



# The International Treaty

ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE



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## Item 9 of the Provisional Agenda

### FIFTH SESSION OF THE GOVERNING BODY

Muscat, Oman, 24-28 September 2013

### REPORT ON THE IMPLEMENTATION OF THE FUNDING STRATEGY

*Note by the Secretary*

#### EXECUTIVE SUMMARY

1. By its Third Session, the Governing Body had already adopted the Funding Strategy of the International Treaty and its four accompanying annexes. The Governing Body welcomed the *Strategic Plan for the implementation of the Benefit-sharing Fund of the Funding Strategy (Strategic Plan)*, at its Third Session. At its Fourth Session, the Governing Body adopted interim procedures for disbursement and for reporting, monitoring and evaluation for the Benefit-sharing Fund.<sup>1</sup> This document reports on progress made in the implementation of the Funding Strategy since the Fourth Session of the Governing Body.
2. The Report provides an update on resource mobilization efforts for the Benefit-sharing Fund and the implementation of the *Strategic Plan*. It focuses in particular on the preparatory activities carried out by the *Ad Hoc* Advisory Committee on the Funding Strategy to enable that the Governing Body, at its Fifth Session, can begin to take all possible measures, including innovative approaches, that could address the shortfall accumulated in the Benefit-sharing Fund and create predictable and sustainable resources for the Fund. The document then summarizes progress made in the further operationalization of the Benefit-sharing Fund, in particular with the review of the Operational Procedures. It also addresses other elements of the Funding Strategy, in including resources not under the direct control of the Governing Body. It concludes by providing a brief analysis of the intergovernmental work that needs to be undertaken in the next intersessional period.
3. A draft Resolution on the implementation of the Funding Strategy is provided in document IT/GB-5/13/7 Add.3. The Governing Body is requested to provide guidance on future resource mobilization efforts. The Governing Body may also wish to provide guidance on the further operationalization of the Benefit-sharing Fund. The Draft Resolution also contains possible measures to further address those resources of the Funding Strategy not under the direct control of the Governing Body.

<sup>1</sup> For a compilation of all the texts related to the Funding Strategy, including the Resolutions adopted by the Governing Body, see: [ftp://ftp.fao.org/ag/asp/planttreaty/publi/funding\\_strategy\\_compilation\\_en.pdf](ftp://ftp.fao.org/ag/asp/planttreaty/publi/funding_strategy_compilation_en.pdf)

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## I. INTRODUCTION

1. Pursuant to Article 18 of the Treaty, the Contracting Parties undertake to implement a funding strategy for the implementation of the Treaty. By its Third Session, the Governing Body had already adopted the Funding Strategy of the International Treaty and its four accompanying annexes. This document reports progress in the implementation of the Funding Strategy of the Treaty, with a special focus on the Benefit-sharing Fund that holds the resources under the direct control of the Governing Body.

2. Since the adoption of the Funding Strategy, the Governing Body has striven to improve the implementation of the Funding Strategy. This document deals with general policy related to the Funding Strategy that is not exclusive to the execution of a particular round of the project cycle of the Benefit-sharing Fund. The document *Report on the execution of the project cycle of the Benefit-Sharing Fund since the Fourth Session of the Governing Body*<sup>2</sup> focuses on matters relevant to the Governing Body on the execution of the rounds of the project cycle since its last Session (March 2011).

3. The document and draft Resolution have been organized following the same structure as in the Third and Fourth Sessions of the Governing Body:

- resource mobilization efforts, including on innovative approaches;
- operation of the Benefit-sharing Fund;
- monitoring of the implementation of the overall Funding Strategy, including resources not under the direct control of the Governing Body.

4. There are three addenda to this Report. The first addendum provides the reviewed Operational Procedures for the Benefit-sharing Fund.<sup>3</sup> The second addendum contains elements for a mid-term programmatic approach for the Benefit-sharing Fund.<sup>4</sup> The third addendum provides the draft Resolution on the implementation of the Funding Strategy.<sup>5</sup> There are further working and information documents in support of this document:

- Report from the Global Crop Diversity Trust.<sup>6</sup>
- Report of the Seventh meeting of the *Ad Hoc* Advisory Committee on the Funding Strategy.<sup>7</sup>
- Report of the resumed session of the Seventh meeting of the *Ad Hoc* Advisory Committee on the Funding Strategy.<sup>8</sup>
- Report of the second resumed session of the Seventh meeting of the *Ad Hoc* Advisory Committee on the Funding Strategy.<sup>9</sup>

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<sup>2</sup> IT/GB-5/13/8

<sup>3</sup> IT/GB-5/13/7 Add.1

<sup>4</sup> IT/GB-5/13/7 Add.2

<sup>5</sup> IT/GB-5/13/7 Add.3

<sup>6</sup> IT/GB-5/13/15

<sup>7</sup> IT/GB-5/13/Inf. 4

<sup>8</sup> IT/GB-5/13/Inf. 4 Add.1

<sup>9</sup> IT/GB-5/13/Inf. 4 Add.2

- Report on lessons learned during the execution of the First and Second Rounds of the Project Cycle.<sup>10</sup>
- Report on the First Round of the Project Cycle of the Benefit-sharing Fund.<sup>11</sup>

5. At its Fourth Session, the Governing Body decided to delegate the authority for the execution of the project cycle during the biennium 2012/2013 to the Bureau of the Fifth Session of the Governing Body. The document *Report from the Chairperson of the Fifth Session of the Governing Body*<sup>12</sup> may contain relevant information related to the matters discussed in this document.

