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Proposal for a

COUNCIL DECISION

**establishing the position to be taken on behalf of the Union within the Governing Body
of the International Treaty on Plant Genetic Resources for Food and Agriculture as
regards certain proposals submitted for adoption during its eleventh session**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

This is a proposal for a Council Decision establishing the position to be taken on behalf of the Union on the amendment of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) - ‘the Treaty’ - at the eleventh session of the Governing Body of the Treaty that will take place from 24 to 29 November 2025.

The Treaty entered into force in 2004. It aims at guaranteeing food security through the conservation, exchange and sustainable use of the world's plant genetic resources for food and agriculture, as well as the fair and equitable benefit sharing arising from their use. The highest organ of the Treaty is the Governing Body. It is composed of all Contracting Parties to the Treaty. The Union and all its Member States are Contracting Parties to the Treaty. The Governing Body is entitled to adopt amendments to the Treaty and its annexes. Those amendments come into force after ratification, acceptance or approval by two-thirds of the Contracting Parties.

Under the Treaty a Multilateral System of access and benefit sharing (MLS) has been established for 64 of some of the most important food and forage crops essential for food security and interdependence (listed in Annex I to the Treaty). The exchange of plant genetic resources is governed by a Standard Material Transfer Agreement (SMTA), defining rights and obligations of provider and recipient of the material. A Benefit-sharing Fund (BSF) has been established as the mechanism for receiving and utilising the financial resources that accrue from the MLS for financing projects in developing countries.

Negotiations aiming at revising the MLS in order to increase user-based income flow to the BSF have been ongoing in the framework of the Treaty since 2013. The negotiations have been advanced by the ‘Ad Hoc Open-ended Working Group to Enhance the Functioning of the Multilateral System’ that was established by the Governing Body in 2013. Its mandate was extended in 2015 and 2017, and it was re-established in 2022. Its fourteenth and last meeting took place from 7 to 11 July 2025. Its work has resulted in a package of measures that will be considered for adoption at the eleventh session of the Governing Body in November 2025. This package includes:

1. The extension of Annex I to the Treaty, with the objective to make more plant genetic resources available within the MLS.
2. The revision of the SMTA, with the objective to render its terms more effective, while respecting the balance of the interests of providers and recipients of plant genetic resources.
3. A resolution that is to accompany the amendment of Annex I to the Treaty and the revision of the SMTA, aiming at addressing the expectations about monetary benefit-sharing from the use of ‘digital sequence information (DSI)’. The concept of DSI (i.e. sequences of the genome of plants that may translate into different characteristics or traits and are becoming increasingly important research and breeding tools) is not covered within the SMTA as it is subject to discussion on what exactly it covers. There is for example difficulty to trace its origin or to trace its contribution to a new product and therefore calculate the benefits to be shared from its use.

A finalisation of these negotiations may take place at the upcoming eleventh session of the

Governing Body taking place in November 2025. This Decision sets out the Union position in relation to the extension of Annex I to the Treaty and to the revision of the SMTA.

The Union position is to extend Annex I as much as possible and that other elements of the package should be conditional to this extension. The extension of Annex I to the Treaty and the revision of the SMTA, once they would come into force, would have legal effects. An authorisation of the Council is therefore needed to agree to the outcome of these negotiations if the result is in line with the Union position.

This Decision should also repeal the previous Council Decision 12102/22 that was adopted by the Council ahead of the ninth session of the Governing Body in 2022, as it only covers the extension of Annex I but not the other elements under discussion at the upcoming eleventh session of the Governing Body.

- **Consistency with existing policy provisions in the policy area**

The Treaty provides a legally binding global framework for the sustainable conservation of plant genetic resources for food and agriculture and a multilateral system under which all parties to the Treaty not only have access to such resources but also share the benefits arising from their use. The proposal aims to improve the functioning of the Treaty and is therefore consistent and supportive to the Union policies in the areas of agriculture and environment.

- **Consistency with other Union policies**

This proposal aims to support the fair and equitable benefit sharing arising from the use of plant genetic resources for food and agriculture in the framework of the Treaty. As the benefits accrued are used for funding projects in developing countries, this proposal is consistent and supportive to the Union international partnership and development policy.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides for the Council, on a proposal from the Commission, to adopt 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.*’

Article 218(9) TFEU applies regardless of whether the Union is a member of the body or a party to 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*’.

The Governing Body is a body set up by an agreement, namely the Treaty that was adopted by the FAO Conference on 3 November 2001 and entered into force on 29 June 2004.

The Union together with its Member States are Contracting Parties to the Treaty.

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

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

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

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.

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

Therefore, the substantive legal bases of the proposed decision are Articles 43(2) TFEU and 192(1) TFEU.

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

- **Subsidiarity (for non-exclusive competence)**

Not Applicable

- **Proportionality**

Not Applicable

- **Choice of the instrument**

Following Article 218(9) TFEU, the instrument chosen is the only possible for achieving the objective of this proposal.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

Not Applicable

- **Stakeholder consultations**

See below.

- **Collection and use of expertise**

The proposal is built upon the negotiation text that that will be considered for adoption at the eleventh session of the Governing Body in November 2025. This text has been prepared by the 'Ad Hoc Open-ended Working Group to Enhance the Functioning of the Multilateral System' that was established by the Governing Body of the Treaty. The work of this Group included an iterative process, whereby text was produced in meetings of the Group, made public and then again reworked based on comments. Experts and stakeholders from all countries that are Contracting Parties to the Treaty had the opportunity to contribute to this process.

