

REPORT OF THE ECP/GR EXPERT GROUP ON MATERIAL TRANSFER AGREEMENTS

October 2000

Introduction

During the seventh meeting of the ECP/GR steering committee, held in Braunschweig in Juli 1998, it was decided to develop a consolidated text regarding material transfer agreements (MTAs) for further discussions within ECP/GR, to be adopted in its final form by the steering committee in its next meeting in 2001. Such text could then be used as a model by the European institutions which hold publicly accessible plant genetic resources collections to compose their own MTA.

The objectives of such activity are (1) to come to a Europe-wide introduction of MTAs in agreement with the requirements of the Convention on Biological Diversity and other relevant legislation, e.g. UPOV, and (2) to seek to harmonize policies and procedures within Europe regarding transfer of plant genetic resources.

To this end a group of experts was formed which undertook the task specified above. The members of this expert group have been listed in annex 1 of this report.

As a first activity a questionnaire was developed to investigate the current situation in the various ECP/GR member states regarding the introduction of MTAs for the exchange of plant genetic resources, and to facilitate the discussion and decision making process within the ECP/GR programme on this topic. The questionnaire has been added to this report as annex 2. The questionnaire was sent to national representatives in the ECP/GR steering committee. Many national representatives forwarded this questionnaire to institutions in their country holding PGRFA to obtain a more detailed and accurate picture of exchange policies in use or under consideration.

The survey was not meant to influence in whatever direction the negotiations for the revision of the International Undertaking. Rules for the future exchange of germplasm for food and agriculture are currently being discussed in the FAO Commission on Plant Genetic Resources, in coordination with the Conference of the Parties to the Convention on Biological Diversity. Depending on the results of these negotiations the contents of material transfer agreements might be adapted in future to conform to a revision of FAO's International Undertaking on Plant Genetic Resources and/or to internationally agreed standards.

This report contains a summary of the results of the questionnaire, as well as suggestions for a consolidated text regarding a Material Transfer Agreement as requested by the ECP/GR Steering Committee.

Results of the questionnaire

Response

Answers to the questionnaire were received from the national representatives of 19 out of 32 ECP/GR member countries, and from 4 out of 8 non-member countries/observers. The answers were obtained from the following countries: Austria, Belarus, Belgium, Czech Republic, Cyprus, Denmark, France, Germany, Greece, Italy, Latvia, Lithuania, Malta, the Netherlands, Norway, Poland, Romania, the Russian Federation, Slovakia, Slovenia, Spain, the UK and Ukrain. These figures as well as the geographical coverage of the response suggest that a fairly good impression could be obtained of the current situation as well as of current thinking in the European region concerning the introduction of MTAs to cover the exchange of PGRFA. However, it should also be stressed that the results do not offer more than just an impression. The national representatives probably did not all communicate with the same categories of institutions and contact persons, and the 'reach' of the national representatives in acquiring feed-back also differed substantially from country to country. The answers to the questionnaire as categorized for analysis have been included as annex 3.

MTAs already introduced, prepared or considered

A limited number of institutions have already introduced MTAs. Only five genebanks belong to this group, i.e. IPK in Germany, CGN in the Netherlands, VIR in Russia, CRF in Spain and the Scandinavian NGB. In addition, several botanic gardens and research institutes have introduced MTAs, including in France, Norway, and the UK. The German Association of Botanic Gardens developed a standard MTA which was also forwarded for to COP5 for further discussion and adoption. Various collection holders, including the genebanks of Greece and the Baltic States, reported the implementation of other types of agreements (material acquisition agreements, material testing agreements, specific bilateral agreements).

The Czech genebank and other Czech collection holders and Ukrain are developing a MTA, whereas in Poland a MTA is being discussed.

In conclusion, a small number of European genebanks, has yet introduced a MTA, or is actively preparing for its introduction.

Coverage of current MTAs

Copies of the Material Transfer Agreements provided were examined for the issues currently covered by these agreements. The MTAs of the genebanks IPK, CGN, VIR, CRF and NGB differ considerably in their coverage as well as the contents of issues. From a comparison between these MTAs, it is not always clear if omissions in some are deliberate or reflect acknowledged shortcomings.

VIR declares that the germplasm is the property of VIR, whereas the other MTAs do not explicitly refer to the ownership issue. CGN, VIR and CRF request that users do not claim intellectual property rights over the materials provided, as well as essentially derived germplasm, whereas the issue is not mentioned in the MTA of NGB and IPK. The MTA of CGN includes the information on the germplasm under this provision. Use of the distributed germplasm is allowed for research and education in four MTAs, whereas CGN, VIR and NGB also allow its use for breeding. This is not explicitly covered by the MTA of CRF. IPK does not address the issue of type of use in its MTA. Direct commercialization is not allowed by VIR and CRF but not prohibited by the MTAs of CGN and NGB, and not addressed by the MTA of IPK. VIR claims permission for commercialization or any other utilization of new breeding materials. IPK, VIR, CRF and NGB do not allow distribution to third parties, the MTA of CGN leaves this option open. Four MTAs, except IPK, request feed-back on evaluation of the provided germplasm. CGN, VIR and CRF open the possibility of confidentiality of some of the information provided by users. NGB and IPK require copies of publications or patent applications covering the provided material. Four genebanks accept no responsibility for the germplasm distributed, an issue not covered by IPK. Some additional minor provisions have also been included.

