



**COUNCIL OF  
THE EUROPEAN UNION**

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**FAO 8**

#### **INFORMATION NOTE**

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Subject: International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA)  
– FAO Expert Group responsible for framing recommendations on the terms of the standard material transfer agreement provided for in Article 12(4) of the ITPGRFA  
– Other matters relating to the ITPGRFA

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#### **I. INTRODUCTION**

1. The International Treaty on Plant Genetic Resources for Food and Agriculture (hereinafter referred to as the "ITPGRFA") is intended to protect and safeguard those varieties of food and fodder plants of which the genetic material is considered to be essential for maintaining food security for the world's population. To that end, the parties to the ITPGRFA have undertaken to promote the exchange of plant genetic material and related information, and to ensure equitable sharing of the ensuing benefits.
2. In order to achieve the above objectives, the ITPGRFA provides for the establishment of a "multilateral system" <sup>1</sup> to facilitate the transfer of plant genetic material by means of a standard material transfer agreement containing the technical and financial conditions for access to plant genetic material and any transfer of such material <sup>2</sup>.

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<sup>1</sup> See Part IV of the ITPGRFA: "Multilateral system of access and benefit-sharing".

<sup>2</sup> See Article 12(4) of the ITPGRFA.

## II. MTA EXPERT GROUP

3. When the ITPGRFA was adopted in November 2001, the 31st FAO Conference decided to establish an expert group responsible for framing and proposing recommendations on the terms of the above standard material transfer agreement (MTA) for examination by the ITPGRFA Interim Committee and possible adoption at the first meeting of its governing body.
4. The terms of reference for the MTA Expert Group were adopted at the first meeting of the ITPGRFA Interim Committee held in Rome in October 2002. On that occasion, the Interim Committee also established the Expert Group's composition, arrangements for appointing members and work timetable.
5. The MTA Expert Group will be composed of 24 experts in the strict sense and 24 advisers, appointed by their respective governments. To ensure the appropriate geographical balance, all FAO regions will appoint four persons for each category, except for the North American and Southwest Pacific regions, for which the number will be limited to two persons per category. Furthermore, the CGIAR <sup>3</sup> will be requested to designate a representative to participate in the work in a technical capacity, and the WIPO <sup>4</sup> and UPOV <sup>5</sup> could, at the request of the Expert Group, do likewise.
6. At the Interim Committee meeting in October 2002, regions were asked to appoint their experts and advisers before the end of 2002. Subsequently, the MTA Expert Group will meet only once – probably in the first half of 2003 – before reporting on its work at the next Interim Committee meeting, which could then decide to organise further meetings of the Group.

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<sup>3</sup> Consultative Group on International Agricultural Research

<sup>4</sup> World Intellectual Property Organisation

<sup>5</sup> International Union for the Protection of New Varieties of Plants

### III. APPOINTMENT AND TERMS OF REFERENCE OF EU EXPERTS

7. On 5 December 2002 the FAO Coordination (Agriculture) Working Party approved a list of eight EU candidates (four experts and four advisers) for membership of the MTA Expert Group<sup>6</sup>. On 11 December 2002 at a meeting in Nyon (Switzerland) the FAO European Region agreed the final list of experts and advisers to be appointed.
8. The final result of the procedure was as follows:

#### Experts appointed for the European Region:

1. Frank Begemann (Germany)  
German Centre for Documentation and Information in Agriculture
2. Jan Borring (Norway)  
Ministry of the Environment
3. Alwin Kopse (Switzerland)  
Federal Office for Agriculture
4. Martin Smith (United Kingdom)  
Department for Environment, Food and Rural Affairs

#### Advisers appointed for the European Region:

1. François Burgaud (France)  
Groupement National Interprofessionnel des Semences
2. Edward Gacek (Poland)  
Research Centre for Cultivar Testing (COBORU)
3. Martin Girsberger (Switzerland)  
Swiss Federal Institute of Intellectual Property
4. Bert Visser (Netherlands)  
Centre for Genetic Resources the Netherlands

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<sup>6</sup> The list had been drawn up by the Subgroup on Plant Genetic Resources in Agriculture of the Commission's Working Group on Seeds and Plants Legislation. The candidates put forward on the list were as follows: 2 German, 2 French, 1 Netherlands, 1 United Kingdom, 1 Portuguese and 1 Finnish.

