

Chemin du Reposoir 7  
1260 Nyon, Switzerland  
Phone: +41 22 365 44 20  
Fax: +41 22 365 44 21  
E-mail: [isf@worldseed.org](mailto:isf@worldseed.org)  
<http://www.worldseed.org>

Mr. Shakeel Bhatti  
Secretary General  
ITPGRFA  
Viale delle Terme di Caracalla,  
00153 Rome  
Italy

Nyon, 4 April 2016

**Ref NCP GB7-004: ISF's inputs as contribution to the work of the *Ad Hoc* Open-Ended Working Group to Enhance the Functioning of the Multilateral System (MLS) of Access and Benefit-Sharing – Termination clause**

Dear Mr. Bhatti,

ISF would like to take the opportunity to provide you with the input of the seed industry on the specific topic of the Termination clause addressed by one of the Friends of Co-Chair Group. Recall that we earlier provided two Discussion Papers (March 2015 and June 2015) in which foundational principles were presented and the issue of Termination was developed. On the issue of Termination, ISF still feels that a user-friendly sMTA and subscription system must be flexible and provide the option to voluntarily terminate after a period of time. We recognize that some rights and obligations should not expire upon termination. Information is provided below that outlines some concerns that need to be reflected in an improved sMTA.

The main concerns of the seed industry include:

- Possibility to terminate the sMTA. Currently, the duration of the sMTA is linked to the duration of the Treaty, without a possibility for the recipients to terminate the sMTA voluntarily. Some recipients are, however, reluctant to accept the sMTA if there is no termination option included, because business contracts typically foresee an option for termination. To make the sMTA more user-friendly, ISF believes that a voluntary termination option should be included, providing recipients the right to terminate the sMTA if they desire to do so. At the same time, ISF believes that such voluntary termination option should be sufficient to make the sMTA more user-friendly.

- Expiration of article 6.7 payment obligations. To make the sMTA more attractive and increase the use of the Multilateral System is limiting the duration of the payment obligation. A perpetual payment obligation is one reason why some recipients may not accept the sMTA. ISF feels that the rights and obligations of the recipients would be more balanced if the payment obligations would expire twenty years after the recipient has signed the sMTA.
- No more tracking and tracing obligations. Not only the perpetual payment obligation, but also the perpetual tracking and tracing obligation is often heard as a reason not to accept the sMTA. Once the sMTA is terminated, it is essential that a seed company user maintains the right to work with PGRFA under development. But after a certain point the user should no longer be obligated to include a sMTA when he wishes to transfer such PGRFA under development to another party. Such obligation should end twenty years after the recipient has signed the sMTA.
- A subscription system to the multilateral system. The seed industry agrees that it is important to put in place a subscription system where monetary benefits are paid on a yearly basis, and access to the PGRFA from the multilateral system is guaranteed. Elements of a user-friendly subscription system could include:
  - it should be for a term of ten years;
  - after the initial ten years, the subscription will be automatically renewed on a year to year basis, unless the subscriber indicates before the date of renewal that he wants to terminate the subscription; [NB: seed companies will be incentivized to renew subscriptions only if countries bring more and different PGRFA into the MLS];
  - premature termination because of specific grounds (such as bankruptcy, discontinuing of the business) should be possible;
  - seed companies must maintain the right to breed with material under development, developed under a subscription, once the subscription is terminated.

In conclusion, ISF wishes to suggest some modifications to the termination provisions from the Draft revised sMTA proposed by the *ad hoc* Working group to enhance the functioning of the multilateral system at its 4<sup>th</sup> meeting:

“9.2 **This Agreement** has a minimum duration of 10 years. Once the minimum duration of 10 years has expired, the **Recipient** has the right to terminate **this Agreement** by informing the **Governing Body** in writing, taking into consideration a termination period of 6 months.”

Moreover, an additional sub article should be added reading as follows:

“9.x In case of termination of **this Agreement**, the **Recipient** shall no longer be allowed to use or transfer the **Material** in the form received. In case the **Recipient** still has any **Material** in the form received in its possession, the **Recipient** shall contact the **Provider** to discuss the possibility of returning the **Material** in the form received. Termination of **this Agreement** shall not affect the rights of **the Recipient** with regard to both the **Plant Genetic Resources for Food and Agriculture under Development** as well as the **Products**. “

In addition, ISF would like to highlight an additional concern related to the treatment of existing sMTA. ISF is of the opinion that there should not be any retroactivity. Any sMTA signed before the new sMTA enters into force should remain the same unless the receiver of the sMTA desires otherwise. The new obligations should only apply to sMTA signed after the entry into force of the new model.

Thank you in advance for your attention on these matters of particular importance for the seed industry and we are staying at your disposal in case you have any questions.

With my best regards,



Michael Keller  
Secretary General