## II. REPORT ON THE BENEFIT-SHARING FUND

### A. RESOURCE MOBILIZATION: IMPLEMENTATION OF THE *STRATEGIC PLAN FOR THE IMPLEMENTATION OF BENEFIT-SHARING FUND AND INNOVATIVE APPROACHES*

#### Strategic Plan for the implementation of the Benefit-sharing Fund

6. At its Third Session, the Governing Body of the Treaty welcomed the *Strategic Plan for the implementation of the Benefit-sharing Fund* and agreed that it will constitute the basis for the implementation of the Fund. The *Strategic Plan* established funding targets for the Benefit-sharing Fund. To date, funds mobilized amount to USD 15.8 million. The following Contracting Parties and donors had contributed to the Benefit-sharing Fund:

Donor	Level (US\$)
EU	6.5 million
Italy	2.77 million
Spain	2.35 million
IFAD	1.5 million
Australia	870,000
Ireland	660,000
Germany	585,000
Norway	537,000
Switzerland	28,612
Canada	1,211

7. At its Seventh Session, the Ad-Hoc Advisory Committee on the Funding Strategy noted with concern that the Contracting Parties were not meeting the targets which they had set for

<sup>10</sup> IT/GB-5/13/Inf. 10

<sup>11</sup> IT/GB-5/13/Inf. 11

<sup>12</sup> IT/GB-5/13/3.

themselves in the Strategic Plan for the implementation of the Benefit-sharing Fund. It noted that a large shortfall of funding had accumulated in relation to the Strategic Plan.

8. While recognizing the effects of the global financial downturn, in the interest of the functioning of the Fund and the Treaty, the Committee urged all Contracting Parties to give highest priority to reaching the global financial targets that have been set by the Governing Body in the Strategic Plan. Contracting Parties with a track record of international development assistance are strongly encouraged to continue playing a leadership role in providing financial support to the Treaty.

9. The Committee noted the successful mobilization of resources through cultivation events under the Strategic Plan and requested the Secretary to further carry out the cultivation activities of the Strategic Plan. Building awareness about the Treaty and the Benefit-sharing Fund, continues to be a determining factor for mobilizing additional voluntary contributions. Communications to donors and interested stakeholders encompass a wide range of activities, including reports and other publication material to support the case for the Fund; preparing communication materials and initiatives for broad audiences; organize awareness raising events, and enhancing existing Treaty tools like the website. The Committee highlighted in particular the importance of continuing the Treaty's distinct branding, communication and media work which the Secretariat has implemented in relation to the Strategic Plan.

10. At its Fourth Session, the Governing Body thanked the High-level Task Force for resource mobilization for its support to the Benefit-sharing Fund and requested it to continue its active support to the Fund. The High-level Task Force has continued to play a leading role to engage donors and high-level officers and experts from Contracting Parties during the present biennium. The Second High-Level Round Table on the International Treaty at Rio+20 was organised under the patronship of the High Level Task Force and co-organised by Brazil and Italy. This high-level and cultivation event served as a platform for donor recognition and engagement with new contributions being announced that support further mobilization of resources from others.

11. The research *Identifying Benefit Flows: Studies on the Potential Monetary and Non-Monetary Benefits arising from the International Treaty*<sup>13</sup> suggests that annual payments into the Benefit-sharing Fund arising from SMTAs will be large, if all factors are favourable, but after many years. The Committee, at its second resumed meeting, noted that, until the innovative approaches begin to generate income, it is important to intensify existing efforts and plans for resource mobilization of voluntary contributions, as established in Resolutions 3/2009 and 3/2011, to sustain immediate income in the Benefit-sharing Fund. Voluntary contributions are expected to play a mission-critical role in enabling the execution of the fourth and fifth rounds of the project cycle in the next two biennia before use-based income generation can fully take over the place of voluntary contributions in sustaining the project cycle of the Benefit-sharing Fund.

### **Innovative approaches for predictable and sustained income to the Benefit-sharing Fund**

12. At its fourth meeting, in 2011, the Governing Body of the Treaty adopted Resolution 3/2011, which:

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<sup>13</sup> The Study was presented to the Ad Hoc Advisory Committee on the Funding Strategy during its seventh meeting and referred to by the Committee in its resumed meetings. The Study is available at: [http://www.planttreaty.org/sites/default/files/Identifying\\_Benefit\\_Flows\\_extra\\_small.pdf](http://www.planttreaty.org/sites/default/files/Identifying_Benefit_Flows_extra_small.pdf) It is being published in hardcopy: *Identifying Benefit Flows: Studies on the Potential Monetary and Non-Monetary Benefits arising from the International Treaty*. Eds. Stannard, C and Moeller, N. FAO, 2013. Copies will be available at the Fifth Session of the Governing Body.