The MTAs of other collection holders reflect a similar pattern of divergence as described above.

Opinions on the desirability of introduction of MTAs

A majority of the responses takes a positive position on the introduction of MTAs, which forms an endorsement to the proposal of the Steering Committee to develop a model to promote further discussion. A summarized overview of such positions is presented in Table 1. Here it should be stressed again that the positions presented originated from different institutions in different countries, whereas the degree to which these positions have been formalized and endorsed by the responsible authorities varies, which implies that we can only interpret the data with caution as a general indication for current trends.

Table 1. Views on desirability of MTAs by country

Type of response	Number of replies per country
Implemented	4*
Important or necessary	11
Desirable	1
Non-committed	1
Not to be introduced	1
No or unclear position	5

* not including NGB

With this reservation in mind, it seems apparent from Table 1, that of a total of 16 out of 23 'country' responses qualify as positive on the desirability of introduction of a MTA.

In some cases, the country response indicated introduction of a MTA by one or several collection holders in that country, as well as the assertion that introduction was considered important in that country. This has only been counted under implementation, to avoid double counting.

If responses are grouped by type of responding institution, rather than by country, it appears that the opinion of collection holders and responsible ministries largely coincides, whereas the opinion of users has only been mentioned in three responses but seems to be less favourable based on these responses (one regarding MTAs as necessary, one non-committal and one opposing).

It should be borne in mind that the word 'desirable' was not explained in the questionnaire, and perspectives of the respondents might therefore have differed. Where a context was mentioned, the response referred to the CBD and/or a Multilateral System as proposed in the FAO Commission on GRFA, currently negotiating the International Undertaking on PGRFA. Where views were expressed these were clearly in favour of a system that would not create an administrative burden for the collection holders.

In conclusion, responses indicate that there is a growing realisation that MTAs for the exchange of PGRFA are or may become necessary.

Issues to be covered by MTAs

This question enquired after the opinion of the national representatives as based on the needs and preferences expressed in the respective country. The analysis was based on the data of 17 respondents.

Table 2. Issues to be covered

Issues to be covered	yes	No	?	Comments received	Compiler's notes
Description germplasm	13	0	4		
Origin of germplasm	14	0	3		

Legal status germplasm	12	1	4	Depending on origin and type of material	
Coverage of MTA	4	0	13		Questions unclear as apparent from responses
including derived material	4	1	12	Case by case; depends	
including documentation	3	1	13		
Terms of access	10	0	7	Flexible, dependent on quantity, status of receiver etc.	
<i>Free</i>	5				
<i>Handling fee</i>	0				
<i>Reciprocal basis</i>	2				
<i>Use as breeding source</i>	14	0	3		
<i>Use for gene isolation</i>	10	0	7		
<i>Use for other biotech options</i>	10	0	7		
<i>PBR</i>	11	2	4		
<i>Patent protection</i>	6	1	10		
<i>Other rights limiting access</i>					Wrong interpretation
<i>Direct commercialization</i>	7	3	7	Should be covered by bilateral agreement	
<i>Benefit sharing</i>	9	2	6		
<i>Distribution to third parties</i>	9	4	4		
Feedback requirements	15	0	2	Not legally binding	
Responsibilities provider	11	0	6		
Other provisions					
<i>Import regulations</i>	6	1	10	Should facilitate exchange; acc. to national legislation; User concern	
<i>Multiplication restrictions</i>	8	1	8	For commercial purposes/protected varieties	
<i>Citation source germplasm</i>	10	1	6	Only if germplasm essential; not compulsory	
<i>Obligations third parties</i>	7	1	9	Same provisions; unrealistic	
<i>Explicit acceptance terms agreement</i>	8	0	9		
<i>Dispute settlement</i>	7	1	9	Which authority?	

Three conclusions can be drawn from the analysis:

- in a considerable number of cases questions were not clearly formulated, or respondents had no explicit views on the matter as apparent from the high number of blanks
- wide support for inclusion of several issues appeared
- few issues suggested for inclusion were squarely rejected.

Four or less blank and no negative answers were noted for the inclusion of the following topics:

- Description of germplasm (passport data)
- Origin of germplasm
- Options for use as a breeding source
- Feedback requirements of characterization/evaluation results

A consolidated MTA text as a model

The text of the two alternative MTAs developed by the CGIAR centres (version 19/05/98 from the Centers' Position Statement on Genetic Resources, Biotechnology and Intellectual Property Rights) has been taken as a basis (see annex 4). Parts of the three model texts attached in a separate document have been placed between square brackets. This should not be interpreted as 'negotiating text' but as text that can either be adopted or deleted from the model as preferred by the country or individual collection holder involved. The alternative models refer to (1) the legal status of the germplasm, (2) commercialisation of the germplasm or materials developed from the germplasm, and (3) distribution to third parties. The other optional text parts have not been marked. Alternative wordings have been indicated by a slash. Any specific MTA derived from the models attached can also easily be adapted to accommodate for repeated shipments of germplasm to a single user. Developing such a general MTA has not yet been incorporated in the alternative texts offered attached.