clear and concise. As Co-Chairs we thought that this part complicated the amendment text but was still useful to clarify, so that we suggest moving it to the draft resolution;
- Para. 29 (para. 17 in the “June 2019 draft package”) has been edited following discussion at OWG-11;
- Para. 33 (para. 23 in the “June 2019 draft package”): We updated the language further to clarify the concepts;
- The Co-Chairs added paragraphs 35 (Secretary to support understanding of “all other plant genetic resources for food and agriculture) and 36 (request to Secretary to provide support including by providing indicative factual lists).
- Para. 38: The Co-Chairs recall that the idea of this paragraph was to encourage Contracting Parties to voluntarily make available their PGRFA that will be covered by the amendment, even before the amendment enters into force;

57. **DSI/GSD section of the draft Resolution:**

- Para. 39 The Co-Chairs inserted a general recognition of the important role that DSI/GSD on PGRFA play in the context of conservation and sustainable use;
- The Co-Chairs decided to keep current paras. 41, 44, 45, 47 and 49 more or less unchanged;
- Added para. 40 on the importance of open access;
- Added para. 42 on IPRs on DSI/GSD;
- The Co-Chairs reformulated current para. 43;
- In para. 46, the Co-Chairs inserted a reference to the FAIR principles (findable, accessible, interoperable, reusable);
- In para. 49, the Co-Chairs added “the CGIAR and other Art. 15 institutions” in the context of capacity development on DSI/GSD;
- In para. 50, the Co-Chairs added a reference to decision 15/9 of the CBD Conference of the Parties and addressed the need to avoid double payments under different benefit-sharing mechanisms;;
- In para. 51, the Co-Chairs added a reference to Resolution 13/2022;
- In para. 48, the Co-Chairs suggest text that would invite database managers to establish an “MLS tag” on DSI/GSD in their databases;

58. **Implementation and review section of the Draft Resolution:**

- The Co-Chairs believe that it was a major success of the previous process to agree on the main concepts for the entry into force of the package of measures, based on the consideration of different expert reports and comprehensive inputs from participants.
- In the draft Resolution of the “June 2019 draft package”, these paragraphs were all “agreed ad ref”. However, following the changes by the Co-Chairs to the revised SMTA, the Co-Chairs had to make several changes to paragraph 53 (para. 37 in the “June 2019 draft package”):
 - The revised SMTA currently only contains a subscription mechanism, so that the re-instatement of Articles 6.7 and 6.8 had to be reformulated;
 - The Co-Chairs deleted the automatic re-activation of the subscription upon entry into force of the amendment because of practical and legal questions;
 - We also deleted the 10 years in the last bullet point, because subscriptions last until a subscriber withdraws, subject to the outcomes of any dispute settlement procedure;
- The Co-Chairs recall that the main concepts are:
 - Adoption of the revised SMTA and the amendment text of Annex I at the Eleventh Session of the Governing Body;
 - The revised SMTA would start to be used a few months after the Governing Body decision, namely as of 1 July 2026;
 - The amendment of Annex I would only apply to those Contracting Parties who ratified it;
 - At its Fourteenth Session end of 2031 (i.e. three biennia after adoption), the Governing Body would take stock of the progress made in reaching the goals of the measures to enhance the functioning of the Multilateral System;
 - A key indicator for this assessment and review will be the entry into force (or not) of the amended Annex I, i.e. reaching the required number of ratifications;
 - If the amended Annex I will not enter into force, the Governing Body would consider additional indicators, such as the level of income accrued to the Benefit-sharing Fund from user-based payments and the number of accessions being available and accessible under the Multilateral System. Given the difficulties in

defining concrete targets (figures), the Working Group in the previous phase of the process agreed to keep these indicators open;

- The Governing Body would have a chance to extend the transitional period;
- Should the goals not have been reached, specific consequences would apply. These need to be defined in the revised SMTA so that Recipients (Subscribers) know the faith of the agreement they sign;
- The consequences would be:
 - Article 6.7 (single access option) would be re-inserted;
 - Article 6.8 (voluntary payments) would be re-inserted;
 - No new Subscriptions would be possible;
 - For ongoing Subscriptions, the Subscriber would be given the choice to keep their Subscription or to switch to the payment modalities under Articles 6.7, 6.8;
- For the assessment of the availability of and access provided to material in the Multilateral System, information from the Compliance Committee may be helpful.
- For any assessment of user-based income to the Benefit-sharing Fund, the Funding Committee could support the Governing Body.

