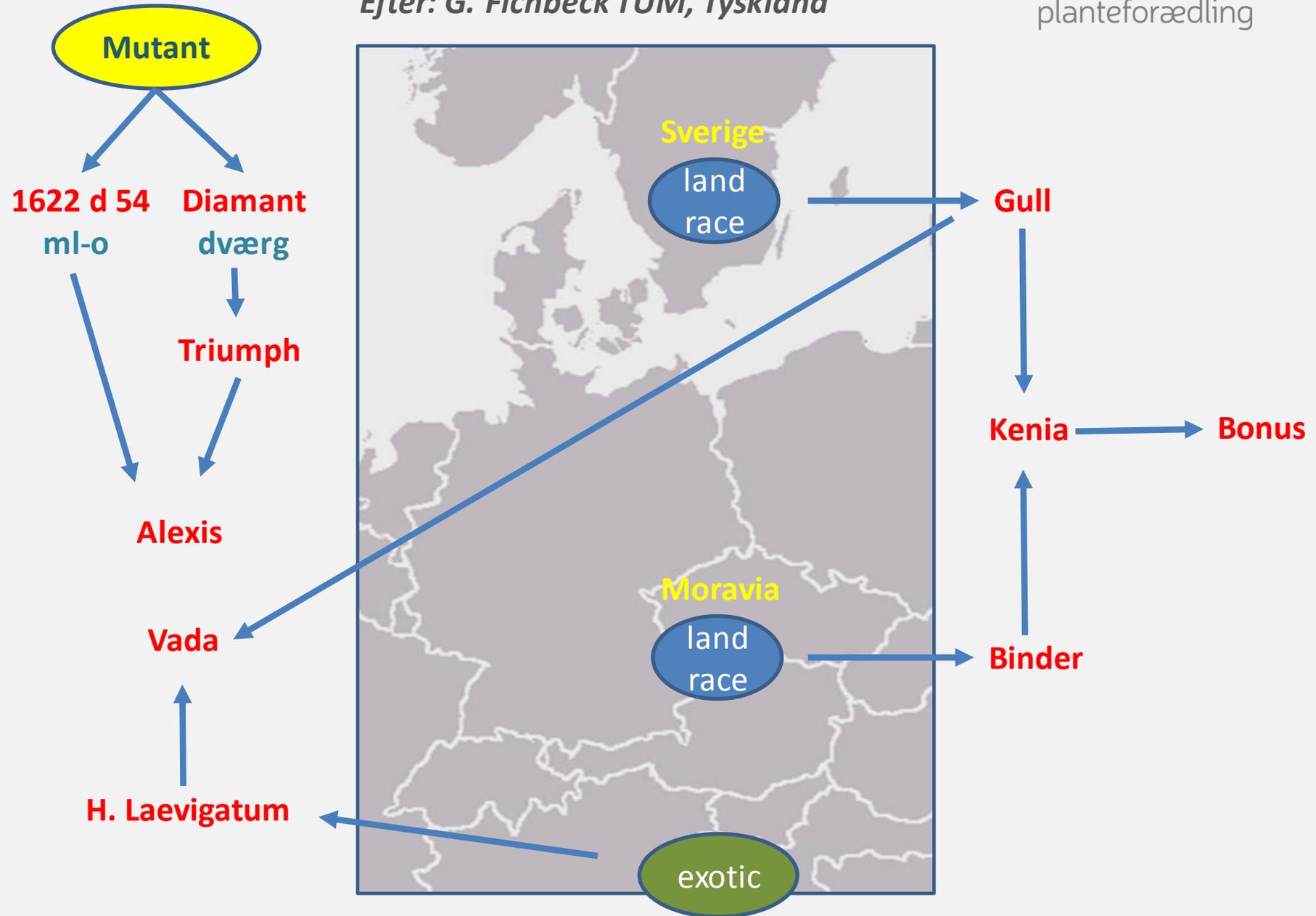


Nagoya kontra International Treaty

**Birger Eriksen formand for :
SAMMENSLUTNINGEN AF DANSKE SORTSEJERE**



Efter: G. Fichbeck TUM, Tyskland



There are two different international frameworks governing access and benefit sharing (ABS) of genetic resources:

Convention on Biological Diversity
CBD: Nagoya
covers all genetic resources (plants, animals, viruses etc.)

