

Council decision 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 (2004/869/EC)

COUNCIL DECISION

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
(2004/869/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 37 and 175(1), in conjunction with the first subparagraph of Article 300(2) and the first subparagraph of Article 300(3) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament⁽¹⁾,

Whereas:

- (1) World food security and sustainable agriculture depend on the conservation and sustainable use of plant genetic resources for agricultural research and breeding.
- (2) The Community is a Member of the United Nations Food and Agriculture Organisation (FAO).
- (3) The International Treaty on Plant Genetic Resources for Food and Agriculture, hereinafter referred to as the 'International Treaty', was adopted by the FAO Conference in Rome on 3 November 2001.
- (4) The Community and its Member States signed the International Treaty on 6 June 2002.
- (5) The International 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 may also share the commercial and other benefits arising from their use.
- (6) The conservation and sustainable use of plant genetic resources for agricultural research and breeding are essential for the development of agricultural production, and for the preservation of agricultural biodiversity.
- (7) By facilitating access to plant genetic resources under a multilateral system, the International Treaty should promote technical progress in agriculture, in accordance with Article 33 of the Treaty establishing the European Community.

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- (8) Pursuant to Article 174 of the Treaty establishing the European Community, Community policy on the environment is to contribute to the preservation, protection and improvement of the quality of the environment.
- (9) By Decision 93/626/EEC⁽²⁾, the Community concluded the Convention on Biological Diversity under the auspices of the United Nations Environment Programme. The measures to ensure the preservation of agricultural biodiversity included in the International Treaty will further the objectives of the Convention.
- (10) Article 26 of the International Treaty stipulates that it shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance, or approval are to be deposited with the Director-General of the FAO.
- (11) Mixed Community and Member States' competence linked with the principle of unity in the international representation of the Community favours joint action for simultaneous deposition of instruments of approval of the said International Treaty by the Community and its Member States.
- (12) In order to allow the participation of the Community and of its Member State in the Governing Body of the International Treaty as soon as possible after its entry into force, Member States should endeavour to complete their internal procedures for approval without delay.
- (13) It is therefore appropriate that the International Treaty attached to this Decision be approved on behalf of the Community,

HAS DECIDED AS FOLLOWS:

Article 1

The International Treaty on Plant Genetic Resources for Food and Agriculture (hereinafter referred to as the 'International Treaty'), which was adopted by the FAO Conference at its 31st Session in November 2001, is hereby approved on behalf of the Community.

The text of the International Treaty is attached to this Decision as Annex A.

Article 2

1 The President of the Council is hereby authorised to designate the person or persons empowered to deposit, on behalf of the Community, the instrument of approval and the declarations set out in Annex B and C to this Decision with the Director-General of the FAO, in accordance with Articles 26 and 34 of the International Treaty.

2 Member States shall endeavour to take the necessary steps with a view to depositing their instruments of ratification or approval simultaneously with those of the European Community and the other Member States and as far as possible not later than 31 March 2004.

3 If, at that date, one or more Member States are not in a position to deposit their instruments of approval, the Community and the other Member States may proceed with the deposit.

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Article 3

1 In a dispute settlement procedure as provided for by Article 22 of the International Treaty, the Community shall be represented by the Commission.

2 Where the Community or one or more Member States are party to the same dispute or involved in different disputes in which the same or similar legal issues are raised, the Commission and the Member States concerned shall defend their interests together, drawing up a cohesive legal and factual body of argument, in accordance with Community and national spheres of competence.

Done at Brussels, 24 February 2004.

For the Council

The President

J. WALSH

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ANNEX A

INTERNATIONAL TREATY on Plant Genetic Resources for Food and Agriculture PREAMBLE

THE CONTRACTING PARTIES,

CONVINCED of the special nature of plant genetic resources for food and agriculture, their distinctive features and problems needing distinctive solutions;

ALARMED by the continuing erosion of these resources;

COGNISANT that plant genetic resources for food and agriculture are a common concern of all countries, in that all countries depend very largely on plant genetic resources for food and agriculture that originated elsewhere;

ACKNOWLEDGING that the conservation, exploration, collection, characterisation, evaluation and documentation of plant genetic resources for food and agriculture are essential in meeting the goals of the Rome Declaration on World Food Security and the World Food Summit Plan of Action and for sustainable agricultural development for this and future generations, and that the capacity of developing countries and countries with economies in transition to undertake such tasks needs urgently to be reinforced;

NOTING that the Global Plan of Action for the Conservation and Sustainable Use of Plant Genetic Resources for Food and Agriculture is an internationally agreed framework for such activities;

ACKNOWLEDGING FURTHER that plant genetic resources for food and agriculture are the raw material indispensable for crop genetic improvement, whether by means of farmers' selection, classical plant breeding or modern biotechnologies, and are essential in adapting to unpredictable environmental changes and future human needs;

AFFIRMING that the past, present and future contributions of farmers in all regions of the world, particularly those in centres of origin and diversity, in conserving, improving and making available these resources, is the basis of farmers' rights;

AFFIRMING ALSO that the rights recognised in this Treaty to save, use, exchange and sell farm-saved seed and other propagating material, and to participate in decision-making regarding, and in the fair and equitable sharing of the benefits arising from, the use of plant genetic resources for food and agriculture, are fundamental to the realisation of farmers' rights, as well as the promotion of farmers' rights at national and international levels;

RECOGNISING that this Treaty and other international agreements relevant to this Treaty should be mutually supportive with a view to sustainable agriculture and food security;

AFFIRMING that nothing in this Treaty shall be interpreted as implying in any way a change in the rights and obligations of the Contracting Parties under other international agreements;

UNDERSTANDING that the previous recital is not intended to create a hierarchy between this Treaty and other international agreements;

AWARE that questions regarding the management of plant genetic resources for food and agriculture are at the meeting point between agriculture, the environment and commerce, and convinced that there should be synergy among these sectors;

AWARE of their responsibility to past and future generations to conserve the world's diversity of plant genetic resources for food and agriculture;

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RECOGNISING that, in the exercise of their sovereign rights over their plant genetic resources for food and agriculture, States may mutually benefit from the creation of an effective multilateral system for facilitated access to a negotiated selection of these resources and for the fair and equitable sharing of the benefits arising from their use; and

DESIRING to conclude an international agreement within the framework of the Food and Agriculture Organisation of the United Nations, hereinafter referred to as FAO, under Article XIV of the FAO Constitution;

HAVE AGREED AS FOLLOWS:

PART I

INTRODUCTION

Article 1

Objectives

1.1 The objectives of this Treaty are the conservation and sustainable use of plant genetic resources for food and agriculture and the fair and equitable sharing of the benefits arising out of their use, in harmony with the Convention on Biological Diversity, for sustainable agriculture and food security.