“emphasize[d] the need to further explore innovative approaches in engaging voluntary donors to the Benefit-sharing Fund, in particular various private sector prospects such as the seed and the food processing industry”.

13. At its seventh meeting, the Committee noted the uncertainty and lack of predictability of income for the Benefit-sharing Fund and how this made the innovative approaches for resource mobilization requested by the Governing Body, a particularly high priority. The experience of project funding through the Benefit-sharing Fund (BSF) has shown that there are huge needs for funding, directed to the implementation of the *Global Plan of Action for the Conservation and Sustainable Utilization of Plant Genetic Resources for Food and Agriculture* in developing countries.

14. The Committee has identified several innovative approaches during the intersessional period in order for the Governing Body, at its Fifth Session, to begin an exploration of all possible measures that could address the shortfall accumulated in the Benefit-sharing Fund and create predictable, reliable and sustainable resources for the Benefit-sharing Fund in order to avoid a negative impact on the Treaty. These approaches are based on the use of plant genetic resources for food and agriculture.

15. The Committee requested that the contents of Agenda Item 4 of the *Report of the second resumed session of the seventh meeting of the Ad Hoc Advisory Committee on the Funding Strategy*<sup>14</sup> be translated and incorporated by the Secretariat into the relevant working documents of the Fifth Session of the Governing Body. What follows in this section is an excerpt of the section of the Report referred above.

16. The *Ad Hoc* Advisory Committee on the Funding Strategy has accordingly identified a number of such potential innovative approaches. The innovative approaches were first described in the Report of the first resumed meeting of the Committee<sup>15</sup>, and which are described in more detail in Part II of the present Report, below:

1. Revisiting Article 6.11 of the SMTA.
2. Revisiting Article 6.7 of the SMTA.
3. Promoting regular seed sales-based contributions by Contracting Parties
4. Expanding the coverage of the Multilateral System.
5. Novel ways to attract use-based voluntary funding.
6. Upfront payments on access, to be discounted against payments due on the commercialization of a product.

17. The Committee concluded that the various innovative approaches are technically interlinked and interdependent, and need to be addressed together. It also concluded that different innovative approaches could each provide a part of an adequate and sustainable flow of income to the BSF, and the objective should therefore be to stack such approaches, within a single package.

18. Discussions with stakeholders have shown that there appears to be an increasing realization that the use of the SMTA has simplified administrative procedures in the plant breeding industry and reduced transaction costs. Any modification to the system that reduces transaction costs has the potential to attract greater support from stakeholders.

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<sup>14</sup> IT/GB-5/13/Inf.4 Add.2.

<sup>15</sup> IT/GB-5/13/Inf.4 Add.1.

19. Stakeholders, in particular the plant breeding industry, have expressed, however, a perceived need to rapidly enhance the legal certainty of the use of the SMTA, in particular in relation to obligations to disclose origin in applications for intellectual property rights, and to the check-points established in national implementation of the Nagoya Protocol, in particular, the acceptance of the SMTA as a certificate of compliance in this context. This is a matter that the Governing Body may wish to address as a matter of urgency not later than the Sixth Session of the Governing Body in 2015, developing any intersessional work required.

20. Enhanced legal certainty will be of particular importance in obtaining support from users of the SMTA for any modifications to the SMTA, and for stakeholder-led, use-based innovative approaches, and should therefore be addressed at the same time.

21. The Committee also noted that, until the innovative approaches begin to generate income, it is important to intensify existing efforts and plans for resource mobilization of voluntary contributions, as established in Resolutions 3/2009 and 3/2011, to sustain immediate income for the BSF.

## INNOVATIVE APPROACHES

### 1. Revisiting Article 6.11 of the SMTA

22. The SMTA already contains an option for crop-based benefit-sharing (SMTA Article 6.11). This option was proposed by the African Region at a late stage in the negotiation of the text of the SMTA, with the intention of creating a payment option for recipients of material under an SMTA that would generate a immediate and predictable flow of funds to the BSF, and reduce the transaction costs of the Multilateral System, both for the management of the system, and for the users of the SMTA. The African Region is still of the opinion that the basic principles of a crop-based benefit-sharing system should form a major thrust of innovative approaches to resource mobilisation.<sup>16</sup>

23. No recipient of material under an SMTA has so far adhered to this crop-based “subscription” option. Discussions with breeders suggest that the main perceived impediments are two-fold:

(a) This option creates, in effect, a **mandatory** payment obligation, whereas the accession-based option (implemented by SMTA Articles 6.7 and 6.8) will in most cases result in a product that is a variety that is not protected by a patent, and as such will not be subject to mandatory payment under Article 6.7. Varieties will likely be commercialized under Plant Variety Protection (PVP), and fall under Article 6.8, which provides only for **voluntary** payments. Since it appears that breeders do not consider it likely that any substantive voluntary payments will be made, this creates an automatic bias against accepting the crop-based payment subscription option.

