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FOR FOOD AND AGRICULTURE

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Item 8 of the Provisional Agenda

SIXTH SESSION OF THE GOVERNING BODY

Rome, Italy, 5-9 October 2015

**CONSOLIDATED REPORT ON THE DELIBERATIONS OF THE *AD HOC* OPEN-
ENDED WORKING GROUP
TO ENHANCE THE FUNCTIONING OF THE MULTILATERAL SYSTEM,
DURING THE 2014–2015 BIENNIUM**

The Working Group met four times during the biennium, with its fourth meeting on 2 October, immediately preceding the Sixth Session of the Governing Body.

Given the time required for translation and document processing, and in order to provide the Governing Body, in good time, with the Working Group's conclusions and recommendations resulting from its deliberations during the 2014–2015 biennium, the Report of the third meeting (1–5 June 2015) was submitted to the Governing Body, as document IT/GB-6/15/6.

However, in the light of the substantial progress that was achieved in the third session, the Bureau decided that a fourth meeting of the Working Group should be held on 2 October 2015, to take advantage of the presence of most of its members at the session of the Governing Body, and the current *Consolidated Report* has been updated to reflect the outcome of this fourth meeting. It replaces the earlier documents IT/GB-6/15/6 and IT/GB-6/15/6 Rev.1.

I. INTRODUCTION

1. At its Fifth Session, the Governing Body established the Working Group, by Resolution 2/2013, with the mandate :

To 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. Line (a) and line (b) were to be addressed in subsequent meetings, respectively.

3. The Governing Body requested the preparation of a number of short, preliminary studies,¹ on the basis of which the Working Group would:

- (a) *Review the functioning of the Multilateral System and the SMTA, in particular, the benefit-sharing provisions of the SMTA;*
- (b) *Analyse the options to enhance the functioning of the Multilateral System;*
- (c) *Consult with relevant Stakeholder Groups; and*
- (d) *Draft and prepare for consideration and decision of the Governing Body the range of measures that it proposes.*

4. At its first meeting, the Working Group elected Mr Modesto Fernandez (Cuba) and Mr Bert Visser (The Netherlands) as its two Co-Chairpersons. It held four meetings, during the biennium.²

5. The Working Group reviewed the progress that has been made during the biennium, in the development of the measures by which the functioning of the Multilateral System could be enhanced. These are:

- I. Increase the availability of plant genetic resources for food and agriculture through the Multilateral System;*
- II. Strengthen non-monetary benefit-sharing mechanisms, such as capacity-building, technology transfer and information exchange;*
- III. Develop a Subscription Model/System for users of plant genetic resources for food and agriculture under the Treaty;*

¹ IT/OWG-EFMLS-2/14/3. Synoptic Study 1: Estimating Income To Be Expected From Possible Changes In The Provisions Governing The Functioning Of The Multilateral System.

IT/OWG-EFMLS-2/14/4. Synoptic Study 2: Policy And Legal Study On The Feasibility And Effects Of Changes To The Multilateral System.

IT/OWG-EFMLS-2/14/5. Synoptic Study 3: An Analysis on How To Enhance Mechanisms For Capacity-Building, Technology-Transfer And Information-Exchange.

IT/OWG-EFMLS-2/14/6. Synoptic Study 4 : Consultation with Stakeholder Groups.

All these documents are available on line at <http://www.planttreaty.org/content/second-meeting-ad-hoc-open-ended-working-group-enhance-functioning-multilateral-system-acces>.

² First meeting, 14–16 May 2014; second meeting, 8–11 December 2014; third meeting, 1–5 June 2015; fourth meeting, 2 October 2015.

IV. *Other improvements to the SMTA to increase user-based payments and make it more user-friendly;*

V. *Other ways to enhance income to the Benefit-sharing Fund in a sustainable and predictable long-term manner; and,*

VI. *Expand the access and benefit-sharing provisions of the Treaty.*

6. The Working Group noted that not all tasks under the mandate had been finalised, and agreed to recommend that the Governing Body complete the package of measures, as described below. The Working Group welcomed the submissions received from Members of the Working Group, regional groups, and stakeholders, which, for ease of reference are contained in IT/OWG-EFMLS-4/15/Inf.3, *Submissions received by the Working Group during the biennium, in preparation for the subscription system and the Draft Revised Standard Material Transfer Agreement.*

7. The Working Group accordingly concentrated on the further development of a possible Subscription Model/System, as all Regions expressed substantial support for such a measure. It therefore developed a list of elements that could be part of a Subscription Model/System and identified alternative features yet to be resolved.