1.2 These objectives will be attained by closely linking this Treaty to the Food and Agriculture Organisation of the United Nations and to the Convention on Biological Diversity.

Article 2

Use of terms

For the purpose of this Treaty, the following terms shall have the meanings hereunder assigned to them. These definitions are not intended to cover trade in commodities:

‘*in situ* conservation’ means the conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings and, in the case of domesticated or cultivated plant species, in the surroundings where they have developed their distinctive properties;

‘*ex situ* conservation’ means the conservation of plant genetic resources for food and agriculture outside their natural habitat;

‘plant genetic resources for food and agriculture’ means any genetic material of plant origin of actual or potential value for food and agriculture;

‘genetic material’ means any material of plant origin, including reproductive and vegetative propagating material, containing functional units of heredity;

‘variety’ means a plant grouping, within a single botanical taxon of the lowest known rank, defined by the reproducible expression of its distinguishing and other genetic characteristics;

‘*ex situ* collection’ means a collection of plant genetic resources for food and agriculture maintained outside their natural habitat;

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‘centre of origin’ means a geographical area where a plant species, either domesticated or wild, first developed its distinctive properties.

‘centre of crop diversity’ means a geographic area containing a high level of genetic diversity for crop species in *in situ* conditions.

Article 3

Scope

This Treaty relates to plant genetic resources for food and agriculture.

PART II

GENERAL PROVISIONS

Article 4

General Obligations

Each Contracting Party shall ensure the conformity of its laws, regulations and procedures with its obligations as provided in this Treaty.

Article 5

Conservation, exploration, collection, characterisation, evaluation and documentation of plant genetic resources for food and agriculture

5.1 Each Contracting Party shall, subject to national legislation, and in cooperation with other Contracting Parties where appropriate, promote an integrated approach to the exploration, conservation and sustainable use of plant genetic resources for food and agriculture and shall in particular, as appropriate:

5.2 The Contracting Parties shall, as appropriate, take steps to minimise or, if possible, eliminate threats to plant genetic resources for food and agriculture.

Article 6

Sustainable use of plant genetic resources

6.1 The Contracting Parties shall develop and maintain appropriate policy and legal measures that promote the sustainable use of plant genetic resources for food and agriculture.

6.2 The sustainable use of plant genetic resources for food and agriculture may include such measures as:

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Article 7

National commitments and international cooperation

7.1 Each Contracting Party shall, as appropriate, integrate into its agriculture and rural development policies and programmes, activities referred to in Articles 5 and 6, and cooperate with other Contracting Parties, directly or through the FAO and other relevant international organisations, in the conservation and sustainable use of plant genetic resources for food and agriculture.

7.2 International cooperation shall, in particular, be directed to:

Article 8

Technical assistance

The Contracting Parties agree to promote the provision of technical assistance to Contracting Parties, especially those that are developing countries or countries with economies in transition, either bilaterally or through the appropriate international organisations, with the objective of facilitating the implementation of this Treaty.

PART III

FARMERS' RIGHTS

Article 9

Farmers' rights

9.1 The Contracting Parties recognise the enormous contribution that the local and indigenous communities and farmers of all regions of the world, particularly those in the centres of origin and crop diversity, have made and will continue to make for the conservation and development of plant genetic resources which constitute the basis of food and agriculture production throughout the world.

9.2 The Contracting Parties agree that the responsibility for realising farmers' rights, as they relate to plant genetic resources for food and agriculture, rests with national governments. In accordance with their needs and priorities, each Contracting Party should, as appropriate, and subject to its national legislation, take measures to protect and promote farmers' rights, including:

9.3 Nothing in this Article shall be interpreted to limit any rights that farmers have to save, use, exchange and sell farm-saved seed/propagating material, subject to national law and as appropriate.

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PART IV

THE MULTILATERAL SYSTEM OF ACCESS AND BENEFIT-SHARING

Article 10

Multilateral system of access and benefit-sharing

10.1 In their relationships with other States, the Contracting Parties recognise the sovereign rights of States over their own plant genetic resources for food and agriculture, including that the authority to determine access to those resources rests with national governments and is subject to national legislation.

10.2 In the exercise of their sovereign rights, the Contracting Parties agree to establish a multilateral system, which is efficient, effective, and transparent, both to facilitate access to plant genetic resources for food and agriculture, and to share, in a fair and equitable way, the benefits arising from the utilisation of these resources, on a complementary and mutually reinforcing basis.

Article 11

Coverage of the Multilateral System

11.1 In furtherance of the objectives of conservation and sustainable use of plant genetic resources for food and agriculture and the fair and equitable sharing of benefits arising out of their use, as stated in Article 1, the Multilateral System shall cover the plant genetic resources for food and agriculture listed in Annex I, established according to criteria of food security and interdependence.

11.2 The Multilateral System, as identified in Article 11.1, shall include all plant genetic resources for food and agriculture listed in Annex I that are under the management and control of the Contracting Parties and in the public domain. With a view to achieving the fullest possible coverage of the Multilateral System, the Contracting Parties invite all other holders of the plant genetic resources for food and agriculture listed in Annex I to include these plant genetic resources for food and agriculture in the Multilateral System.

11.3 Contracting Parties also agree to take appropriate measures to encourage natural and legal persons within their jurisdiction who hold plant genetic resources for food and agriculture listed in Annex I to include such plant genetic resources for food and agriculture in the Multilateral System.

11.4 Within two years of the entry into force of the Treaty, the Governing Body shall assess the progress in including the plant genetic resources for food and agriculture referred to in paragraph 11.3 in the Multilateral System. Following this assessment, the Governing Body shall decide whether access shall continue to be facilitated to those natural and legal persons referred to in paragraph 11.3 that have not included these plant genetic resources for food and agriculture in the Multilateral System, or take such other measures as it deems appropriate.

11.5 The Multilateral System shall also include the plant genetic resources for food and agriculture listed in Annex I and held in the *ex situ* collections of the International Agricultural Research Centres of the Consultative Group on International Agricultural Research (CGIAR), as provided in Article 15.1a, and in other international institutions, in accordance with Article 15.5.

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Article 12

Facilitated access to plant genetic resources for food and agriculture within the Multilateral System

12.1 The Contracting Parties agree that facilitated access to plant genetic resources for food and agriculture under the Multilateral System, as defined in Article 11, shall be in accordance with the provisions of this Treaty.

12.2 The Contracting Parties agree to take the necessary legal or other appropriate measures to provide such access to other Contracting Parties through the Multilateral System. To this effect, such access shall also be provided to legal and natural persons under the jurisdiction of any Contracting Party, subject to the provisions of Article 11.4.