International Treaty on Plant Genetic Resources for Food and Agriculture
FAO: IT PGRFA
plant genetic resources relevant for food and agriculture

D-day

into force October 12th 2014

into force 2004

Convention on Biological Diversity

Bilateralt

Individuel kontrakt

Respekterer ikke breedere exemption

Begge internationale konventioner
Begge ABS systemer
Konkurrerer med hinanden

International Treaty on Plant Genetic Resources for Food and Agriculture

Multilateralt system

Standard MTA

Respekterer breedere exemption

breeder's exemption



Giver adgang til frit at krydse med beskyttede sorter

breeder's exemption

- ✓ *Genetiske ressourcer (tredje lande) bruges i europæisk forædling*
- ✓ *Disse genetiske ressource opkvalificeres gennem forædlingen-processen*
- ✓ *Stilles herefter frit til rådighed for tredje lande til videre brug - nu i dyrknings-værdige sorter*

Nagoya



for brug af genetiske ressourcer

EU court case Germany and Holland

ESA filed mid-December application to intervene

More specifically, the press release quotes **Ms Stephanie Franck**, President of the German Plant Breeders' Association (BDP) as follows:

“The EU Regulation leads to abundant red tape, restricts access to plant genetic resources in particular for plant breeders – meaning: its utilization in breeding- and by far exceeds the principles laid down in the Nagoya Protocol itself”.

Ms Franck stresses that German plant breeders give their unconditional support to the objective of fair benefit sharing between providers and users of genetic resources of the Nagoya Protocol. The EU Regulation implementing it, however, does not provide a viable solution. Real benefit sharing will only take place as long as plant breeders actually use the resources, i.e. **as long as access is not prevented by excessive bureaucratic hurdles.**

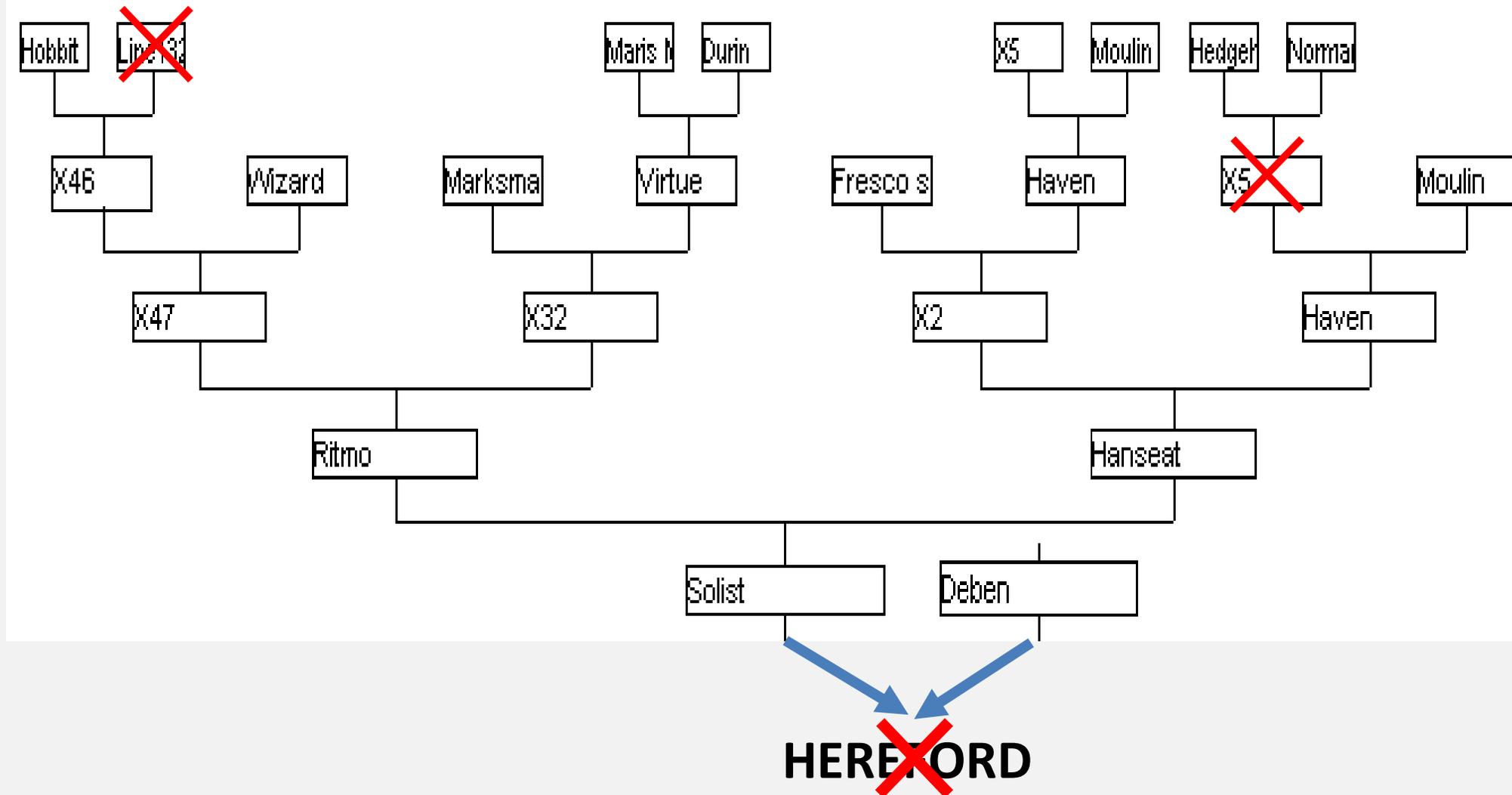
Plant breeding needs a special approach, explains Ms Franck, since utilization of a genetic resource in plant breeding is not comparable to other forms of utilization, as e.g. in the pharmaceutical industry. **The plant breeder can only uncover the value of genetic resources during the long breeding process, and therefore the direct utilization of genetic resources is not given.** “The exact documentation on the utilization of genetic resources as required by the EU Regulation is practically not feasible,” says Ms Franck.