8. The Working Group discussed ways in which a Subscription Model/System could be developed and implemented, and agreed that a step-by-step approach should be followed. The first step would be the incorporation of the Subscription Model/System into a revised SMTA, primarily through the revision of Article 6.11.

9. To enable the adoption by the Governing Body, at its Sixth Session, of a revised SMTA that includes provision for the Subscription Model/System, the Secretariat was requested to prepare a revised SMTA, a Registration Form, and other relevant materials.

10. At its final session, held on 2 October 2015, back-to-back with the Sixth Session of the Governing Body, the Working Group took note of the documents that had been prepared, by the Secretariat:

- *Draft revised Standard Material Transfer Agreement;*³
- *Commentary on Structural Elements for the Development of a Subscription Model/System;*⁴
- *Possible objectives and elements of a Protocol to the International Treaty;*⁵
- *Exploring a proposal to develop a mechanism of contributions by Contracting Parties to the Benefit-Sharing Fund.*⁶

11. The Working Group discussed the introductory part of the draft SMTA as prepared by the Secretariat, and during that discussion, observations were made with regard to paragraphs 2 and 3 of this introduction.

12. Members of the Working Group also made some comments on the substantive parts of the SMTA.

³ IT/OWG-EFMLS-4/15/3

⁴ IT/OWG-EFMLS-4/15/4

⁵ IT/OWG-EFMLS-4/15/Inf. 4

⁶ IT/OWG-EFMLS-4/15/Inf.5.

II. CONCLUSIONS AND RECOMMENDATIONS

13. The Working Group has discussed in considerable detail a number of elements that need to be addressed in the final package of measures to be prepared for the consideration and decision by the Governing Body.

14. While there is substantial agreement on a number of elements — in particular the interest in establishing a Subscription Model/System, as the primary payment mechanism in the Treaty's access and benefit-sharing system — consensus has not yet been reached on certain elements, where various options remain for consideration.

15. The fact that many actors are involved in the process — governments of Contracting Parties to the Treaty, as well as the seed sector and farmers organizations— requires the development of sound mechanisms, able to attract more providers and users and to enhance the functioning of the Multilateral System, which take into account the many developments over the fourteen years since the adoption of the Treaty.

16. The Working Group recalls that the Multilateral System has not achieved all objectives for which it was constructed. While it has made good improvement regarding access with an increasing number of SMTAs, it has not achieved its monetary benefit-sharing functions, and availability under the MLS. To date, there has been no SMTA-based payment to the Benefit-sharing Fund. A failure to overcome the structural problems in the current working of the Multilateral System will put the future of the Treaty as a whole at risk.

17. It further agrees that these structural problems, such as transaction costs, the avoidance of SMTA material and the problem of voluntary payments, alternative sources of materials, the variation of the levels of payment, and different categories of recipient, cannot be overcome by revision of the SMTA alone, but recognizes some immediate changes could be done to make early progress on this.

18. The Working Group accordingly *recommends* to the Governing Body at its Sixth Session that it consider how the remaining work can best be concluded. Elements of the remaining work are identified below.

19. The Working Group *recommends* to the Governing Body that the following documents would be part of the basis for continuing its work during the next biennium:

- *Draft revised Standard Material Transfer Agreement*,⁷ which is contained in *Appendix 1* of this Report;
- *Commentary on Structural Elements for the Development of a Subscription Model/System*,⁸ which is contained in *Appendix 2* of this Report;
- *Possible objectives and elements of a Protocol to the International Treaty*,⁹ which is contained in *Appendix 3* of this Report;

⁷ IT/OWG-EFMLS-4/15/3.

⁸ IT/OWG-EFMLS-4/15/4.

⁹ IT/OWG-EFMLS-4/15/Inf.4.

