

April 2014



# The International Treaty

ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE



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## Item 5 of the Provisional Agenda

### FIRST MEETING OF THE AD-HOC OPEN-ENDED WORKING GROUP TO ENHANCE THE FUNCTIONING OF THE MULTILATERAL SYSTEM

Geneva, Switzerland, 14-16 May 2014

### PREPARATIONS FOR FUTURE MEETINGS OF THE WORKING GROUP

*Note by the Secretary*

#### EXECUTIVE SUMMARY

1. This document provides an overview of matters that the Working Group may wish to take into account in preparing for its further meetings, based on latest information received about expressions of interest by Contracting Parties in hosting the third meeting. Two further meetings of the Working Group have been planned to fulfil the mandate provided by the Governing Body. The Working Group may wish to provide guidance on inputs and outputs expected for each meeting. The document discusses the timing for both meetings and the support required for holding the third meeting. The document then focuses on participation of observers in future meetings of the Working Group and on the Working Group's consultations with stakeholder groups on innovative approaches during the inter-sessional periods, as foreseen in Resolution 2/2013.

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## 1. INTRODUCTION

1. At its Fifth Session the Governing Body decided to establish, through Resolution 2/2013, this *Ad Hoc* Open-ended Working Group to Enhance the Functioning of the Multilateral System of Access and Benefit-sharing. The Working Group will develop a range of measures for consideration and decision by the Governing Body, at its Sixth Session, that will:

- (a) Increase user-based payments and contributions to the Benefit-sharing Fund in a sustainable and predictable long-term manner, and
- (b) Enhance the functioning of the Multilateral System by additional measures.

2. The Resolution 2/2013 specified that these two objectives were to be achieved in a subsequent manner. The accomplishment of these two objectives will be challenging, as there are a number of highly complex economic, legal and policy questions that will need to be tackled in the course of the biennium. At the same time, the decisions to be made by the Governing Body arising from the work of this Working Group could result in short and long-term improvements in the implementation of the Treaty.

3. Given the complexity and importance of the tasks in front of the Working Group, at least two more meetings during the 2014/2015 biennium have been envisaged in this document. The Governing Body indicated that, while the aim was to have at least two sessions in the biennium, any further necessary sessions would need to be covered by extra-budgetary funds.

4. This document seeks guidance from the Working Group on preparations for its future meetings during the 2014/2015 biennium. Besides timing, it first provides a summary of inputs and outputs for each meeting to organize the work of the group. It then analyses options to mobilize the resources and support needed to hold the third meeting of the Working Group.

5. Resolution 2/2013 emphasized that one the tasks of the Working Group was to consult stakeholder groups. The Working Group has to consider which stakeholders and other observers it may wish to invite at its next sessions and how it may wish to interact with stakeholders inter-sessionally.

## II. TIMING OF THE SECOND AND THIRD MEETINGS

6. The Secretariat has already explored possible dates for the second and third meetings of the Working Group with FAO Conference Services. The second meeting of the Working Group is to be scheduled before the end of 2014.

7. The Sixth Session of the Governing Body will take place in the third quarter of 2015. A third meeting of the Working Group will thus have to take place before mid-June 2015, given the need to translate documents in time for the Governing Body Session. For planning purposes, the third meeting is proposed to take place in May 2015.

8. The Working Group may wish to take note of tentative dates for its second (November 2014) and third meeting (May 2015).

## III. IDENTIFICATION AND SCHEDULING OF INPUTS AND OUTPUTS DURING THE BIENNIUM

9. In light of the complex and sequential tasks before the Working Group, the identification of inputs and outputs for each meeting of the Working Group is of utmost importance to guarantee decision-making on measures to enhance the functioning of the Multilateral System by the Governing Body at its Sixth Session. This section first takes stock of the main results expected of this first meeting of the Working Group to then provide a summary of inputs and outputs to be

achieved at its second and third meeting. The Working Group may wish to structure its work as follows:

### **Meeting 1 (the current meeting)**

10. The document *Background on the work undertaken by the Ad Hoc Advisory Committee on the Funding Strategy, and its further development*,<sup>1</sup> provides the Working Group with an overview of the state of development of the innovative approaches at the end of the last biennium. It also analyses:

- (1) The factors that the *Ad Hoc* Advisory Committee on the Funding Strategy identified as being behind the shortfall in user-based income for the Benefit-sharing Fund;
- (2) The performance of *The Strategic Plan for the Implementation of the Benefit-sharing Fund*, as it approaches the end of its first five-year period;
- (3) The key structural features that will need to be taken into account in developing innovative approaches.