The CIMMYT wheat variety **Veery** for example is a product of **3,170 crossings between 51 different parental lines originating from 26 different countries.** Such a plant variety has been developed over many generations and by many different plant breeders. “A plant breeder simply does not have the information required for documentation” Ms Franck adds.

Decision on admissibility first quarter 2015

- Ackermann Saatzeit
- Böhm Nordkartoffel Agrarproduktion
- Deutsche Saatveredelung AG
- Ernst Benary Samenzucht GmbH
- Freiherr von Moreau Saatzeit GmbH
- Gartenbau J. + H. Westhoff GbR
- HYBRO Saatzeit GmbH & Co. KG
- Klemm + Sohn GmbH & Co. KG
- KWS SAAT AG
- Norddeutsche Pflanzenzucht
- Nordsaat Saatzeitgesellschaft
- P. H. Petersen Saatzeit Lundsgaard GmbH
- PZO - Pflanzenzucht Oberlimpurg
- Saatzeit Streng-Engelen GmbH & Co. KG
- SaKa Pflanzenzucht GmbH & Co. KG
- Strube Research GmbH & Co. KG
- W. von Borries-Eckendorf GmbH & Co. KG

Afstamningstræ for vinterhvedesorten Hereford



CBD; Nagoya

Article 2(2)

where it states that “this Regulation does **not apply to genetic resources for which access and benefit-sharing is governed by specialized international instruments** that are consistent with, and do not run counter to the objectives of the Convention [the CBD] and the Nagoya Protocol.”

So for genetic resources belonging to **Annex I crops you don't even have to make a due diligence declaration under Article 7** of the Regulation because they are simply not in the scope of the Regulation

due diligence ... the **sMTA should be fine.**

FAO: IT PGRFA

13.2 d

De kontraherende parter er enige om, en modtager, som markedsfører et produkt, der er en plantegenetisk ressource for fødevarerbrug, **skal betale en rimelig andel af forfatterens andel af den samlede værdi af markedsføringen af dette produkt, medmindre produktet uden begrænsninger er tilgængeligt for andre med henblik på yderligere forskning og forædling,**