- *Exploring a proposal to develop a mechanism of contributions by Contracting Parties to the Benefit-Sharing Fund,*¹⁰ which is contained in Appendix 4 of this Report;
- *Submissions Received by the Working Group during the biennium, in preparation for the Subscription System and the draft revised Standard Material Transfer Agreement.*¹¹

20. The Working Group **draws attention** to the textbox that follows, which contains the *Proposed tasks for further work* that it proposes undertaking in the 2016-2017 biennium, as complemented by the Addendum to this report. The Working Group believes that, on the basis of these and other documents and these proposed tasks, a coherent packet of measures could be prepared for consideration for adoption by the Governing Body, at its Seventh Session. It therefore **recommends** to the Governing Body that its mandate be extended for the forthcoming biennium.

21. In this context, the Working Group notes that, as the Funding Strategy adopted by the Governing Body provides, the resources under its direct control— that is, the Benefit-sharing Fund — include both user-based income and contributions by Contracting Parties and stakeholders, and **recommends** that all such sources be addressed together in a package of measures, taking into account that the Benefit-Sharing Fund is part of the broader Funding Strategy of the Treaty.

22. The Working Group **recommends** a further process, to address current concerns regarding structural components of the Treaty, such as: the Funding Strategy, the Global Information System, the promotion of sustainable use, and Farmers' Rights, as well as the relationship with the implementation of the Nagoya Protocol. The strengthening of such components will support the enhancement of the Multilateral System. This will require some far-reaching decisions by the Governing Body, on the basis of which new mechanisms can be developed in a more complete form.

Proposed tasks for further work

- a. As a first step, to elaborate the elements for a Subscription Model/System for user-based payments within the Multilateral System, which encourages the extensive use of the plant genetic resources for food and agriculture it contains, and therefore ensures sustainable and predictable income to the Benefit-sharing Fund, by revising the current SMTA.
 - i. [To design the Subscription Model/System as the benefit-sharing mechanism following access to the plant genetic resources for food and agriculture in the Multilateral System.]
 - ii. [To also explore an alternative benefit-sharing mechanism for occasional access to, and use of, individual samples from the Multilateral System. To design this alternative mechanism in such a way that:

¹⁰ IT/OWG-EFMLS-4/15/Inf.5.

¹¹ IT/OWG-EFMLS-4/15/Inf.3.

1. [all commercialization of products derived from materials received will lead to mandatory benefit-sharing, as in the current SMTA Article 6.7, possibly against different rates.] OR
 2. [voluntary benefit-sharing is retained as the payment option for products freely available for further research, breeding and training, as in the current SMTA Article 6.8.]]
- iii. For each benefit-sharing mechanism proposed, to overcome the stumbling blocks to use of germplasm from the Multilateral System that have been identified, including the lack of termination provisions in the SMTA.
- b. This first step should include consideration of payment rates within the Treaty's access and benefit-sharing, taking into account the role of the Contracting Parties.
- c. As a second step, to prepare a draft [amendment to the Treaty] / [Protocol to the Treaty] completing the Subscription Model/System and extending the crop coverage to [the scope of the Treaty itself, namely all plant genetic resources for food and agriculture,] [a defined list of crops], in harmony with enhanced benefit-sharing provisions.
- d. To explore a proposal to develop a mechanism of contributions by Contracting Parties that will ensure sustainable and predictable income to the Benefit-Sharing Fund and other elements of the Funding Strategy, such as an amendment to the Funding Strategy.
- e. To propose a target for the income to the Benefit-sharing Fund for the 2018–2023 period, that is meaningful and realistic, recognizing that the opinions of how to arrive at the target still show divergence. The target should be based on such factors as: the current amount needed for the project cycle, allowing for incremental growth, in each cycle; a needs analysis that takes into account information sources such as the FAO *The Global Plan of Action on Plant Genetic Resources for Food and Agriculture*.
- f. To explore the consolidation of a long-term investment strategy for the Benefit-sharing Fund.

23. The Working Group further notes that it has not yet been possible to provide reasoned estimates of the likely income to the Benefit-sharing Fund that could result from the various payment options, because user-based income will depend first and foremost upon the attractiveness of the revised Multilateral System and the actual willingness of users to access material from the Multilateral System. Reasoned estimates will support meaningful decision-making. It therefore **recommends** that, in further developing the payment options, users be requested to express their willingness to use such options, and in this context project the likely income to the Benefit-sharing Fund.