11. On this basis, the outcomes that the Working Group may wish to attain in this meeting include:

- (1) Agreement on the concepts to guide the revisiting of SMTA articles 6.7 and 6.11;
- (2) Identification of further possible innovative approaches;
- (3) Identification of substantive legal and technical inter-sessional work required for Meeting 2 and 3;
- (4) Arrangements for discussions and consultations with stakeholder groups, including in particular users of plant genetic resources; the Working Group may wish to request its Co-chairs to continue existing discussions, and report to its second meeting;
- (5) Agreement on a plan of work for Meetings 2 and 3; and,
- (6) Identification of any specific information needed for Meeting 2.

### **Meeting 2**

12. At Meeting 2, in accordance with the decision of the Governing Body, the Working Group will consider how to increase user-based contributions to the Benefit-sharing Fund, through innovative approaches.

13. A number of important inputs will be available:<sup>2</sup>

- (1) The short, strategic and preliminary studies requested by the Governing Body:

- (a) A study estimating income to be expected from possible changes, consistent with the objectives of the Treaty, in the provisions governing the functioning of the Multilateral System;

The study will develop the economic methodologies established in the earlier study,<sup>3</sup> and will include quantified information, wherever possible, on the financial implications of each of the innovative approaches. A computer model to calculate income arising from different innovative approaches depending on

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<sup>1</sup> IT/OWG-EFMLS-1/14/3

<sup>2</sup> Some of these inputs will be subject to the availability of funding for the research required to produce them. Initial expressions of interest from donors to support the necessary work have been received.

<sup>3</sup> *Assessing the potential for monetary payments from the exchange of plant genetic resources under the Multilateral System of the International Treaty on Plant Genetic Resources for Food and Agriculture.*

different factors will be available at Meeting 2. The study will include information relevant to the possible extension of the crop coverage of the System; however, the Governing Body has decided that any substantive decision on this question will be addressed subsequently, at Meeting 3.

(b) A policy and legal study on the feasibility of such changes.

The information in this study will largely be for information in Meeting 2, as the relevant decisions will only be taken in Meeting 3.

(c) A study on how to enhance mechanisms for capacity-building, technology-transfer and information-exchange.

(d) An analysis of the factors that influence the willingness of stakeholder groups to make contributions to the Benefit-sharing Fund and to access plant genetic resources for food and agriculture from the Multilateral System.

This study will draw on the extensive discussions with a wide range of stakeholders that are ongoing.

(2) The outcome of continued discussions with stakeholders in the inter-sessional period.

(3) Based on Resolution 2/2013, a draft plan, prepared by the Secretary, to operationalize a strategy to stack different revenue streams, in order to provide an adequate flow of income to the Benefit-sharing Fund, in the short, medium and long term.

14. On this basis, the outcomes that the Working Group may wish to attain in Meeting 2 include:

(1) Review of each of the innovative approaches to be applied and combined in a stacked approach;

(2) Agreement in principle on the elements of the packet of innovative measures, and on the parameters to be followed in each case, with a request to the Secretariat to undertake any further technical work necessary;

(3) Initial discussion of a strategy to stack the innovative approaches and mix different revenue streams.

### **Meeting 3**

15. At Meeting 3, the Working Group would then be able to:

(1) Review and finalize each of the innovative approaches, on the basis of the technical work undertaken by the Secretariat upon request of Meeting 2;

(2) Consider additional measures to enhance the functioning of the Multilateral System, in particular by extending the crop coverage of the System;

(3) Consider the legal and policy implications for making the necessary changes;

(4) Draft and prepare for consideration and decision of the Governing Body at its Sixth Session the range of measures that it proposes, for the packet of innovative user-based approaches and other approaches;

(5) Give instructions for any technical work needed to support its proposals to the Governing Body.

16. The Working Group may wish to review the schedule provided for the delivery of inputs and outputs for its second and third meetings.

#### **IV. THIRD MEETING OF THE WORKING GROUP: HOSTING ARRANGEMENTS AND FINANCIAL SUPPORT**

17. As stated above, the Governing Body indicated that any further necessary sessions beyond the two first meetings of the Working Group will need to be covered by extra-budgetary funds. The Governing Body urged Contracting Parties to urgently provide support and financial resources, should these be needed, for the Working Group to be able to fulfil its mandate on schedule.