V. NOTES ON THE REVISED STANDARD MATERIAL TRANSFER AGREEMENT

59. The revised SMTA proposed by the Co-Chairs is contained in the document, IT/OWG-EFMLS-12/24/3.1, *Appendix 1 to the draft Resolution* (pages 9 to 24).
60. We kept the line numbering (in the English version), to facilitate the discussions on specific text.
61. We slightly changed the sequence of the Annexes of the SMTA:
- a. Annex 1: List of Materials Provided;
 - b. Annex 2: Subscription Terms;
 - c. Annex 3: Registration Form;
 - d. Annex 4: Rates and Modalities of Payment Under Articles 6.7 and 6.8 of This Agreement (with a footnote indicating that it would only apply under certain circumstances).
62. We provide the following list of major changes. The Working Group may want to use this list when reading the Co-Chairs' proposal, to understand our reasons for changes to specific provisions. After a general overview, we list the changes in the sequence of the SMTA, starting with the main body text and then going through the four above Annexes.
63. **General overview:**
- As mentioned above, we opted for a revised SMTA with a subscription as the payment mechanism. A Recipient would sign (agree to) the SMTA and register as a Subscriber.
 - We developed this SMTA to have a basis for discussing the advantages and perceived challenges of an SMTA containing only a subscription mechanism.
 - As Co-Chairs we believe that such an SMTA would be much more likely to reach the aims of the enhancement process listed in Resolution 3/2022. Also, the Working Group agreed at its last meeting to focus first on the subscription option and only subsequently assess the need for a single access option, given the strong support for the subscription option.

- We believe that exemptions and thresholds will be an important tool to bring the possible advantages of the single access option into the subscription mechanism. We therefore inserted into the revised SMTA:
 - A threshold of number of accessions accessed in the Multilateral System in a year;
 - A threshold of yearly sales, below which no payment would be needed;
 - An exemption for certain in-kind uses of material accessed under an SMTA, such as seed multiplication, characterization, regeneration.
- As mentioned in the section on the draft Resolution, we consider the provisions on the entry into force, the transition phase and the review process to be important elements in the package of measures.
 - Timeline:
 - November 2025: GB-11 adopts the package of measures;
 - July 2026: Recipients start to subscribe;
 - 2031: GB-14 will review progress (especially if the amendment of Annex I will not have entered into force) and make further decisions;
 - If certain conditions are not met by 2031, the consequences are defined in the revised SMTA (Art. 9.4 and Annex 4):
 - 6.7 and 6.8 (voluntary!) would be reinstated;
 - No new subscriptions will be possible;
 - For ongoing subscriptions, the subscriber can choose to continue their subscriptions based on the revised SMTA; or withdraw, so that 6.7/6.8 and Annex 4 will apply;
 - Since the single access payment option under 6.7/6.8 would be reinserted, they need to be clearly provided in the revised SMTA;
 - We provide further details on this important area below;
- Some additional changes had to be made in a few “agreed ad ref” provisions, so that – in those instances – the Co-Chairs decided to delete the “agreed ad ref” remark. The Working Group may want to consider these changes as technical changes only and remember that it had “agreed ad ref” on all the concepts contained in these provisions, so that it should not be too difficult to mark them “agreed ad ref” again:
 - Art. 6.11, Art. 6.11bis, 6.11ter;
 - Annex 2, Art. 1.1 (subscription);
 - Art. 9.2 SMTA (reference to the single access option deleted);
 - References to the (re-ordered) Annexes throughout the SMTA;
- Editorial comment: We kept the article numbers for “6.11”, 6.11bis, and “6.7/6.8”, because they are commonly used to describe the payment options and concepts of the current SMTA. We think they have become synonymous for the subscription option and the single access option, respectively. We suggest re-numbering these articles only at a later stage.

64. **Main body of the SMTA:**

- Preamble
 - Editorial updates (years);
 - Regarding the penultimate paragraph, we are not sure why this paragraph is not marked as “agreed ad ref”. It uses the exact same language as the current SMTA. The language is also similar to Article 4.2 of the SMTA, which is “agreed ad ref”.