12.3 Such access shall be provided in accordance with the conditions below:

12.4 To this effect, facilitated access, in accordance with Articles 12.2 and 12.3, shall be provided pursuant to a standard material transfer agreement (MTA), which shall be adopted by the Governing Body and contain the provisions of Articles 12.3a, d and g, as well as the benefit-sharing provisions set forth in Article 13.2d(ii) and other relevant provisions of this Treaty, and the provision that the recipient of the plant genetic resources for food and agriculture shall require that the conditions of the MTA shall apply to the transfer of plant genetic resources for food and agriculture to another person or entity, as well as to any subsequent transfers of those plant genetic resources for food and agriculture.

12.5 Contracting Parties shall ensure that an opportunity to seek recourse is available, consistent with applicable jurisdictional requirements, under their legal systems, in case of contractual disputes arising under such MTAs, recognising that obligations arising under such MTAs rest exclusively with the parties to those MTAs.

12.6 In emergency disaster situations, the Contracting Parties agree to provide facilitated access to appropriate plant genetic resources for food and agriculture in the Multilateral System for the purpose of contributing to the re-establishment of agricultural systems, in cooperation with disaster relief coordinators.

Article 13

Benefit-sharing in the Multilateral System

13.1 The Contracting Parties recognise that facilitated access to plant genetic resources for food and agriculture which are included in the Multilateral System constitutes itself a major benefit of the Multilateral System and agree that benefits accruing therefrom shall be shared fairly and equitably in accordance with the provisions of this Article.

13.2 The Contracting Parties agree that benefits arising from the use, including commercial, of plant genetic resources for food and agriculture under the Multilateral System shall be shared fairly and equitably through the following mechanisms: the exchange of information, access to and transfer of technology, capacity-building, and the sharing of the benefits arising from commercialisation, taking into account the priority activity areas in the rolling Global Plan of Action, under the guidance of the Governing Body:

13.3 The Contracting Parties agree that benefits arising from the use of plant genetic resources for food and agriculture that are shared under the Multilateral System should flow

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primarily, directly and indirectly, to farmers in all countries, especially in developing countries, and countries with economies in transition, who conserve and sustainably utilise plant genetic resources for food and agriculture.

13.4 The Governing Body shall, at its first meeting, consider relevant policy and criteria for specific assistance under the agreed funding strategy established under Article 18 for the conservation of plant genetic resources for food and agriculture in developing countries, and countries with economies in transition whose contribution to the diversity of plant genetic resources for food and agriculture in the Multilateral System is significant and/or which have special needs.

13.5 The Contracting Parties recognise that the ability to fully implement the Global Plan of Action, in particular of developing countries and countries with economies in transition, will depend largely upon the effective implementation of this Article and of the funding strategy as provided in Article 18.

13.6 The Contracting Parties shall consider modalities of a strategy of voluntary benefit-sharing contributions whereby food processing industries that benefit from plant genetic resources for food and agriculture shall contribute to the Multilateral System.

PART V

SUPPORTING COMPONENTS

Article 14

Global Plan of Action

Recognising that the rolling Global Plan of Action for the conservation and sustainable use of plant genetic resources for food and agriculture is important to this Treaty, Contracting Parties should promote its effective implementation, including through national actions and, as appropriate, international cooperation to provide a coherent framework, *inter alia*, for capacity-building, technology transfer and exchange of information, taking into account the provisions of Article 13.

Article 15

***Ex situ* collections of plant genetic resources for food and agriculture**

15.1 Held by the International Agricultural Research Centres of the Consultative Group on International Agricultural Research and other international institutions The Contracting Parties recognise the importance to this Treaty of the *ex situ* collections of plant genetic resources for food and agriculture held in trust by the International Agricultural Research Centres (IARCs) of the Consultative Group on International Agricultural Research (CGIAR). The Contracting Parties call upon the IARCs to sign agreements with the Governing Body with regard to such *ex situ* collections, in accordance with the following terms and conditions:

15.2 The Contracting Parties agree to provide facilitated access to plant genetic resources for food and agriculture in Annex I under the Multilateral System to IARCs of the CGIAR that have signed agreements with the Governing Body in accordance with this Treaty. Such centres shall be included in a list held by the Secretary to be made available to the Contracting Parties on request.

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15.3 The material other than that listed in Annex I, which is received and conserved by IARCs after the coming into force of this Treaty, shall be available for access on terms consistent with those mutually agreed between the IARCs that receive the material and the country of origin of such resources or the country that has acquired those resources in accordance with the Convention on Biological Diversity or other applicable law.

15.4 The Contracting Parties are encouraged to provide IARCs that have signed agreements with the Governing Body with access, on mutually agreed terms, to plant genetic resources for food and agriculture not listed in Annex I that are important to the programmes and activities of the IARCs.

15.5 The Governing Body will also seek to establish agreements for the purposes stated in this Article with other relevant international institutions.

Article 16

International plant genetic resources networks

16.1 Existing cooperation in international plant genetic resources for food and agriculture networks will be encouraged or developed on the basis of existing arrangements and consistent with the terms of this Treaty, so as to achieve as complete coverage as possible of plant genetic resources for food and agriculture.

16.2 The Contracting Parties will encourage, as appropriate, all relevant institutions, including governmental, private, non-governmental, research, breeding and other institutions, to participate in the international networks.

Article 17

The global information system on plant genetic resources for food and agriculture

17.1 The Contracting Parties shall cooperate to develop and strengthen a global information system to facilitate the exchange of information, based on existing information systems, on scientific, technical and environmental matters related to plant genetic resources for food and agriculture, with the expectation that such exchange of information will contribute to the sharing of benefits by making information on plant genetic resources for food and agriculture available to all Contracting Parties. In developing the global information system, cooperation will be sought with the clearing house mechanism of the Convention on Biological Diversity.

17.2 Based on notification by the Contracting Parties, early warning should be provided about hazards that threaten the efficient maintenance of plant genetic resources for food and agriculture, with a view to safeguarding the material.

17.3 The Contracting Parties shall cooperate with the Commission on Genetic Resources for Food and Agriculture of the FAO in its periodic reassessment of the state of the world's plant genetic resources for food and agriculture in order to facilitate the updating of the rolling Global Plan of Action referred to in Article 14.

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PART VI

FINANCIAL PROVISIONS

Article 18

Financial resources

18.1 The Contracting Parties undertake to implement a funding strategy for the implementation of this Treaty in accordance with the provisions of this Article.

18.2 The objectives of the funding strategy shall be to enhance the availability, transparency, efficiency and effectiveness of the provision of financial resources to implement activities under this Treaty.

18.3 In order to mobilise funding for priority activities, plans and programmes, in particular in developing countries and countries with economies in transition, and taking the Global Plan of Action into account, the Governing Body shall periodically establish a target for such funding.