18. The Secretariat is exploring different options to support the realization of the third meeting of the Working Group, as follows:

- The Secretariat has reported to the Bureau of the Sixth Session of the Governing Body that it has received expressions of interest by two Contracting Parties with regard to the hosting of the second or the third meeting of the Working Group. Discussions with these Contracting Parties are on-going. At its first meeting, the Bureau of the Sixth Session welcomed the preliminary indication from Brazil that it may host the possible third meeting of the Working Group in the first semester of 2015. Under this option, Contracting Parties that will host the third meeting are expected to provide financial support for the meeting costs (facilities, interpretation, translation, ...) plus support to developing countries participation.
- There have been also contacts with donor Contracting Parties that may be interested in providing financial support for the running of the third meeting of the Working Group. Under this option, a donor or donors may provide financial support for running the third meeting using the United Nations facilities, either in Rome (Italy) or Geneva (Switzerland).
- A third option that has been successful in the past is to combine the support from a Contracting Party that will host the meeting, i.e. in a developing country, by providing the facilities and other support for the running of the meeting, with the financial support from another Contracting Party to cover part of the meeting costs and the support to developing country participation.

19. The Working Group may wish to urge Contracting Parties to urgently provide support and financial resources for the realization of the third meeting of the Working Group and it may wish to request the Secretary to keep the Working Group representatives up-to-date, during the inter-sessional period preceding the second meeting, about progress made to support the realization of the third meeting.

#### **V. OBSERVERS TO THE SECOND AND THIRD MEETINGS OF THE WORKING GROUP**

20. The Governing Body, through Resolution 2/2013, adopted the following with regard to Observers:

Contracting Parties which have no representatives on the Working Group may participate, upon request to the Secretariat, in the work of the Working Group, in an observer capacity.

For the Working Group's first meeting, the Bureau may invite up to two representatives each from the following groups, as observers:

- Civil society organizations;
- The seed industry;
- Farmers' organizations; and,
- The CGIAR Centres.

For its subsequent meetings, the Working Group may invite pertinent observers, and experts, as it feels appropriate.

Regional balance will be taken into account in inviting these observers. All observers and experts will speak at the invitation of the Co-chairs.

The Working Group may also choose to meet in a format of Contracting Party representatives, to make decisions which are of a governance nature.

21. In addition to the 27 membership representatives, the Working Group may wish to request the Secretary to invite the following categories of Observers to the second and third meetings of this Open-ended Working Group:

- **Contracting Party observers:** the Governing Body made it clear that Contracting Parties that are not Members may attend the meetings as Observers. Resolution 2/2013 remained silent about the number of representatives of a Contracting Party which is observing the meetings of the Working Group. The Working Group may wish to invite Contracting Parties who are observing the meetings to nominate, through request to the Secretariat, up to three representatives to future meetings of the Working Groups.
- **Stakeholder groups:** for the first meeting, the Governing Body requested the Bureau of the Sixth Session to invite two representatives from each from the following groups:
  - Civil society organizations;
  - The seed industry;
  - Farmers' organizations; and,
  - The CGIAR Centres.

For subsequent meetings the Governing Body envisaged broadening direct stakeholder participation and thus enabled the Working Group to invite as many stakeholder observers as it considers pertinent and appropriate. The Working Group may thus wish to invite as many pertinent stakeholders and experts as it feels appropriate in light of the Open-ended nature of the Working Group.

- **Non-Contracting Parties:** the Secretariat has received requests from non-Contracting Parties to attend meetings of the Working Group. Discussions on measures to enhance the functioning of the Multilateral System may influence positively in the ratification process in different countries so it is advisable to enable non-Contracting Parties to attend future meetings of the Working Group.
- **Intergovernmental Organizations:** throughout the negotiations of the Standard Material Agreement of the Multilateral System, representatives from a number of International Intergovernmental Organizations were invited to participate in the intergovernmental process to provide their expertise and technical assistance upon request. The following institutions that have partnership arrangements with the Governing Body or its Secretariat should be invited:
  - Secretariat of the Convention on Biological Diversity;
  - Secretariat of the Union for the Protection of New Plant Varieties;
  - World Intellectual Property Organization;
  - Secretariat of the Commission on Genetic Resources for Food and Agriculture.
  - United Nations Environment Programme.
- **Silent observers:** representatives from other international institutions that may wish to attend will be invited to follow the proceedings of the meetings.