(b) Even without taking this factor into account, and considering only the level of mandatory payments, the ratio of mandatory payments under Article 6.11 (at 0.5% of a company’s gross annual sales of all its products, whether or not these contain materials received under and SMTA) to mandatory payments under Article 6.7 (at 1.1%, less 30% = 0.77%, of annual gross sales), is not economically attractive to breeders.

24. A further factor must be taken into account, in considering how to make Article 6.11 more attractive to recipients: the attractiveness of this option varies greatly from breeder to

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<sup>16</sup> See Report of the Resumed Seventh Meeting of the *Ad Hoc* Advisory Committee on the Funding Strategy- Appendix 2 (document IT/GB-5/13/Inf.4/Add.1)

breeder, depending on the resources that they actually need to access under SMTAs, and the number of products they actually make that incorporate material received under SMTAs. This makes it difficult for Article 6.11, as currently constructed, to serve as a “one size fits all” solution.

25. Article 6.11 should therefore not be approached independently of the other innovative approaches, in particular, the possibility of extending mandatory payments to other categories of product, and to possible changes that may be made to the level of payments, under Article 6.7. Levels of payment under Articles 6.11 and 6.7 are technically interlinked, and dependent variables. They would need to be considered together, if Article 6.11 is revisited, so that it can achieve the objectives for which it was formulated, that is, the generation of an immediate and predictable flow of funds, and a reduction of transaction costs for users and the Treaty.

## **2. Revisiting Article 6.7 of the SMTA**

26. A consideration of Articles 6.7 and 6.8 together shows that there is an inbuilt bias towards recipients avoiding the use of materials under SMTAs, when these would be incorporated in a product that would result in mandatory payments (i.e., payments in accordance with Article 6.7), and that breeders are of the opinion that voluntary payments (in accordance with Article 6.8) are unlikely ever to be substantial, because a company that makes a substantial payment is put at a real competitive disadvantage, in relation to a company that does not.

27. This imperfection in the current system could be addressed by extending the range of products to which mandatory payments would apply, for example, by including under mandatory payments all products that may not be freely reproduced.

28. The Governing Body may, in accordance with Article 13.2d(ii), establish different levels of payment for various categories of recipient; and from time to time review the level of payment and assess whether the mandatory payment requirement shall apply also in cases where commercialized products are available without restriction to others for further research and breeding. The Governing Body might accordingly consider making benefit-sharing mandatory, as well, for products that are restricted for multiplication, at a relatively lower level of payment.

29. In revisiting the levels of payment under Article 6.7, the Governing Body will need to also take into account the impact this would have upon the attractiveness or otherwise of Article 6.11, and to consider the two innovative approaches together.

30. Innovative approaches 1 and 2 have the advantage of only requiring modifications to the text of the SMTA, which may be effected by a simple decision of the Governing Body, and which would not require changes to the Treaty itself.

## **3. Promoting regular seed sales-based contributions by Contracting Parties**

31. This innovative approach recognizes the decision of the Government of Norway to make an annual contribution of 0.1% of the value of seed sales in its territory to the BSF, beginning in 2009. These are voluntary contributions, as foreseen in Article 18.4f of the Treaty, which are outside the scope of the SMTA. Norway regards such contributions as recognizing not only the value of current access, but as also constituting a recognition of the value of plant genetic resources that were received before the Treaty came into force. It estimated that Norway’s contributions through this initiative would amount to USD 1 million over a ten-year period. At the time of announcing the decision, Norway estimated that, if all Developed Countries made similar contributions, a sum of about USD 200 million would flow to the BSF over ten years, in a predictable manner.



32. At the Second World Seed Conference in 2009, speakers from the seed industry estimated the value of the world's annual turnover of all seeds at USD 36 billion, and noted that, if the whole world followed this approach, for all seeds, it would bring the BSF the sum of USD 36 million annually. In such a case, it hoped that the administrative load for the industry could be lightened.

33. The Governing Body has recommended that other Contracting Parties consider making a similar contribution, but, at the time of writing, no other Party has done so.

34. The Governing Body, in considering innovative approaches, might therefore wish to clarify whether other Contracting Parties would be prepared to make regular seed sales-based contributions, and under what conditions, within a larger package of innovative benefit-sharing approaches.

#### **4. Expanding the coverage of the Multilateral System**

35. Many stakeholders have expressed a desire for an urgent expansion of the coverage of the Multilateral System, to ensure that plant breeding has effective access to the wide range of plant genetic resources that it needs in order to develop high performing crops, to underwrite food security, and to face the growing challenge of climate change.

36. Stakeholders have also recognized that an expansion in the coverage of the Multilateral System could also expand the potential for benefit-sharing, and that the two questions are therefore intimately and reciprocally linked. The Committee recognized that the present Benefit-sharing Fund arrangements are not providing appropriate benefit-sharing and that any expansion of the Multilateral System shall only enhance benefit-sharing if changes to the current Benefit-sharing Fund arrangements can be agreed.