Respekterer Breeders exemption

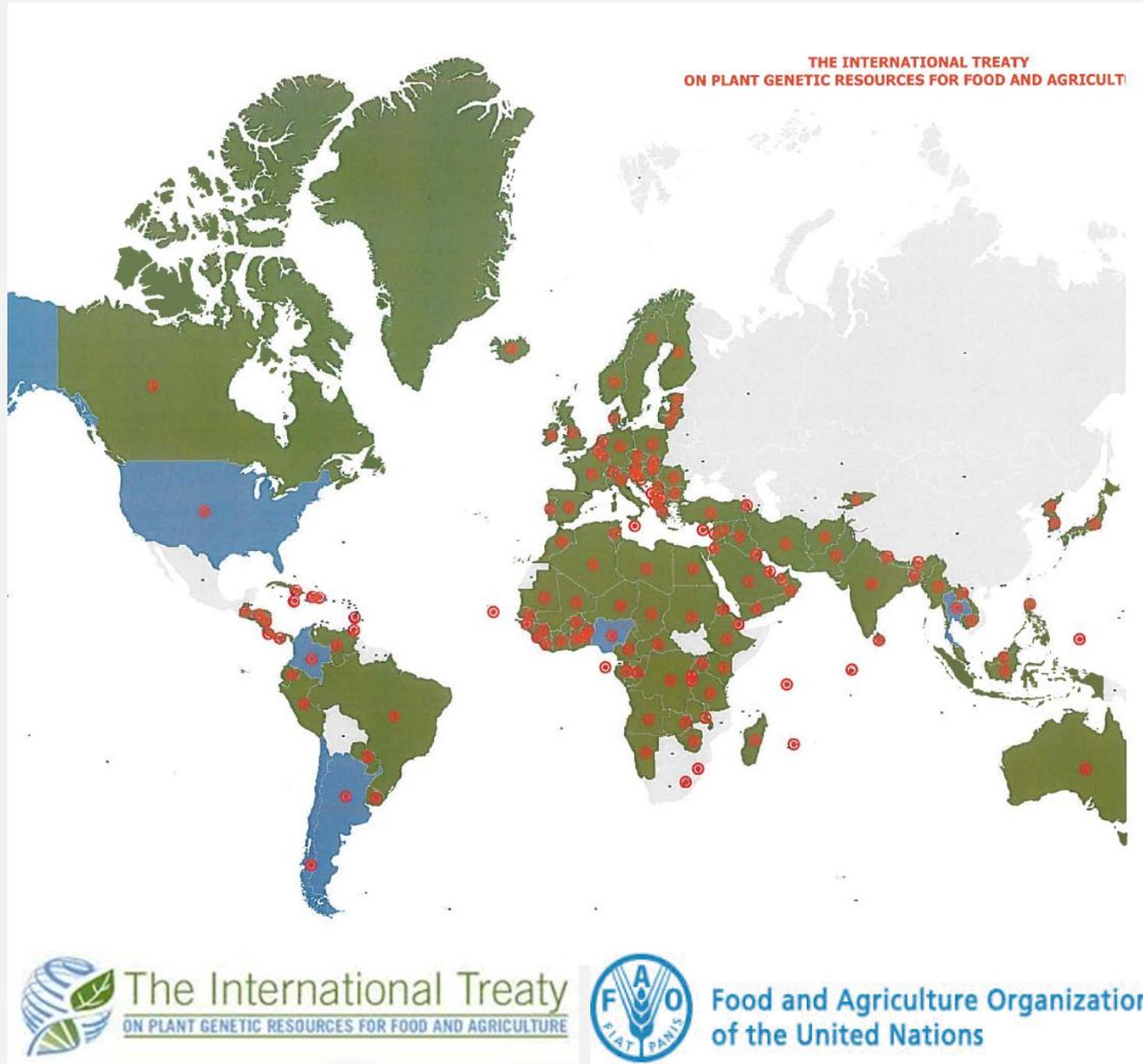


The International Treaty
ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE



Food and Agriculture Organization
of the United Nations

FAO: IT PGRFA



ANNEX I LIST OF CROPS COVERED UNDER THE MULTILATERAL SYSTEM

Food crops

Crop	Genus	Observations
Breadfruit	<i>Artocarpus</i>	Breadfruit only.
Asparagus	<i>Asparagus</i>	
Oat	<i>Avena</i>	
Beet	<i>Beta</i>	
Brassica complex	<i>Brassica</i> et al.	Genera included are: <i>Brassica</i> , <i>Amaracia</i> , <i>Barbarea</i> , <i>Camelina</i> , <i>Crambe</i> , <i>Dipltaxis</i> , <i>Euca</i> , <i>Lepidium</i> , <i>Raphanobras</i> , <i>Raphanus</i> , <i>Boissia</i> . This comprises various vegetable crops such as rapeseed, mustard, cress, 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>	
Apple	<i>Malus</i>	
Cassava	<i>Manihot</i>	<i>Manihot esculenta</i> only.
Banana / Plantain	<i>Musa</i>	Except <i>Musa textilis</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</i> et al.	Including <i>Agropyron</i> , <i>Elymus</i> , and <i>Secale</i> .
Faba Bean / Vetch	<i>Vigna</i>	
Cowpea et al.	<i>Vigna</i>	
Maize	<i>Zea</i>	Excluding <i>Zea peruviana</i> , <i>diploperennis</i> , and <i>Zea mays</i> .