22. Due to capacity constraints, the Working Group may wish to request that up to three representatives of any Observer may attend the second and third meetings of the Working Group. It may request the Co-Chairs to liaise with the Secretariat to further programme the participation of Observers to future meetings of the Working Group.

## VI. CONSULTATIONS WITH STAKEHOLDER GROUPS ON INNOVATIVE APPROACHES DURING THE INTER-SESSIONAL PERIOD

23. In Resolution 2/2013, the Governing Body defines as task (c) of the Working Group “to consult with relevant Stakeholders Groups” with the view of achieving enhanced access and increase fair and equitable sharing of benefits.<sup>4</sup>

24. In the same Resolution, the Governing Body

*“appealed to stakeholders who use plant genetic resources under the Treaty to ... assist the Working Group to develop innovative user-based approaches to realizing monetary benefit-sharing, within the context of the use of the Standard Material Transfer Agreement, and other innovative approaches that can contribute to an adequate and sustainable flow of resources to the Benefit-sharing Fund.”*<sup>5</sup>

25. The Governing Body also thanked the stakeholders who directly cooperated with the *Ad Hoc* Advisory Committee on the Funding Strategy in the last biennium in identifying possible innovative approaches to mobilizing resources for the Benefit-sharing Fund.

26. In the past biennium, the Committee engaged in direct consultation with stakeholders to explore novel ways to attract use-based voluntary funding, including a large group of vegetable breeders through an International Vegetable Licensing Platform (ILP). The Committee conducted these stakeholder consultations through multiple means, including: formal direct dialogue between stakeholder groups and the Committee as a whole during its regular plenary sessions; informal inter-sessional consultations of the Co-chairs with the stakeholder groups in closed dedicated meetings; informal consultations of the Co-chairs with stakeholder representatives on the margins of other meetings; written exchanges; teleconferences; and joint inter-sessional drafting exercises of the Co-chairs with stakeholder representatives to produce specific products requested by the Committee for its next meeting. These inter-sessional stakeholder consultations resulted in joint reports distributed to the Committee, and contained as Appendix to the Report of the first resumed meeting of the Committee.<sup>6</sup>

27. At its first meeting in March 2014, the Bureau of the Sixth Session of the Governing Body considered the preparations for the first Working Group meeting. The Bureau gave guidance that in the process surrounding the Working Group “welcoming the engagement of the various stakeholder groups in the process.”

28. Following these successful and productive direct interactions of the Committee with stakeholder groups during past biennia and the guidance of the Bureau, the Working Group might wish to request the Co-chairs to continue the established practice of consulting inter-sessionally with stakeholder groups to assist the Working Group in developing innovative approaches that can contribute to an adequate and sustainable flow of resources to the Benefit-sharing Fund; and request the Co-chairs to report back on progress made at the second meeting of the Working Group.

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<sup>4</sup> Resolution 2/2013, Part IV, paragraph 23.III(c)

<sup>5</sup> Resolution 2/2013, Part IV, paragraph 24

<sup>6</sup> [http://www.planttreaty.org/sites/default/files/gb5i4ea1\\_Resumed\\_ACF57\\_RES1.pdf](http://www.planttreaty.org/sites/default/files/gb5i4ea1_Resumed_ACF57_RES1.pdf)

## VII. GUIDANCE SOUGHT

29. The Working Group may wish to provide guidance on the preparations for future meetings of the Working Group, and in particular it may wish to:

- to take note of tentative dates for its second meeting (November 2014) and third meeting (May 2015);
- review and approve the schedule provided for the delivery of inputs and outputs for its second and third meetings, subject to the availability of resources;
- urge Contracting Parties to urgently provide support and financial resources for the realization of the third meeting of the Working Group and the preparatory work required for the second and third meetings. It may wish to request the Secretary to keep the Working Group representatives up-to-date, during the inter-sessional period preceding the second meeting, about progress made to support the realization of the third meeting;
- request the Secretary to invite the categories of Observers contained in paragraph 21 of this document to the second and third meetings of this Open-ended Working Group;
- request that up to three representatives of any Observer may attend the second and third meetings of the Working Group.
- request the Co-Chairs to liaise with the Secretariat to further programme the participation of Observers to future meetings of the Working Group.
- request the Co-chairs to continue the established practice of consulting inter-sessionally with stakeholder groups who are willing to assist the Working Group to develop innovative approaches that can contribute to an adequate and sustainable flow of resources to the Benefit-sharing Fund, and request the Co-chairs to report back on progress made at the second meeting of the Working Group.