24. In the context of mobilizing donor support to activities under the Benefit-sharing Fund, the Working Group **recommends** that the Governing Body reconsider the current arrangements for projects carried out in the framework of the Benefit-sharing Fund, by strengthening the programmatic approach, in order to make support to the Benefit-sharing Fund more attractive:

1. By providing greater predictability to prospective donors, regarding the planned activities and targeted outputs and impacts of proposed projects, in order to enable them to make informed decisions regarding their potential contributions;

2. By improving thematic coherence between individual projects, and project cycles;
 3. By developing a long-term investment strategy, with objectives and results;
 4. By promoting synergy between the Benefit-sharing Fund and the Funding Strategy, of which the Benefit-sharing Fund is a part; and
 5. By considering the feasibility and desirability of a donor council, or some similar body, to support the implementation of the Treaty.
25. The Working Group draws to the attention of the Governing Body that currently known income to the Benefit-sharing Fund is not adequate to maintain the forthcoming fourth project cycle at anything like the current levels. It therefore recommends that the Governing Body call on Contracting Parties to contribute funds to the Benefit-Sharing Fund on an ad hoc interim basis, for the years 2015–2017, in order to maintain momentum in the reshaping of the Multilateral System.

III. PROPOSED MEETING OF THE WORKING GROUP DURING THE SIXTH SESSION OF THE GOVERNING BODY

26. Provision has been made for the Working Group to be able to meet on three evenings during the session of the Governing Body, after approval by the Governing Body. It *requests* the agreement of the Governing Body to doing so, with the object of preparing its work in the next biennium, and finalizing Draft Resolution 1/2015, *Measures to enhance the functioning of the Multilateral System of Access and Benefit-Sharing*, and Resolution 2/2015, *Implementation of the Funding Strategy of the International Treaty*, for the consideration of the Governing Body in the adoption of its report.

LIST OF APPENDIXES

Appendix 1: Draft revised Standard Material Transfer Agreement ([IT/OWG-EFMLS-4/15/3](#))

Appendix 2: Commentary on Structural Elements for the Development of a Subscription Model/System ([IT/OWG-EFMLS-4/15/4](#))

Appendix 3: Possible objectives and elements of a Protocol to the International Treaty ([IT/OWG-EFMLS-4/15/Inf.4](#))

Appendix 4: Exploring a proposal to develop a mechanism of contributions by Contracting Parties to the Benefit-Sharing ([IT/OWG-EFMLS-4/15/Inf.5](#))

Appendix 5: Submissions Received by the Working Group during the biennium, in preparation for the Subscription System and the draft revised Standard Material Transfer Agreement ([IT/OWG-EFMLS-4/15/Inf.3](#)).

ADDENDUM

FEATURES OF A SUBSCRIPTION SYSTEM

The following features of a subscription system have been presented by members of the Working Group. These have not been agreed by the Working Group.

- Contribution to benefit-sharing/increasing user-based payments to the Benefit-sharing Fund/effective mechanism;
- Reduced tracking or tracing of plant genetic resources for food and agriculture, after signing of the SMTA, accessed through the Subscription System related to the Multilateral System;
- Reduced transaction costs/easy to use/simple options menu;
- Providing legal certainty to users;
- Containing a termination clause to the subscription agreement.

All members of the WG-EFMLS support the elaboration of a Subscription System. Views on further features differ amongst the membership.

Major issues regarding the elaboration of a subscription system

1. The Subscription System might be the only access mechanism, or it might operate in parallel with a 6.7/6.8-based access mechanism. If parallel access mechanisms are offered, there may be differentiated payment rates.
2. Some members support to keep 6.8 as a voluntary payment option that does not require monetary benefit-sharing.
3. The Working Group has not yet decided on whether a termination clause might be applied also to plant genetic resources for food and agriculture accessed outside the subscription system.
4. The Working Group has not yet decided on the options of crop-based subscription vis-à-vis all-crops subscription. Some members feel this can best be decided in a later stage.
5. Some members feel that a differentiation among user categories is not justified, whereas others wish to exempt some users from payment obligations.
6. The Working Group has not yet discussed whether a subscription system should be governed by an international legal instrument (amendment to the SMTA/amendment to/Protocol of the Treaty).