raps

byg

kartofler

hvede

Hestebønner

Forages

Genera	Species
LEGUME FORAGES	
<i>Astragalus</i>	<i>chinensis</i> , <i>cicer</i> , <i>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</i> , <i>ciliolatus</i> , <i>hirsutus</i> , <i>ochrus</i> , <i>odoratus</i> , <i>sativus</i>
<i>Lespedeza</i>	<i>cuneata</i> , <i>striata</i> , <i>stipulacea</i>
<i>Lotus</i>	<i>comiculatus</i> , <i>subbiflorus</i> , <i>uliginosus</i>
<i>Lupinus</i>	<i>albus</i> , <i>angustifolius</i> , <i>luteus</i>
<i>Medicago</i>	<i>arboorea</i> , <i>falcata</i> , <i>sativa</i> , <i>scutellata</i> , <i>rigidula</i> , <i>truncatula</i>
<i>Melilotus</i>	<i>albus</i> , <i>officinalis</i>
<i>Onobrychis</i>	<i>viciifolia</i>
<i>Ornithopus</i>	<i>sativus</i>
<i>Prosopis</i>	<i>affinis</i> , <i>alba</i> , <i>chilensis</i> , <i>nigra</i> , <i>pallida</i>
<i>Pueraria</i>	<i>phaseoloides</i>
<i>Trifolium</i>	<i>alexandrinum</i> , <i>alpestre</i> , <i>ambiguum</i> , <i>angustifolium</i> , <i>arvense</i> , <i>agrocckenum</i> , <i>hybridum</i> , <i>incarnatum</i> , <i>pratense</i> , <i>repens</i> , <i>resupinatum</i> , <i>rupeppellianum</i> , <i>sempinosum</i> , <i>subterraneum</i> , <i>vesiculosum</i>
GRASS FORAGES	
<i>Andropogon</i>	<i>gayanus</i>
<i>Agropyron</i>	<i>crisatum</i> , <i>desertorum</i>
<i>Stolonica</i>	<i>stolonifera</i> , <i>tenuis</i>
<i>Styragurus</i>	<i>pratensis</i>
<i>Arrhenatherum</i>	<i>elatius</i>
<i>Dactylis</i>	<i>glomerata</i>
<i>Festuca</i>	<i>arundinacea</i> , <i>gigantea</i> , <i>heterophylla</i> , <i>ovina</i> , <i>pratensis</i> , <i>rubra</i>
<i>Lolium</i>	<i>hybridum</i> , <i>multiflorum</i> , <i>perenne</i> , <i>rigidum</i> , <i>temulentum</i>
<i>Phalaris</i>	<i>aquatica</i> , <i>arundinacea</i>
<i>Phleum</i>	<i>pratense</i>
<i>Poa</i>	<i>alpina</i> , <i>annua</i> , <i>pratensis</i>
<i>Piptisacum</i>	<i>laxum</i>
OTHER FORAGES	
<i>Atriplex</i>	<i>halimus</i> , <i>nummularia</i>
<i>Salsola</i>	<i>vermiculata</i>

kløver

rajgræs





Why the German court case?

The problem with Annex 1 of the Treaty is, that not all field crops are in there (**soybeans are NOT in the Annex 1, for example**). The second problem is that **all uses other than food or feed are principally NOT under Annex 1** even if the crop itself is listed in Annex 1. Example: **corn/maize is listed, but if used as a biomass crop for biogas, it is NOT under Annex 1.**

Therefore, the German court case is comprehensive, it includes ALL crops. This is anyway correct, since principally, Nagoya regulates all crops – the Treaty is just a special regulation under Nagoya. **And the Treaty is at risk, since some developing countries doubt that it is in their interest.**

FAO: IT PGRFA

Strategic Plan for the Implementation of the Benefit-sharing Fund of the Funding Strategy

The need for the Benefit-sharing Fund is determined by the global need for support in the following three priority areas:

- * Information exchange, technology transfer and capacity building;
- * Managing and conserving plant genetic resources on farm;
- * Sustainable use of plant genetic resources.