9. In accordance with the schedule drawn up at the FAO Coordination (Agriculture) meeting on 5 December 2002, the Commission prepared draft guidelines to be followed by the EU experts during the negotiations in the MTA Expert Group <sup>7</sup>. These draft guidelines will be examined by the FAO Coordination (Agriculture) Working Party on 27 March 2003.

#### **IV. MATTERS REQUIRING PARTICULAR ATTENTION**

11. At its meeting on 23 October 2002 the FAO Coordination (Agriculture) Working Party stressed the importance of ensuring that the positions taken by the EU experts during the negotiations in the MTA Expert Group were in line with Community rules, especially as regards the protection of plant varieties, patentability and seed marketing.
12. Certain matters to be discussed by the MTA Expert Group will be not only technical but also political (developed countries vis-à-vis developing countries/countries in transition, industry vis-à-vis the scientific world). The experts will therefore need to have suitable political points of reference and the FAO Coordination (Agriculture) Working Party will have to be properly informed of the progress of the negotiations.
13. The negotiating positions to be decided by the EU experts will have to be compatible with the negotiating directives which the Council adopted in October 1999 for the negotiations on the ITPGRFA itself <sup>8</sup> and with the negotiating positions established subsequently by the FAO Coordination (Agriculture) Working Party <sup>9</sup>.

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<sup>7</sup> "Draft General Guiding Principles for the EU Members of the FAO Expert Group on the terms of the Standard Material Transfer Agreement under the International Treaty on Plant Genetic Resources for Food and Agriculture". This document will be circulated in the meeting room.

<sup>8</sup> See 7066/99.

<sup>9</sup> See 13116/00 and 7263/00.

## **V. OTHER MATTERS RELATING TO THE ITPGRFA**

### **(a) Interpretative statement concerning Article 12(3)(d) of the ITPGRFA**

12. At the time of both adoption and signing, the Member States and the Community made an interpretative statement concerning Article 12(3)(d) of the ITPGRFA <sup>10</sup> to ensure that this provision was compatible with Community rules, in particular Directive 98/44/EC of 6 July 1998 on the legal protection of biotechnological inventions.
13. At the time of ratification of the ITPGRFA , the Community and the Member States will have to decide if they wish maintain this interpretative statement (or perhaps issue another one). As regards individual Member States (as members of the FAO), the Council Legal Service has taken the view that there is nothing to stop a Member State presenting a unilateral interpretative statement when an agreement is ratified, as long as the statement concerns matters within the competence of the Member States. <sup>11</sup> This would seem to be more a political than a legal matter.
14. The Member States will have to decide whether it is appropriate for the Commission (on behalf of the Community as an organisation belonging to the FAO) to maintain the interpretative statement concerning Article 12(3)(d). This question is being examined by the Commission's Legal Service, which should issue its opinion in March 2003. If a statement on behalf of the Community is still deemed appropriate, the ideal course – in view of the doctrine of the unity of the action of the Member States and the Community – would be to make a joint statement on behalf of the Community and its Member States (as was done at the time of adoption in 2001 and signing in 2002).

### **(b) Progress of signature and ratification of the ITPGRFA**

15. At 26 March 2003, the ITPGRFA had been signed by 78 countries and ratified by 15. One of the countries that have signed recently is the United States.

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<sup>10</sup> Article 12(3)(d) provides for the restriction of intellectual property rights as regards plant genetic material obtained by the Multilateral System. The interpretative statement concerning that Article will be found in Annex B to 13790/01.

<sup>11</sup> The Legal Service has sent the delegations a collection of notes setting out the current principles relating to this problem. See, in particular, 14677/01, point 3.

16. The ITPGRFA will come into force 90 days after deposit of the 40th instrument of ratification. The ITPGRFA Secretariat expects the figure of 40 ratifications to be reached by the end of 2003. In principle, the Community and its Member States should deposit their instruments of ratification simultaneously <sup>12</sup>.
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<sup>12</sup> See 13384/02, page 5.