37. The list of crops in *Annex 1* to the Treaty is an integral part of the Treaty, and, as such, changes to *Annex 1* would require changes to the Treaty, and a round of ratifications. This would inevitably be slow, both for a sufficient number of Contracting Parties to ratify the revision, and bring the changes into effect, and then for further Contracting Parties to ratify it. Should the Governing Body agree to the expansion of the list, it might wish to consider, at the same time, shorter-term, practical arrangements, by which Contracting Parties could be encouraged to use the expanded list on a day-to-day basis, in the provision of facilitated access under the SMTA.

38. Alternatively, the expansion of the Multilateral System might be effected by a Protocol to the Treaty, which would allow for ratification independently from the implementation of the Treaty itself.

#### **5. Novel ways to attract use-based voluntary funding: vegetable licensing platform**

39. The *Ad Hoc* Committee stressed the desirability of stakeholder groups to themselves propose novel ways of contributing to the BSF, in recognition of the value of the Treaty in facilitating access, reducing transaction costs, and providing legal certainty. If initiatives by industry groups for use-based funding can be brought to early fruition, this will significantly enhance the likelihood of voluntary contributions from other sources.

40. During the biennium, the *Ad Hoc* Committee on the Funding Strategy has been exploring with the Vegetable Industry Working Group a possible Vegetable Licensing Platform (VLP), which is currently under construction, and which will include use-based voluntary benefit-sharing. If this initiative, by a large group of vegetable breeders, comes into being, it can be expected to create momentum for other sectors of plant breeding to structure initiatives that reflect their needs and are fitting the structure of their sectors of plant breeding.

41. The Vegetable Industry Working Group is working on establishing an Industry Licensing Platform (ILP). They are developing an Open Innovation Model protected commons, whereby immediate access to vegetable patented traits would be guaranteed under fair, reasonable and non-discriminatory conditions. The Vegetable Industry Working Group informed the *Ad Hoc* Advisory Committee on the Funding Strategy of this possibility, and has kept it informed about its preparations for the establishment of the ILP, the way in which it will work, and the contributions to the BSF that it foresees, if the ILP is finally established.

42. The rationale behind the development of the ILP as an Open Innovation Model emerged from several challenges that plant breeders (especially small, family-owned and medium-sized plant breeders) have faced in recent years, when seeking to breed new varieties. The ILP aims to provide a framework for open and non-exclusive access for plant breeders to normal traits that are under patent. According to the information received, the main motivation for creating the Open Innovation Model was an effort by the Vegetable Industry Working Group to reduce transaction costs, increase legal certainty, avoid dependency and possible litigation in the exchange of PGRFA products under restriction after their first commercialization. Hence, the underlying rationale for establishing the ILP is to stimulate the use of plant genetic resources by innovation through plant breeding.

43. The ILP would be limited to normal traits. The ILP would not cover or transfer any GM technologies. The scope of the ILP would be all patents and patent applications owned and controlled by participants in the platform who cover biological materials that are part of the licensing platform. The ILP will make every such new patent on normal traits immediately available for open innovation licensing for further breeding. A fair, reasonable and non-discriminatory remuneration would be established for its commercial use. Part of that remuneration would be contributed to the Benefit-sharing Fund of the Treaty, through an agreement with the ILP. If no patent has been granted in a region or country for a specific trait, no licensing or payments for that technology in that country is necessary under the Open innovation model.

44. *Additional Non-monetary benefits that could be expected, in support of the Treaty:*

- The Treaty provides that, for breeders in “*developing countries that are Contracting Parties [access to and transfer of technology] shall be provided and/or facilitated under fair and most favourable terms*”, as explicitly pointed out in the Treaty. For technologies relating to normal vegetable traits, access would currently be free, since normal traits are not patentable in developing countries, and in consequence no royalty would be due for any use in such countries.
- The effect of the ILP would be to lower transactional costs, as no case-by-case negotiation of contractual terms and royalties is required;
- The ILP will include provisions to create patenting transparency. This will allow stakeholders to monitor the filing of applications and the grant and licensing of patents on a transparent and inclusive basis.
- The ILP will promote food security through the dissemination of improved technology, “free access but not access for free”;
- The ILP will establish a global breeder’s exemption for patents within its pool, which enables a free use for breeding and development, and under which payments are only due upon commercialization, in countries where the resulting variety is covered by a valid patent.

45. The potential of the ILP as an innovative source of income for the BSF:

There appears to be a strong potential for contributions to the BSF from this interaction between the ITPGRFA and the vegetable seed industry. Any funds provided would accrue to the BSF for allocation through its project cycle to approved projects for conservation and sustainable use of PGRFA by farmers in developing countries, in accordance with Article

18.4f of the Treaty. Contributions to the Benefit-sharing Fund under Article 18.4f of the Treaty do not require any institutional linkage between the Treaty and the ILP and do not increase the workload of the Secretariat. The ILP would not seek any involvement in decisions on which projects to fund, or in any part of the project cycle.