18.4 Pursuant to this funding strategy:

18.5 The Contracting Parties agree that priority will be given to the implementation of agreed plans and programmes for farmers in developing countries, especially in least developed countries, and in countries with economies in transition, who conserve and sustainably utilise plant genetic resources for food and agriculture.

PART VII

INSTITUTIONAL PROVISIONS

Article 19

Governing Body

19.1 A Governing Body for this Treaty is hereby established, composed of all Contracting Parties.

19.2 All decisions of the Governing Body shall be taken by consensus unless by consensus another method of arriving at a decision on certain measures is reached, except that consensus shall always be required in relation to Articles 23 and 24.

19.3 The functions of the Governing Body shall be to promote the full implementation of this Treaty, keeping in view its objectives, and, in particular, to:

19.4 Subject to Article 19.6, each Contracting Party shall have one vote and may be represented at sessions of the Governing Body by a single delegate who may be accompanied by an alternate, and by experts and advisers. Alternates, experts and advisers may take part in the proceedings of the Governing Body but may not vote, except in the case of their being duly authorised to substitute for the delegate.

19.5 The United Nations, its specialised agencies and the International Atomic Energy Agency, as well as any State not a Contracting Party to this Treaty, may be represented as observers at sessions of the Governing Body. Any other body or agency, whether governmental

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or non-governmental, qualified in fields relating to conservation and sustainable use of plant genetic resources for food and agriculture, which has informed the Secretary of its wish to be represented as an observer at a session of the Governing Body, may be admitted unless at least one third of the Contracting Parties present object. The admission and participation of observers shall be subject to the Rules of Procedure adopted by the Governing Body.

19.6 A Member Organisation of the FAO that is a Contracting Party and the Member States of that Member Organisation that are Contracting Parties shall exercise their membership rights and fulfil their membership obligations in accordance, *mutatis mutandis*, with the Constitution and General Rules of the FAO.

19.7 The Governing Body shall adopt and amend, as required, its own Rules of Procedure and financial rules which shall not be inconsistent with this Treaty.

19.8 The presence of delegates representing a majority of the Contracting Parties shall be necessary to constitute a quorum at any session of the Governing Body.

19.9 The Governing Body shall hold regular sessions at least once every two years. These sessions should, as far as possible, be held back-to-back with the regular sessions of the Commission on Genetic Resources for Food and Agriculture.

19.10 Special sessions of the Governing Body shall be held at such other times as may be deemed necessary by the Governing Body, or at the written request of any Contracting Party, provided that this request is supported by at least one third of the Contracting Parties.

19.11 The Governing Body shall elect its Chairperson and Vice-Chairpersons (collectively referred to as the Bureau), in conformity with its Rules of Procedure.

Article 20

Secretary

20.1 The Secretary of the Governing Body shall be appointed by the Director-General of the FAO, with the approval of the Governing Body. The Secretary shall be assisted by such staff as may be required.

20.2 The Secretary shall perform the following functions:

20.3 The Secretary shall communicate to all Contracting Parties and to the Director-General:

20.4 The Secretary shall provide documentation in the six languages of the United Nations for sessions of the Governing Body.

20.5 The Secretary shall cooperate with other organisations and treaty bodies, including in particular the Secretariat of the Convention on Biological Diversity, in achieving the objectives of this Treaty.

Article 21

Compliance

The Governing Body shall, at its first meeting, consider and approve cooperative and effective procedures and operational mechanisms to promote compliance with the provisions of this Treaty and to address issues of non-compliance. These procedures and mechanisms shall include

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monitoring, and offering advice or assistance, including legal advice or legal assistance, when needed, in particular to developing countries and countries with economies in transition.

Article 22

Settlement of disputes

22.1 In the event of a dispute between Contracting Parties concerning the interpretation or application of this Treaty, the parties concerned shall seek solutions by negotiation.

22.2 If the parties concerned cannot reach agreement by negotiation, they may jointly seek the good offices of, or request mediation by, a third party.

22.3 When ratifying, accepting, approving or acceding to this Treaty, or at any time thereafter, a Contracting Party may declare in writing to the Depositary that for a dispute not resolved in accordance with Article 22.1 or Article 22.2 above, it accepts one or both of the following means of dispute settlement as compulsory:

22.4 If the parties to the dispute have not, in accordance with Article 22.3 above, accepted the same or any procedure, the dispute shall be submitted to conciliation in accordance with Part 2 of Annex II to this Treaty unless the parties otherwise agree.

Article 23

Amendments to the Treaty

23.1 Amendments to this Treaty may be proposed by any Contracting Party.

23.2 Amendments to this Treaty shall be adopted at a session of the Governing Body. The text of any proposed amendment shall be communicated to Contracting Parties by the Secretary at least six months before the session at which it is proposed for adoption.

23.3 All amendments to this Treaty shall only be made by consensus of the Contracting Parties present at the session of the Governing Body.

23.4 Any amendment adopted by the Governing Body shall come into force among Contracting Parties having ratified, accepted or approved it on the 90th day after the deposit of instruments of ratification, acceptance or approval by two-thirds of the Contracting Parties. Thereafter the amendment shall enter into force for any other Contracting Party on the 90th day after that Contracting Party deposits its instrument of ratification, acceptance or approval of the amendment.

23.5 For the purpose of this Article, an instrument deposited by a Member Organisation of the FAO shall not be counted as additional to those deposited by Member States of such an organisation.

Article 24

Annexes

24.1 The annexes to this Treaty shall form an integral part of this Treaty and a reference to this Treaty shall constitute at the same time a reference to any annexes thereto.

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24.2 The provisions of Article 23 regarding amendments to this Treaty shall apply to the amendment of annexes.

Article 25

Signature

This Treaty shall be open for signature at the FAO from 3 November 2001 to 4 November 2002 by all Members of the FAO and any States that are not Members of the FAO but are Members of the United Nations, or any of its specialised agencies or of the International Atomic Energy Agency.

Article 26

Ratification, acceptance or approval

This Treaty shall be subject to ratification, acceptance or approval by the Members and non-Members of the FAO referred to in Article 25. Instruments of ratification, acceptance, or approval shall be deposited with the Depository.

Article 27

Accession

This Treaty shall be open for accession by all Members of the FAO and any States that are not Members of the FAO but are Members of the United Nations, or any of its specialised agencies or of the International Atomic Energy Agency from the date on which the Treaty is closed for signature. Instruments of accession shall be deposited with the Depository.

Article 28

Entry into force

28.1 Subject to the provisions of Article 29.2, this Treaty shall enter into force on the 90th day after the deposit of the 40th instrument of ratification, acceptance, approval or accession, provided that at least 20 instruments of ratification, acceptance, approval or accession have been deposited by Members of the FAO.