2009-2014	Year 1	Year 2	Year 3	Year 4	Year 5
<i>Cumulative target</i>	<i>\$10m</i>	<i>\$27m</i>	<i>\$50m</i>	<i>\$80m</i>	<i>\$116m</i>

Table 1: Global Plan of Action Estimates

Priorities of the Benefit-sharing Fund	Priority Activities of the Global Plan of Action	Option A	Option B	Option C
		In million USD		
1. Information exchange, technology transfer and capacity-building	15. Building strong national programmes	5.6	12.9	29.9
	19. Expanding and improving education and training	16.6	30.6	63.3
2. Managing and conserving plant genetic resources on farm	2. Supporting on farm management and improvement of plant genetic resources	7.5	17.2	37.0
3. The sustainable use of plant genetic resources	9. Expanding the characterisation, evaluation and number of core collections to facilitate use	9.4	16.4	31.4
	10. Increased genetic enhancement and base-broadening efforts	21.2	30.7	51.2
	11. Promoting sustainable agriculture through diversification of crop production and broader diversity in crops	5.3	9.0	18.5
	Total	65.6	116.8	231.3



FAO: IT PGRFA

For the financial period **2009 – 2014**, the financial plan did foresee an overall financial framework of **116 mio. USD**, which exclusively was expected from such voluntary financial contributions to be provided by **countries (ca. 80%), non-profit organisations (ca. 10%) and industry (ca. 10%)**.

In reality, only around **23% of this has been achieved up to today**.

Consequently, the Treaty is currently discussing a possible enhancement of its financial mechanism to generate the expected income in the future. Discussions on such enhancement shall be concluded in **fall 2015**.

Garlich v. Essen | Secretary General

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Rue du Luxembourg 23, 1000 Brussels, Belgium

Benefit sharing



Branchen bakker op om FAO's IT.

CBD; Nagoya

“The Nagoya Implementing Regulation” entered into force on 12 October 2014

Implementing acts for Articles 5, 7 and 8 not before October 2015

The European Commission organised a stakeholder Meeting on 9 December 2014 in order to inform stakeholders about the next steps and to

- present a **discussion paper on the implementing act** and its annexes that will be drafted for Articles 5, 7 and 8 of the Regulation with deadline for input on 9.1.2015

REGISTERED COLLECTIONS (Article 5)

MONITORING USER COMPLIANCE (Article 7)

BEST PRACTICES (Article 8)



REGISTERED COLLECTIONS (Article 5)

option practical and meaningful for collections and for users.

should **not be so burdensome** ... or even make it impossible for any collection to be registered.....conditions should remain attractive also for users of such collections.

MONITORING USER COMPLIANCE (Article 7)

Article 7 provides for two different checkpoints in time at which the declaration of due diligence

should be submitted: **at the stage of research funding (§1) and at the stage of final development (§2).**

Due diligence declaration at the stage of research funding (para. 1)

We believe that the Implementing Acts should restrict the applicability of paragraph 1 to recipients of **public research funding.**

Due diligence declaration at the stage of final development of a product (para. 2)

For cases where the declaration is to be filed upon application for a marketing authorization, the Implementing Acts should also foresee simplified declaration procedures depending on the different sectorial regulatory procedures, for instance when a **centralised marketing authorisation** is sought for a product or where a product is to be placed on several markets

BEST PRACTICES (Article 8)

(Article 3.10) of 'association of users', We believe that it is likely that few **associations** of users have powers to oversee the activities of their members



MONITORING USER COMPLIANCE (Article 7)

Further on, point (b)(iii) of this article requires users to **provide information on subsequent users of genetic resources.**

Final commercial products (plant varieties, which are also genetic resources) are freely available to any third party for research and development therefore **it is not possible to know who the subsequent users are.**

ESA is therefore of the opinion that in cases of breeding this obligation should only refer to subsequent users of the genetic resource **in the form as originally obtained**

In other words **when plant varieties available on the market**, which are otherwise free for further research and development, are accessed and utilized the **due diligence obligation** should not be necessary or **should be considered to have been fulfilled.**

Confirmation from the Commission needed

Eva Juul Jensen; Naturstyrelsen:

Seks branchespecifikke vejledninger til artikel 7