- Article 2
 - Definitions “Sales”/”to commercialize”:
 - We decided to build on the progress made at the October 2019 meeting, which is practically the same as the ALT definitions of the “June 2019 draft package”;
 - For “commercialization”, the Co-Chairs decided to keep the reference to PGRFA under development; also we kept the reference to commodities, which is the language used in Annex 2 (Art. 1c) of the current SMTA and Annex 4 (Art. 2c) of the revised SMTA;
 - We added a new definition of “trait of commercial value”, drawing on language suggested by a Contracting Party in its submission. We believe that a definition might be helpful as the term “trait of commercial value” is used in Art. 6.5e and in Annex 4 of the revised SMTA.
- Article 5:
 - In Art. 5e, the Co-Chairs decided to keep the reference to confidentiality and to keep the main concepts, but to change the language drawing on text suggested in the October 2019 meeting of the Working Group. We emphasize that ensuring confidentiality of a report received by the Governing Body seems difficult from a practical point of view. Nevertheless, we are of the opinion that the Governing Body benefits from the information shared by major Providers like the CGIAR Centers, about the SMTAs they enter into. An alternative could be to replace “Governing Body” with “Secretary”, to increase confidentiality over transparency.
- Articles. 6.11, 6.11bis:
 - We simplified these provisions (and deleted Art. 6.11ter for this reason);
 - We had to make some changes, because the revised SMTA now only contains the subscription mechanism:
 - Recipient “shall” rather than “may” sign the Registration Form;
 - Practicalities of how to register;
- Articles 6.7, 6.8
 - We moved these articles to Article 9.4 on the transitional phase (and we deleted Art. 6.8bis);
 - However, Article 6.8 would become voluntary again, which is the concept the Working Group had agreed upon (ad ref) in the earlier phase of the enhancement process (also in the corresponding Resolution paragraphs of the “June 2019 draft package”, which were “agreed ad ref”);
- Article 6.10:
 - The Co-Chairs decided to delete the last sentence, as its content is already covered by the rest of Art. 6.10, especially the “shall transfer the benefit-sharing obligations” implying that the third party accepts them. The remaining language in 6.10 is exactly the same as in Art. 6.10 of the current SMTA.
- Article 6.9:
 - The Co-Chairs deleted the bracketed text “[and all genetic sequence data]”, for the reasons stated above. The remaining text of Art. 6.9 is exactly the same as in Art. 6.9 of the current SMTA.
- Article 9.4 and Annex 4: TRANSITIONAL PHASE
 - As stated above, we moved the texts of Arts. 6.7 (“June 2019 draft package”) and 6.8 (current SMTA because voluntary payment) into Art. 9.4;
 - We view this bulk of provisions as important for reaching an agreement on the overall package. We plan to first discuss the relevant draft Resolution part, so that all concepts could

be clarified and agreed upon, and to only subsequently deal with the revised SMTA. In this suggested text for Art. 9.4, the Co-Chairs updated the revised SMTA based on their proposed Resolution text.

- Annex 4 contains the further provisions for the (potentially) re-established single access payment (Articles 6.7 and 6.8); it is the same as Annex 2 of the revised SMTA in the “June 2019 draft package”, with the notable exception that Art. 6.8 payments would become voluntary again (deletion of Art. 2 in Annex 4; re-insertion of the exception in what is now Art. 2(a) of Annex 4). The Co-Chairs made some further minor editorial adjustments.
 - We are of the view that the clear stipulation of the consequences in the revised SMTA enhance transparency and may be needed for contract law reasons. They expect that, should the criteria indeed not be met in 2031, the Governing Body would adopt an adapted version of the SMTA, the content of which will already be agreed (see text of draft Resolution and Art. 9.4 of the revised SMTA: no subscription in subsequently signed SMTAs, single access payments would become the only payment mechanism);
 - The Co-Chairs added a footnote in Annex 4 to explain the background of these provisions. The Working Group may want to discuss the footnote in the context of its discussions on the transitional phase and entry into force, and ensure that any text would align with the text used in the draft Resolution.
- Article 9.2:
 - Slight editorial changes;
 - Article 10:
 - This Article on signature now includes the possibility for declarations on the additional exemptions from payment (limited number of accessions or only in-kind use of accessed PGRFA);

65. **Subscription Annex (now Annex 2)**

- The Subscription Terms are now in Annex 2;
- Art. 1.1: We made some language changes in this Article, which became necessary because the proposed revised SMTA contains only a subscription mechanism;
- Art. 3.1:
 - We consider that the Working Group already agreed (ad ref) on the payment basis and that this provision only requires finding the most appropriate language. The basis for payments shall be all PGRFA products in a Subscriber’s portfolio. In connection with the suggested definitions of “Sales” and “to commercialize”, the Co-Chairs opted for a payment basis that includes the Sales from all PGRFA products of a Subscriber. Together with the definitions, this includes income from license fees and income from the Subscriber’s affiliates. The Working Group should note that under the current SMTA, the payment basis includes income by the Recipient’s licensees, whereas under the new structure, it will be the license fees received by the Recipient.
- Art. 3.2, 3.2BIS
 - Regarding the payment rate, the Co-Chairs chose the formulation with a single payment rate but giving the Subscriber the possibility to opt for differentiated rates. A single rate seems to be the clearest and simplest option, requiring less administrative efforts. Nevertheless, the Co-Chairs consider an optional differentiation, as one of the options proposed by the Working Group in the “June 2019 package” to have the potential to attract further Subscribers. The rates would need to be balanced accordingly.
 - The Co-Chairs opted for keeping the concrete payment rates bracketed.
- Art. 3.3