28.2 For each Member of the FAO and any State that is not a Member of the FAO but is a Member of the United Nations, or any of its specialised agencies or of the International Atomic Energy Agency that ratifies, accepts, approves or accedes to this Treaty after the deposit, in accordance with Article 28.1, of the 40th instrument of ratification, acceptance, approval or accession, the Treaty shall enter into force on the 90th day following the deposit of its instrument of ratification, acceptance, approval or accession.

Article 29

Member Organisations of the FAO

29.1 When a Member Organisation of the FAO deposits an instrument of ratification, acceptance, approval or accession for this Treaty, the Member Organisation shall, in accordance

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with the provisions of Article II.7 of the FAO Constitution, notify any change regarding its distribution of competence to its declaration of competence submitted under Article II.5 of the FAO Constitution as may be necessary in light of its acceptance of this Treaty. Any Contracting Party to this Treaty may, at any time, request a Member Organisation of the FAO that is a Contracting Party to this Treaty to provide information as to which, as between the Member Organisation and its Member States, is responsible for the implementation of any particular matter covered by this Treaty. The Member Organisation shall provide this information within a reasonable time.

29.2 Instruments of ratification, acceptance, approval, accession or withdrawal, deposited by a Member Organisation of the FAO, shall not be counted as additional to those deposited by its Member States.

Article 30

Reservations

No reservations may be made to this Treaty.

Article 31

Non-parties

The Contracting Parties shall encourage any Member of the FAO or other State, not a Contracting Party to this Treaty, to accept this Treaty.

Article 32

Withdrawals

32.1 Any Contracting Party may at any time after two years from the date on which this Treaty has entered into force for it, notify the Depositary in writing of its withdrawal from this Treaty. The Depositary shall at once inform all Contracting Parties.

32.2 Withdrawal shall take effect one year from the date of receipt of the notification.

Article 33

Termination

33.1 This Treaty shall be automatically terminated if and when, as the result of withdrawals, the number of Contracting Parties drops below 40, unless the remaining Contracting Parties unanimously decide otherwise.

33.2 The Depositary shall inform all remaining Contracting Parties when the number of Contracting Parties has dropped to 40.

33.3 In the event of termination the disposition of assets shall be governed by the financial rules to be adopted by the Governing Body.

Changes to legislation: There are currently no known outstanding effects for the Council decision 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 (2004/869/EC). (See end of Document for details)

Article 34

Depositary

The Director-General of the FAO shall be the Depositary of this Treaty.

Article 35

Authentic texts

The Arabic, Chinese, English, French, Russian and Spanish texts of this Treaty are equally authentic.

Annex I

LIST OF CROPS COVERED UNDER THE MULTILATERAL SYSTEM

FOOD CROPS

Crop	Observations	Genus
Breadfruit	<i>Artocarpus</i>	Breadfruit only.
Asparagus	<i>Asparagus</i>	
Oat	<i>Avena</i>	
Beet	<i>Beta</i>	
Brassica complex	<i>Brassica et al.</i>	Genera included are: <i>Brassica</i> , <i>A Armoracia</i> , <i>Barbarea</i> , <i>Camelina</i> , <i>Crambe</i> , <i>Diplotaxis</i> , <i>Eruca</i> , <i>Isatis</i> , <i>Lepidium</i> , <i>Raphanobrassica</i> , <i>Raphanus</i> , <i>Rorippa</i> , and <i>Sinapis</i> . This comprises oilseed and vegetable crops such as cabbage, rapeseed, mustard, cress, rocket, radish, and turnip. The species <i>Lepidium meyenii</i> (maca) is excluded
Pigeon pea	<i>Cajanus</i>	
Chickpea	<i>Cicer</i>	
Citrus	<i>Citrus</i>	Genera <i>Poncirus</i> and <i>Fortunella</i> are included as root stock
Coconut	<i>Cocos</i>	

Changes to legislation: There are currently no known outstanding effects for the Council decision 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 (2004/869/EC). (See end of Document for details)

Major aroids	<i>Colocasia, Xanthosoma</i>	Major aroids include taro, cocoyam, dasheen and tannia
Carrot	<i>Daucus</i>	
Yams	<i>Dioscorea</i>	
Finger millet	<i>Eleusine</i>	
Strawberry	<i>Fragaria</i>	
Sunflower	<i>Helianthus</i>	
Barley	<i>Hordeum</i>	
Sweet Potato	<i>Ipomoea</i>	
Grass pea	<i>Lathyrus</i>	
Lentil	<i>Lens</i>	
Apple	<i>Malus</i>	
Cassava	<i>Manihot</i>	<i>Manihot esculenta</i> only.
Banana/plantain	<i>Musa</i>	Except <i>Musa textili</i> .
Rice	<i>Oryza</i>	
Pearl Millet	<i>Pennisetum</i>	
Beans	<i>Phaseolus</i>	Except <i>Phaseolus polyanthus</i>
Pea	<i>Pisum</i>	
Rye	<i>Secale</i>	
Potato	<i>Solanum</i>	Section <i>Tuberosa</i> included, except <i>Solanum phureja</i> .
Eggplant	<i>Solanum</i>	Section <i>Melongena</i> included
Sorghum	<i>Sorghum</i>	
Triticale	<i>Triticosecale</i>	
Wheat	<i>Triticum et al.</i>	Including <i>Agropyron</i> , <i>Elymus</i> , and <i>Secale</i> .
<i>Faba Bean/Vetch</i>	<i>Vicia</i>	
<i>Cowpea et al.</i>	<i>Vigna</i>	
Maize	<i>Zea</i>	Excluding <i>Zea perennis</i> , <i>Zea diploperennis</i> , and <i>Zea luxurians</i>

FORAGES

Genera	Species
Legumes forages	
<i>Astragalus</i>	<i>chinensis, cicer, arenarius</i>

Changes to legislation: There are currently no known outstanding effects for the Council decision 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 (2004/869/EC). (See end of Document for details)