46. The *Ad Hoc* Advisory Committee is convinced of the need to work closely with representatives of the plant breeding industry, in order that they can explain and make clear the advantages of the Treaty to their stakeholders, and so the advantages of supporting the Treaty by creating use-based voluntary funding mechanisms. Improving the outreach of the Treaty to relevant stakeholder groups should also be a priority in developing innovative approaches to benefit-sharing.

#### **6. Upfront payments on access, to be discounted against payments due on the commercialization of a product**

47. One way that could both encourage recipients to choose a particular payment option, and create an immediate flow of resources to the BSF, would be to link it to the possibility of the recipient making an up-front payment on access to material under an SMTA to a discount against payments due when a product is commercialized, related to the size of the up-front payment.

48. There are many ways in which this could be constructed. For example, a recipient could either pay a fixed amount, or choose how much to pay per accession, with the discount of what is owed on commercializing a product, on the amount of the up-front payment. The discount could vary according to the length of time between access and commercialization, and the system could be structured to work for either Art. 6.7 or 6.11.

49. This is not an independent approach, but an addition to innovative approaches 1 and 2. It could be incorporated in the SMTA, if it were agreed.

#### **CONSIDERATION BY THE GOVERNING BODY OF INNOVATIVE APPROACHES TO MOBILIZING FUNDS**

50. The innovative approaches described above will be forwarded to the Governing Body for its consideration in the Fifth Session of the Governing Body. They are complex and interlinked, and delegations should be encouraged to come prepared.

51. The Committee recommended that the Governing Body consider the various innovative approaches identified, and any others that may be suggested, in an integrated manner, and that a package that stacks various sources of funds be identified. The need to rapidly increase the level of effective benefit-sharing, through the BSF, is evident to many stakeholders, and it is recommended that the Governing Body take the necessary steps to implement such a package.

52. The Committee recommended that the Committee on the Funding Strategy should be reconvened, but under a substantially widened mandate, that acknowledges current challenges of implementation of the Treaty and prepares for decision-making of the Governing Body regarding the functioning of the Benefit-Sharing Fund in the context of the Multilateral System in an inclusive and comprehensive approach. Such decision would take advantage of the accumulated extensive experience in the *Ad Hoc* Committee on the Funding Strategy whilst addressing current realities confronting the International Treaty's implementation. The title of the Working Group and the elements that could be included in its terms of reference appear included in the draft Resolution on the implementation of the Funding Strategy in document IT/GB-5/13/7 Add.3.

53. If industry groups launch initiatives under their own authority which foresee contributions to the Treaty's Benefit-sharing Fund, the Committee recommends that the Ad Hoc Open-ended Working Group be mandated to follow and engage such developments in order to increase income to the Benefit-sharing Fund, as appropriate. The Committee further recommends that the Bureau of the Sixth Session be requested to take any actions necessary, with the advice of the Ad Hoc Open-ended Working Group, to facilitate and encourage receipt by the Benefit-sharing Fund of any income that may be generated by the innovative approaches during the biennium.

54. The Committee recommends to explicitly decide on an inter-sessional agenda regarding the Funding Strategy, including to maintain a working relationship with the Vegetable Industry Working Group and also facilitate discussions with other segments of the seed industry, to develop arrangements appropriate for them that will generate substantial voluntary contributions to the BSF, in accordance with Article 18.4f of the Treaty.

55. The Committee appealed to donors and Contracting Parties to provide any funds, support meetings of the Ad Hoc Working Group, or provide other resources required for the Ad Hoc Working Group to be able to fulfil the tasks allotted to it by the Governing Body, taking into account the budget for the next biennium.

## **B. FURTHER OPERATIONALIZATION OF THE BENEFIT-SHARING FUND**

### **Review of lessons learned in the execution of the first and second rounds of the project cycle**

56. At its Fourth Session, the Governing Body requested the Secretary, through Resolution 3/2011, to prepare, for the Bureau of the Fifth Session of the Governing Body, a report on lessons learnt during the execution of the first and second rounds of the project cycle to support the design and execution of the project cycle and its future rounds.<sup>17</sup>

57. The Bureau of the Fifth Session gave guidance to the Secretariat on the preparation of the *Report on lessons learned during the execution of the first and second rounds of the project cycle*, in terms of process and contents.<sup>18</sup> It requested the Secretary to submit the final report to the *Ad Hoc Advisory Committee on the Funding Strategy* for its review and, specifically, for its advice on solutions to streamline and make the rounds of project cycle more cost effective.

58. The Committee, at its seventh meeting, reviewed the *Report of lessons learned* and highlighted that it provides an excellent basis for making the rounds of the project cycle more cost effective and for improving transparency. The Committee used the *Report on lessons learned* to provide its advice in the review of Operational Procedures and in the design and structure of the third Call for Proposals. It requested the Secretary to submit the final *Report on lessons learned* to the Bureau.