- We added additional exemptions. This is probably one of the most important issues to complete, in order to make subscription attractive to users who otherwise might opt for a single access option.
- We recall that these are only exemptions from payment, not exemptions from other provisions of the SMTA, for example having to sign an SMTA to transfer the accessed PGRFA to a subsequent recipient, or the provision not to claim any intellectual property right on the material in the form received.
- Corresponding changes had to be made in Art. 10 of the SMTA, giving the Recipient the possibility to declare that an exemption applies;
- The amount of yearly sales and the concrete number of accessions will need to be agreed by the Working Group;
- Art. 3.5
 - The Co-Chairs suggest that the reports be sent to the Secretary, if these reports should indeed be treated as confidential business information. The Secretary reports to the Governing Body.
- Art. 4:
 - We deleted Arts. 4.5 and 4.5BIS for the following reasons and did the following corresponding changes in Art. 4.1: The Co-Chairs are of the view that the dispute settlement clause (Article 8) gives the third party beneficiary the possibility to address a possible breach by the Subscriber of any obligation under the SMTA; Art. 4.5 is therefore not needed. Art. 4.5BIS was inserted to provide a similar right to the Subscriber and is, as a consequence of the deletion of Art. 4.5, not needed anymore. In Art. 4.1, the reference to the deleted 4.5 was replaced by a general reference to Art. 8.
 - Consequently, the bracketed text in Art. 8.4 was deleted.
 - Art. 4.4: We lifted the brackets around “two years”, following the fruitful discussions on this point in the meeting of the Working Group in October 2019. The list of referenced Articles was updated.

66. **Registration Form Annex (now Annex 3)**

- We reformulated the first sentence, because this is not an option anymore.
- We added an option for the Recipient to choose the differentiated payment rates (tick box).

67. **Annex 4 (now covering the potential single access option):**

- This Annex is practically the same as Annex 2 in the revised SMTA of the “June 2019 draft package”.
- We inserted a footnote to explain the background of these provisions and when they would be applicable. The Working Group may want to discuss the footnote in the context of its discussions on the transitional phase and entry into force and ensure that any text would align with the text used in the draft Resolution regarding the entry into force.

VI. NOTES ON THE AMENDMENT OF ANNEX I

68. The text for an amendment of Annex I of the International Treaty proposed by the Co-Chairs is contained in the document, IT/OWG-EFMLS-12/24/3.1, *Appendix 2 to the draft Resolution* (page 25).

69. We opted for keeping the text of the “June 2019 draft package” practically unchanged.

70. We only deleted the phrase “including those plant genetic resources for food and agriculture previously excepted or excluded in the list above.” We found it hard to understand and we think it is better placed in the draft Resolution. Therefore, we decided to move it to the draft Resolution (para. 28 of the draft

Resolution). The effect will be the same, namely that the amended Annex I also includes those PGRFA that are excluded in the list of crops of the current Annex I.

71. We note that a clear understanding of the terms “all other PGRFA” and “for food and agriculture” will be needed, as also pointed out by the Working Group at its last meeting. We therefore inserted language into the draft Resolution in this context, as explained above, requesting support from the Secretary (paras. 35, 36). The draft Resolution could also request the *Ad Hoc* Technical Advisory Committee on the Multilateral System and the Standard Material Transfer Agreement to provide support during the next biennium.

72. Regarding Article 2, the principle is that countries can only join (accede to) the amended International Treaty to become new Contracting Parties. This Article seeks to operationalize the agreement reached by the Working Group on this issue “ad ref”. If a country had signed the current version of the International Treaty, it would ratify the current version of the International Treaty. If a country accedes to the International Treaty before the amendment enters into force, it would accede to the current version of the International Treaty. Any accession after the entry into force of the amendment, however, would be to the amended International Treaty.

73. We provide further explanations on the amendment of Annex I above, when explaining our approach to this “hotspot”.

VII. NEXT STEPS

74. We hope that the Co-Chairs’ proposal will be available in all languages of the Working Group with sufficient time to allow Contracting Parties and Regions to prepare for the Twelfth meeting of the Working Group. The goal for such meeting would be to have a draft negotiating text of the Working Group that will require further work in the next two meetings.

75. We suggest the following process for the Twelfth meeting of the Working Group. We would first undertake a full first reading of the package of measures for the MLS enhancement, as provided in document IT/OWG-EFMLS-12/24/3.1 and would identify areas that require further work. We would then focus on the Subscription mechanism including for discussing the advantages and perceived challenges of an SMTA containing only a subscription mechanism and if the advantages of the single access options could be addressed under the subscription mechanism without losing the advantages of that approach, and whether there is a clear specific role for a single access option. We also recommend having some time at the end of our meeting to program the next steps for the negotiations by the Working Group, including potential small groups, and to support such discussion we have prepared document IT/OWG-EFMLS-12/24/5, *Future work suggested by the Co-Chairs*.