<i>Canavalia</i>	<i>ensiformis</i>
<i>Coronilla</i>	<i>varia</i>
<i>Hedysarum</i>	<i>coronarium</i>
<i>Lathyrus</i>	<i>cicera, ciliolatus, hirsutus, ochrus, odoratus, sativus</i>
<i>Lespedeza</i>	<i>cuneata, striata, stipulacea</i>
<i>Lotus</i>	<i>corniculatus, subbiflorus, uliginosus</i>
<i>Lupinus</i>	<i>albus, angustifolius, luteus</i>
<i>Medicago</i>	<i>arborea, falcata, sativa, scutellata, rigidula, truncatula</i>
<i>Melilotus</i>	<i>albus, officinalis</i>
<i>Onobrychis</i>	<i>viciifolia</i>
<i>Ornithopus</i>	<i>sativus</i>
<i>Prosopis</i>	<i>affinis, alba, chilensis, nigra, pallida</i>
<i>Pueraria</i>	<i>phaseoloides</i>
<i>Trifolium</i>	<i>Alexandrinum, alpestre, ambiguum, angustifolium, arvense, agrocicerum, hybridum, incarnatum, pratense, repens, resupinatum, rueppellianum, semipilosum, subterraneum, vesiculosum</i>
Grass forages	
<i>Andropogon</i>	<i>gayanus</i>
<i>Agropyron</i>	<i>cristatum, desertorum</i>
<i>Agrostis</i>	<i>stolonifera, tenuis</i>
<i>Alopecurus</i>	<i>pratensis</i>
<i>Arrhenatherum</i>	<i>elatius</i>
<i>Dactylis</i>	<i>glomerata</i>
<i>Festuca</i>	<i>arundinacea, gigantea, heterophylla, ovina, pratensis, rubra</i>
<i>Lolium</i>	<i>hybridum, multiflorum, perenne, rigidum, temulentum</i>
<i>Phalaris</i>	<i>aquatica, arundinacea</i>
<i>Phleum</i>	<i>pratense</i>
<i>Poa</i>	<i>alpina, annua, pratensis</i>
<i>Tripsacum</i>	<i>laxum</i>
Other forages	
<i>Atriplex</i>	<i>halimus, nummularia</i>

Changes to legislation: There are currently no known outstanding effects for the Council decision 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 (2004/869/EC). (See end of Document for details)

<i>Salsola</i>	<i>vermiculata</i>
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Annex II PART 1 ARBITRATION Article 1 The claimant party shall notify the Secretary that the parties to the dispute are referring it to arbitration pursuant to Article 22. The notification shall state the subject-matter of arbitration and include, in particular, the Articles of this Treaty, the interpretation or application of which are at issue. If the parties to the dispute do not agree on the subject matter of the dispute before the President of the tribunal is designated, the arbitral tribunal shall determine the subject matter. The Secretary shall forward the information thus received to all Contracting Parties to this Treaty. Article 21 In disputes between two parties to the dispute, the arbitral tribunal shall consist of three members. Each of the parties to the dispute shall appoint an arbitrator and the two arbitrators so appointed shall designate by common agreement the third arbitrator who shall be the President of the tribunal. The latter shall not be a national of one of the parties to the dispute, nor have his or her usual place of residence in the territory of one of these parties to the dispute, nor be employed by any of them, nor have dealt with the case in any other capacity. 2 In disputes between more than two Contracting Parties, parties to the dispute with the same interest shall appoint one arbitrator jointly by agreement. 3 Any vacancy shall be filled in the manner prescribed for the initial appointment. Article 31 If the President of the arbitral tribunal has not been designated within two months of the appointment of the second arbitrator, the Director-General of the FAO shall, at the request of a party to the dispute, designate the President within a further two-month period. 2 If one of the parties to the dispute does not appoint an arbitrator within two months of receipt of the request, the other party may inform the Director-General of the FAO who shall make the designation within a further two-month period. Article 4 The arbitral tribunal shall render its decisions in accordance with the provisions of this Treaty and international law. Article 5 Unless the parties to the dispute otherwise agree, the arbitral tribunal shall determine its own rules of procedure. Article 6 The arbitral tribunal may, at the request of one of the parties to the dispute, recommend essential interim measures of protection. Article 7 The parties to the dispute shall facilitate the work of the arbitral tribunal and, in particular, using all means at their disposal, shall: Provide it with all relevant documents, information and facilities; and Enable it, when necessary, to call witnesses or experts and receive their evidence. Article 8 The parties to the dispute and the arbitrators are under an obligation to protect the confidentiality of any information they receive in confidence during the proceedings of the arbitral tribunal. Article 9 Unless the arbitral tribunal determines otherwise because of the particular circumstances of the case, the costs of the tribunal shall be borne by the parties to the dispute in equal shares. The tribunal shall keep a record of all its costs, and shall furnish a final statement thereof to the parties to the dispute. Article 10 Any Contracting Party that has an interest of a legal nature in the subject-matter of the dispute which may be affected by the decision in the case, may intervene in the proceedings with the consent of the tribunal. Article 11 The tribunal may hear and determine counterclaims arising directly out of the subject-matter of the dispute. Article 12 Decisions both on procedure and substance of the arbitral tribunal shall be taken by a majority vote of its members. Article 13 If one of the parties to the dispute does not appear before the arbitral tribunal or fails to defend its case, the other party may request the tribunal to continue the proceedings and to make its award. Absence of a party to the dispute or a failure of a party to the dispute to defend its case shall not constitute a bar to the proceedings. Before rendering its final decision, the arbitral tribunal must satisfy itself that the claim is well founded in fact and law. Article 14 The tribunal shall render its final decision within five months of the date on which it is fully constituted unless it finds it necessary to extend the time-limit

Changes to legislation: There are currently no known outstanding effects for the Council decision 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 (2004/869/EC). (See end of Document for details)

for a period which should not exceed five more months. Article 15 The final decision of the arbitral tribunal shall be confined to the subject-matter of the dispute and shall state the reasons on which it is based. It shall contain the names of the members who have participated and the date of the final decision. Any member of the tribunal may attach a separate or dissenting opinion to the final decision. Article 16 The award shall be binding on the parties to the dispute. It shall be without appeal unless the parties to the dispute have agreed in advance to an appellate procedure. Article 17 Any controversy which may arise between the parties to the dispute as regards the interpretation or manner of implementation of the final decision may be submitted by either party to the dispute for decision to the arbitral tribunal which rendered it.

PART 2

CONCILIATION

Article 1

A conciliation commission shall be created upon the request of one of the parties to the dispute. The commission shall, unless the parties to the dispute otherwise agree, be composed of five members, two appointed by each party concerned and a President chosen jointly by those members.

Article 2

In disputes between more than two Contracting Parties, parties to the dispute with the same interest shall appoint their members of the commission jointly by agreement. Where two or more parties to the dispute have separate interests or there is a disagreement as to whether they are of the same interest, they shall appoint their members separately.

Article 3

If any appointments by the parties to the dispute are not made within two months of the date of the request to create a conciliation commission, the Director-General of the FAO shall, if asked to do so by the party to the dispute that made the request, make those appointments within a further two-month period.

Article 4

If a President of the conciliation commission has not been chosen within two months of the last of the members of the commission being appointed, the Director-General of the FAO shall, if asked to do so by a party to the dispute, designate a President within a further two-month period.