- **Impact assessment**

Not Applicable

- **Regulatory fitness and simplification**

Not Applicable

- **Fundamental rights**

The proposal does not have impacts on fundamental rights.

4. BUDGETARY IMPLICATIONS

The proposal does not have budgetary implications.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

Not Applicable

- **Detailed explanation of the specific provisions of the proposal**

Article 1 explains the position to be taken on behalf of the Union at the negotiations during the eleventh session (or subsequent sessions) of the Governing Body of the Treaty as regards the amendments to Annex I to the Treaty and the adoption of a revised Standard Material Transfer Agreement.

Article 2 explains the conditions under which the position to be taken on behalf of the Union may divert from the content of this Council Decision.

Article 3 repeals the previous Council Decision on the same subject.

Article 4 sets the date of expiration of this Council Decision.

Annex I and II further detail the position mentioned under Article 1.

Annex III further details the conditions mentioned under Article 2.

Proposal for a

COUNCIL DECISION

establishing the position to be taken on behalf of the Union within the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture as regards certain proposals submitted for adoption during its eleventh session

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 Treaty') was concluded by the Union by means of Council Decision 2004/869/EC⁽¹⁾ and entered into force on 29 June 2004.
- (2) Pursuant to Article 23 and Article 24.2 of the Treaty, the Governing Body established by the Treaty ('the Governing Body') is entitled to adopt amendments to the Treaty and its annexes.
- (3) During its eleventh session from 24 to 29 November 2025, the Governing Body is to examine and possibly adopt a decision on a proposal for amendments to Annex I to the Treaty which aim to cover plant genetic resources for food and agriculture other than those currently contained in that Annex. The plant genetic resources included in Annex I to the Treaty are covered by the multilateral system of access and benefit-sharing ('the Multilateral System') established under the Treaty.
- (4) The proposal for amendments to the Annex I to the Treaty will be examined by the Governing Body within a package of measures that will also include a proposal for the revision of the Standard Material Transfer Agreement (SMTA), the standard contract that governs the exchange of material under the Multilateral System.
- (5) This package of measures has been prepared by the Ad Hoc Open-ended Working Group to Enhance the Functioning of the Multilateral System, that was established by the Governing Body for this purpose. The Union should support the proposed amendments to the Annex I to the Treaty and the revision of the SMTA, as these are expected to contribute to achieving the main objectives of the Treaty.
- (6) Once accepted and following ratification, acceptance or approval by two-thirds of the Contracting Parties, the decision of the Governing Body regarding the amendments to Annex I to the Treaty to cover further plant genetic resources for food and agriculture and the revision of the SMTA will be binding on the Union. It is therefore appropriate to establish the position to be taken on behalf of the Union within the Governing Body

⁽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, ELI: <http://data.europa.eu/eli/dec/2004/869/oj>).

at its eleventh session or in any subsequent session taking place during the period of validity of this Decision, if no agreement is reached at its eleventh session.

- (7) The amendments to Annex I to the Treaty and the revision of the SMTA would not require any change in Union law.
- (8) In order to allow for the necessary flexibility during the negotiations in the course of the eleventh session of the Governing Body, or in any subsequent session if no agreement is reached at this eleventh session, the Union should be authorised to agree to minor technical changes in relation to this Decision as regards the decision to be adopted by the Governing Body on the amendments to Annex I to the Treaty and the revision of the SMTA, provided that such changes do not alter the substance of this Decision.
- (9) This Decision should apply for a limited period of time, after which, if the amendment to Annex to the Treaty and the revision of the SMTA have not been adopted, the Commission should assess the effectiveness of this Decision and propose whether or not to extend its application or otherwise amend or repeal it.
- (10) The previous Council Decision 12102/22 establishing the position to be taken on behalf of the Union within the Governing Body of the Treaty should be repealed, as it does not reflect the developments within the Ad Hoc Open-ended Working Group to Enhance the Functioning of the Multilateral System,

HAS ADOPTED THIS DECISION:

Article 1

1. The position to be taken on the Union's behalf in the eleventh session of the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture ('the Treaty') to be held from 24 to 29 November 2025, or in any subsequent session if no agreement is reached at the eleventh session, as regards the amendment to Annex I to the Treaty concerning the expansion of coverage under the Multilateral System of Access and Benefit-sharing and the adoption of a revised Standard Material Transfer Agreement, shall be based on the draft amendment to Annex I to the Treaty and on the draft revised Standard Material Transfer Agreement set out respectively in Annexes I and II.
2. The system of mandatory payments established by the revised Standard Material Transfer Agreement shall be subject to conditions related to the entry into force of the amendment to Annex I to the Treaty.

Article 2

Where the position referred to in Article 1 is likely to be affected by new scientific or technical information presented before or during the eleventh session of the Governing Body, or in any subsequent session if no agreement is reached at the eleventh session, or where the Union needs to enter into further negotiations at that session, the Union position may be subject to minor technical changes to be agreed on the spot, respecting the principles laid down in Annex III.

Article 3

The Council Decision 12102/22 of 13 September 2022 on the position to be taken on behalf of the European Union within the Governing Body of the International Treaty on Plant

Genetic Resources for Food and Agriculture as regards amendments to Annex I to that Treaty is repealed.

Article 4

This Decision shall enter into force on the day of its adoption.

Article 5

This Decision shall apply until 31 December 2029.

Article 6

This Decision is addressed to the Commission and to the Member States.

Done at Brussels,

For the Council

The President

[...]