59. The Bureau, at its second meeting, welcomed the *Report on lessons learned* and requested the Secretariat to issue the latest version as an information document for the Governing Body.<sup>19</sup>

60. The *Report on lessons learned* is provided in IT/GB-5/13/Inf. 11. The Governing Body may wish to take it into account in finalizing the review of Operational Procedures and in providing guidance in the execution of the next call for proposals. Lessons learned with regard to the governance and institutional arrangements for the Benefit-sharing Fund may also provide

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<sup>17</sup> Resolution 3/2011, Part II, paragraph 23.

<sup>18</sup> *Report of the First Meeting of the Bureau of the Fifth Session of the Governing Body*.

<sup>19</sup> IT/GB-5/13/Inf.4. *Report of the Seventh Meeting of the Ad Hoc Advisory Committee on the Funding Strategy*. Paras. 26-30. <http://www.planttreaty.org/sites/default/files/acfs7re.pdf>

inputs to the Governing Body in further discussions on the further operationalization of the Benefit-sharing Fund.

### Review of Operational Procedures

61. At its Fourth Session, the Governing Body requested the *Ad Hoc* Advisory Committee on the Funding Strategy to provide advice on the review of the Operational Procedures. Following the advice from the Bureau, such review by the Committee was based on the *Report of lessons learned*<sup>20</sup> during the first and second rounds of the project cycle.

62. The reviewed Operational Procedures, as well as the process followed for the review, are provided in addendum *Draft reviewed Operational Procedures for the Benefit-sharing Fund, including the draft Policy on Conflict of Interest*.<sup>21</sup> Following the lessons learned from the execution of the project cycle, the Bureau requested a policy of conflict of interest that is also provided in this document.

63. At the time of preparation of this document, the Committee was still refining the section on selection criteria of the Operational Procedures. Another key aspect for finalizing the review of the Operational Procedures is the responsibility for the screening of pre-proposals.<sup>22</sup> The Committee emphasized that substantive work on the screening of pre-proposals should be undertaken by technical experts in evaluation of project proposals, and not by policy-makers or the Secretariat. It requested the Secretariat to explore options, taking into account existing models from other funds, for using a limited number of experts in a cost-effective manner in the screening of pre-proposals. It considered the possibility of having some of the experts of the Panel conducting the screening of pre-proposals in the future. The Co-chairs of the Committee will report on the Committee's deliberations on these matters to the Governing Body.

64. The Governing Body is invited to finalize the review of the Operational Procedures and to adopt the *Policy* on conflict of interests in support of the Operational Procedures, through the draft Resolution on the implementation of the Funding Strategy in document IT/GB-5/13/7 Add.3.

65. The Operational Procedures adopted by the Governing Body, at its Second Session, contained the following footnote:

*The Governing Body may wish to address the following issues: whether moneys under the direct control of the Governing Body should, where applicable, only be applied to Annex I Crops; ...*

66. In reviewing the Operational Procedures, the Committee recalled such footnote and advised the Governing Body to take a decision on this issue at its next Session taking into account the experience gained in the first two rounds of the project cycle. The value of underutilized crops for local food security and climate change adaptation was emphasized.

67. The diversification of crop production to lessen dependence on external inputs, increase productivity, and respond to the challenge of climate change is a priority of the Benefit-sharing Fund. Funding in the first two rounds of the project cycle has not been applied exclusively to *Annex I* crops. The Call for Proposals 2010 supported the development of strategic action plans for climate change adaptation for plant genetic resources for food and agriculture. Immediate action projects of the Call for Proposals 2010 focused on plant genetic resources for food and agriculture listed in *Annex I* of the International Treaty. The Call for Proposals 2009 supported single-species projects that addressed only *Annex I* plant genetic resources for food and agriculture and multi-species projects that addressed mainly *Annex I* plant genetic resources for food and agriculture but included actions in support to the management of other plant genetic

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<sup>20</sup> IT/ACFS-7/12/4.

<sup>21</sup> IT/GB-5/13/7 Add.1. The process followed to conduct the review and the preparation of the policy on conflict of interest is described in paragraphs 2-5 of the document.

<sup>22</sup> Two of the lessons learned (#3 and #4) of the *Report on lessons learned* relate to the screening of pre-proposals and provide suggestions to improve this step of the project cycle.

resources for food and agriculture that were important for food security, climate change adaptation and the diversification of local agricultural systems.

68. The Governing Body may wish to decide that the scope of plant genetic resources for food and agriculture for each round of the project cycle be addressed in the design of each Call for Proposals, building on the experience gained in the first two rounds of the project cycle.

### **Mid-term Plan for the Benefit-sharing Fund**

69. At its Fourth Session, the Governing Body emphasized the importance of enhancing sustainable food security by assisting farmers to adapt to climate change, and for this purpose, requested the Secretary to develop a mid-term programmatic approach for the Benefit-sharing Fund, building upon the thematic focus of the second Call for Proposals and in full alignment with the priorities adopted by the Governing Body and submit it to the Governing Body, at its Fifth Session, for approval. The *Ad Hoc* Advisory Committee on the Funding Strategy advised that, for clarity, the midterm programmatic approach should be titled as medium term plan.