Article 5

The conciliation commission shall take its decisions by majority vote of its members. It shall, unless the parties to the dispute otherwise agree, determine its own procedure. It shall render a proposal for resolution of the dispute, which the parties shall consider in good faith.

Article 6

A disagreement as to whether the conciliation commission has competence shall be decided by the commission.

Changes to legislation: There are currently no known outstanding effects for the Council decision 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 (2004/869/EC). (See end of Document for details)

Annex I

LIST OF CROPS COVERED UNDER THE MULTILATERAL SYSTEM

FOOD CROPS

Crop	Observations	Genus
Breadfruit	<i>Artocarpus</i>	Breadfruit only.
Asparagus	<i>Asparagus</i>	
Oat	<i>Avena</i>	
Beet	<i>Beta</i>	
Brassica complex	<i>Brassica et al.</i>	Genera included are: <i>Brassica</i> , <i>Armoracia</i> , <i>Barbarea</i> , <i>Camelina</i> , <i>Crambe</i> , <i>Diplotaxis</i> , <i>Eruca</i> , <i>Isatis</i> , <i>Lepidium</i> , <i>Raphanobrassica</i> , <i>Raphanus</i> , <i>Rorippa</i> , and <i>Sinapis</i> . This comprises oilseed and vegetable crops such as cabbage, rapeseed, mustard, cress, rocket, radish, and turnip. The species <i>Lepidium meyenii</i> (maca) is excluded
Pigeon pea	<i>Cajanus</i>	
Chickpea	<i>Cicer</i>	
Citrus	<i>Citrus</i>	Genera <i>Poncirus</i> and <i>Fortunella</i> are included as root stock
Coconut	<i>Cocos</i>	
Major aroids	<i>Colocasia</i> , <i>Xanthosoma</i>	Major aroids include taro, cocoyam, dasheen and tannia
Carrot	<i>Daucus</i>	
Yams	<i>Dioscorea</i>	
Finger millet	<i>Eleusine</i>	
Strawberry	<i>Fragaria</i>	
Sunflower	<i>Helianthus</i>	
Barley	<i>Hordeum</i>	
Sweet Potato	<i>Ipomoea</i>	
Grass pea	<i>Lathyrus</i>	
Lentil	<i>Lens</i>	

Changes to legislation: There are currently no known outstanding effects for the Council decision 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 (2004/869/EC). (See end of Document for details)

Apple	<i>Malus</i>	
Cassava	<i>Manihot</i>	<i>Manihot esculenta</i> only.
Banana/plantain	<i>Musa</i>	Except <i>Musa textili</i> .
Rice	<i>Oryza</i>	
Pearl Millet	<i>Pennisetum</i>	
Beans	<i>Phaseolus</i>	Except <i>Phaseolus polyanthus</i>
Pea	<i>Pisum</i>	
Rye	<i>Secale</i>	
Potato	<i>Solanum</i>	Section <i>Tuberosa</i> included, except <i>Solanum phureja</i> .
Eggplant	<i>Solanum</i>	Section <i>Melongena</i> included
Sorghum	<i>Sorghum</i>	
Triticale	<i>Triticosecale</i>	
Wheat	<i>Triticum et al.</i>	Including <i>Agropyron</i> , <i>Elymus</i> , and <i>Secale</i> .
<i>Faba Bean/Vetch</i>	<i>Vicia</i>	
<i>Cowpea et al.</i>	<i>Vigna</i>	
Maize	<i>Zea</i>	Excluding <i>Zea perennis</i> , <i>Zea diploperennis</i> , and <i>Zea luxurians</i>

FORAGES

Genera	Species
Legumes forages	
<i>Astragalus</i>	<i>chinensis, cicer, arenarius</i>
<i>Canavalia</i>	<i>ensiformis</i>
<i>Coronilla</i>	<i>varia</i>
<i>Hedysarum</i>	<i>coronarum</i>
<i>Lathyrus</i>	<i>cicera, ciliolatus, hirsutus, ochrus, odoratus, sativus</i>
<i>Lespedeza</i>	<i>cuneata, striata, stipulacea</i>
<i>Lotus</i>	<i>corniculatus, subbiflorus, uliginosus</i>
<i>Lupinus</i>	<i>albus, angustifolius, luteus</i>
<i>Medicago</i>	<i>arborea, falcata, sativa, scutellata, rigidula, truncatula</i>
<i>Melilotus</i>	<i>albus, officinalis</i>
<i>Onobrychis</i>	<i>viciifolia</i>

Changes to legislation: There are currently no known outstanding effects for the Council decision 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 (2004/869/EC). (See end of Document for details)

<i>Ornithopus</i>	<i>sativus</i>
<i>Prosopis</i>	<i>affinis, alba, chilensis, nigra, pallida</i>
<i>Pueraria</i>	<i>phaseoloides</i>
<i>Trifolium</i>	<i>Alexandrinum, alpestre, ambiguum, angustifolium, arvense, agrocicerum, hybridum, incarnatum, pratense, repens, resupinatum, rueppellianum, semipilosum, subterraneum, vesiculosum</i>
Grass forages	
<i>Andropogon</i>	<i>gayanus</i>
<i>Agropyron</i>	<i>cristatum, desertorum</i>
<i>Agrostis</i>	<i>stolonifera, tenuis</i>
<i>Alopecurus</i>	<i>pratensis</i>
<i>Arrhenatherum</i>	<i>elatius</i>
<i>Dactylis</i>	<i>glomerata</i>
<i>Festuca</i>	<i>arundinacea, gigantea, heterophylla, ovina, pratensis, rubra</i>
<i>Lolium</i>	<i>hybridum, multiflorum, perenne, rigidum, temulentum</i>
<i>Phalaris</i>	<i>aquatica, arundinacea</i>
<i>Phleum</i>	<i>pratense</i>
<i>Poa</i>	<i>alpina, annua, pratensis</i>
<i>Tripsacum</i>	<i>laxum</i>
Other forages	
<i>Atriplex</i>	<i>halimus, nummularia</i>
<i>Salsola</i>	<i>vermiculata</i>

Changes to legislation: There are currently no known outstanding effects for the Council decision 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 (2004/869/EC). (See end of Document for details)

Annex II

PART 1

ARBITRATION

Article 1

The claimant party shall notify the Secretary that the parties to the dispute are referring it to arbitration pursuant to Article 22. The notification shall state the subject-matter of arbitration and include, in particular, the Articles of this Treaty, the interpretation or application of which are at issue. If the parties to the dispute do not agree on the subject matter of the dispute before the President of the tribunal is designated, the arbitral tribunal shall determine the subject matter. The Secretary shall forward the information thus received to all Contracting Parties to this Treaty.

Article 2

1 In disputes between two parties to the dispute, the arbitral tribunal shall consist of three members. Each of the parties to the dispute shall appoint an arbitrator and the two arbitrators so appointed shall designate by common agreement the third arbitrator who shall be the President of the tribunal. The latter shall not be a national of one of the parties to the dispute, nor have his or her usual place of residence in the territory of one of these parties to the dispute, nor be employed by any of them, nor have dealt with the case in any other capacity.

2 In disputes between more than two Contracting Parties, parties to the dispute with the same interest shall appoint one arbitrator jointly by agreement.

3 Any vacancy shall be filled in the manner prescribed for the initial appointment.

Article 3

1 If the President of the arbitral tribunal has not been designated within two months of the appointment of the second arbitrator, the Director-General of the FAO shall, at the request of a party to the dispute, designate the President within a further two-month period.

2 If one of the parties to the dispute does not appoint an arbitrator within two months of receipt of the request, the other party may inform the Director-General of the FAO who shall make the designation within a further two-month period.

Article 4

The arbitral tribunal shall render its decisions in accordance with the provisions of this Treaty and international law.

Article 5

Unless the parties to the dispute otherwise agree, the arbitral tribunal shall determine its own rules of procedure.

Article 6

The arbitral tribunal may, at the request of one of the parties to the dispute, recommend essential interim measures of protection.

Changes to legislation: There are currently no known outstanding effects for the Council decision 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 (2004/869/EC). (See end of Document for details)

Article 7

The parties to the dispute shall facilitate the work of the arbitral tribunal and, in particular, using all means at their disposal, shall:

- (a) Provide it with all relevant documents, information and facilities; and
- (b) Enable it, when necessary, to call witnesses or experts and receive their evidence.

Article 8

The parties to the dispute and the arbitrators are under an obligation to protect the confidentiality of any information they receive in confidence during the proceedings of the arbitral tribunal.

Article 9

Unless the arbitral tribunal determines otherwise because of the particular circumstances of the case, the costs of the tribunal shall be borne by the parties to the dispute in equal shares. The tribunal shall keep a record of all its costs, and shall furnish a final statement thereof to the parties to the dispute.

Article 10

Any Contracting Party that has an interest of a legal nature in the subject-matter of the dispute which may be affected by the decision in the case, may intervene in the proceedings with the consent of the tribunal.

Article 11

The tribunal may hear and determine counterclaims arising directly out of the subject-matter of the dispute.

Article 12

Decisions both on procedure and substance of the arbitral tribunal shall be taken by a majority vote of its members.

Article 13

If one of the parties to the dispute does not appear before the arbitral tribunal or fails to defend its case, the other party may request the tribunal to continue the proceedings and to make its award. Absence of a party to the dispute or a failure of a party to the dispute to defend its case shall not constitute a bar to the proceedings. Before rendering its final decision, the arbitral tribunal must satisfy itself that the claim is well founded in fact and law.

Article 14

The tribunal shall render its final decision within five months of the date on which it is fully constituted unless it finds it necessary to extend the time-limit for a period which should not exceed five more months.

Article 15

The final decision of the arbitral tribunal shall be confined to the subject-matter of the dispute and shall state the reasons on which it is based. It shall contain the names of the members who have participated and the date of the final decision. Any member of the tribunal may attach a separate or dissenting opinion to the final decision.

Changes to legislation: There are currently no known outstanding effects for the Council decision 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 (2004/869/EC). (See end of Document for details)

Article 16

The award shall be binding on the parties to the dispute. It shall be without appeal unless the parties to the dispute have agreed in advance to an appellate procedure.

Article 17

Any controversy which may arise between the parties to the dispute as regards the interpretation or manner of implementation of the final decision may be submitted by either party to the dispute for decision to the arbitral tribunal which rendered it.

PART 2

CONCILIATION

Article 1

A conciliation commission shall be created upon the request of one of the parties to the dispute. The commission shall, unless the parties to the dispute otherwise agree, be composed of five members, two appointed by each party concerned and a President chosen jointly by those members.

Article 2

In disputes between more than two Contracting Parties, parties to the dispute with the same interest shall appoint their members of the commission jointly by agreement. Where two or more parties to the dispute have separate interests or there is a disagreement as to whether they are of the same interest, they shall appoint their members separately.

Article 3

If any appointments by the parties to the dispute are not made within two months of the date of the request to create a conciliation commission, the Director-General of the FAO shall, if asked to do so by the party to the dispute that made the request, make those appointments within a further two-month period.

Article 4

If a President of the conciliation commission has not been chosen within two months of the last of the members of the commission being appointed, the Director-General of the FAO shall, if asked to do so by a party to the dispute, designate a President within a further two-month period.

Article 5

The conciliation commission shall take its decisions by majority vote of its members. It shall, unless the parties to the dispute otherwise agree, determine its own procedure. It shall render a proposal for resolution of the dispute, which the parties shall consider in good faith.

Article 6

A disagreement as to whether the conciliation commission has competence shall be decided by the commission.

Changes to legislation: There are currently no known outstanding effects for the Council decision 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 (2004/869/EC). (See end of Document for details)

ANNEX B

Instrument of approval of the International Treaty on Plant Genetic Resources for Food and Agriculture

The Council of the European Union has the honour to refer to the International Treaty on Plant Genetic Resources for Food and Agriculture, which was adopted by the FAO Conference at its 31st Session in November 2001, and to inform the Director-General of the Food and Agriculture Organisation of the United Nations that the European Community hereby approves the aforesaid Treaty pursuant to its Article 26 and undertakes to abide by its provisions.

Date [...]

ANNEX C

Declarations of the European Community

The following declarations shall be attached to the instrument of approval deposited with the Director-General of the FAO:

1. 'The European Community interprets Article 12.3d of the International Treaty on Plant Genetic Resources as recognising that plant genetic resources for food and agriculture or their genetic parts or components which have undergone innovation may be the subject of intellectual property rights provided that the criteria relating to such rights are met.';
2. 'In accordance with the provisions of Article II.7 of the FAO Constitution, the European Community declares that its declaration of competence submitted to FAO on 4 October 1994 under Article II.5 of the FAO Constitution still applies in the light of its acceptance of the International Treaty on Plant Genetic Resources for Food and Agriculture.';
3. 'In accordance with the provision of Article 22.3 the European Community declares that for a dispute not resolved in accordance with Article 22.1 or Article 22.2 it accepts as compulsory the dispute settlement provisions in Article 22.3 (a).'

Changes to legislation: *There are currently no known outstanding effects for the Council decision 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 (2004/869/EC). (See end of Document for details)*

- (1) Opinion delivered on 29 January 2004 (not yet published in the Official Journal).
- (2) [OJ L 309, 13.12.1993, p. 1.](#)

Changes to legislation:

There are currently no known outstanding effects for the Council decision 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 (2004/869/EC).