70. The draft Medium Term Plan, as well as the process followed to prepare it, are provided in addendum *Draft elements for the Mid-term Plan for the Benefit-sharing Fund*.<sup>23</sup> The Governing Body is invited to consider and adopt the draft Mid-term Plan, through the draft Resolution on the implementation of the Funding Strategy in document IT/GB-5/13/7 Add.3.

### **Development of Partnerships**

71. By Resolution 8/2009, the Governing Body “requested the Secretariat to foster cooperation with other organizations and strengthen existing cooperative arrangements with a view to developing synergies and reducing inefficiencies”. At its fifth meeting, the Committee “requested the Secretariat to continue surveying for further potential partners of the Fund with relevant organizations”. Consequently, the Secretary sent letters to relevant organizations, requesting them to provide information if they were interested in partnering with the Benefit-sharing Fund.

72. Following the letters issued by the Secretary, expressions of interest were received from a number of organizations, namely: FAO, the Global Crop Diversity Trust (GCDT), the International Fund for Agricultural Development (IFAD), the United Nations Office for Project Services (UNOPS), the United Nations Development Programme (UNDP), the United Nations Environment Programme (UNEP) and Oxfam International (Oxfam). Following these expressions of interest in the Fund from numerous international organizations, the Governing Body, at its Fourth Session, “note[d] with appreciation the expressions of interest by FAO, the Global Crop Diversity Trust, IFAD, UNDP, UNEP, UNOPS, CATIE, Oxfam Novib and the World Bank to support the further operationalization of the Benefit-sharing Fund.”

73. At its fifth and sixth meetings, the Committee received presentations from IFAD, UNOPS and UNDP. The Committee requested the Secretary to fully engage in establishing the partnership with IFAD and to further explore the partnership with UNOPS, recognizing that other agencies including IFAD and UNDP can provide similar services. The Secretary proceeded accordingly and, at its Fourth Session, the Governing Body “welcome[d] the progress made toward Memoranda of Cooperation with IFAD and UNDP to support the further development of the Benefit-sharing Fund and the overall implementation of the Treaty”.

74. The Committee recommended enhancing “the effectiveness of the operation of the BSF... by relying on designated implementation entities to provide services related to project formulation, supervision and implementation”. It also requested the Secretary “to continue exploring options for partnerships with multilateral institutions that provide similar services for

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<sup>23</sup> IT/GB-5/13/7 Add.2.

other multilateral funds and have a recognized capacity for project and financial management, are present in the field and can support co-funding of projects funded by the BSF.”

75. Furthermore, at its Fourth Session, the Governing Body “request[ed] the Secretary to continue establishing partnerships with relevant international organizations as well as bilateral donors to support the Benefit-sharing Fund.”

76. Consequently partnership agreements, whether for an specific activity or for general overall cooperation, have been finalised with IFAD, UNDP and UNEP. Discussions have also been held with the Global Environment Facility (GEF) and the World Bank which could potentially lead to direct contributions towards the Benefit-sharing Fund. The Treaty being a member of the Liaison Group of Biodiversity-related Conventions (BLG), discussions have been initiated in the BLG on how guidance to the GEF could be processed in the future to include GEF-eligible recommendations of the Biodiversity-related Conventions, such as the Treaty.

77. At its first meeting, the Bureau of the Fifth Session welcomed the establishment of partnerships with international organizations, such as UNDP and UNEP, which may function as multilateral implementing entities of the Benefit-sharing Fund, to enhance its impact and capacity. It stressed the need to further develop the two types of partnerships identified: (1) international partners that will act as donors to the Benefit-sharing Fund, such as IFAD; and (2) international partners that will act as designated implementing entities of the Benefit-sharing Fund, such as UNDP and UNEP. It emphasized the need for flexibility in fully engaging these partners, while respecting the policies and procedures set by the Governing Body of the Treaty. It requested the Secretary to further advance the partnerships with international organizations.. In line with the request by the Bureau at its first meeting, the Secretariat of the Treaty is currently discussing the possibility of enhancing cooperation with FAO technical divisions and decentralized offices whilst ensuring that any such engagement will respect the policies and procedures set by the Governing Body of the Treaty.

78. The Committee recently endorsed the standard stages for the establishment of long-term partnerships and revised the basic criteria for approval of partners as wells the process of establishment of partnerships to be used in the establishment of future.<sup>24</sup>

79. Partnerships can allow the project portfolio of the Benefit-sharing Fund to grow and diversify by building on the different comparative advantages of these entities and, at the same time, can increase the fund’s capacity to leverage capital from other sources. Efforts to enhance partnerships should be strenghtened in the further operationalization of the Benefit-sharing Fund. The experience from other funds demonstrates that partners can positively contribute to attract financial resources or co-funding to the Fund, support project and programme formulation, assist national institutions in the execution, backstopping and monitoring. Experience gained in the present biennium should be used in the next biennium to continue enhancing and strengthening partnerships to help the Benefit-sharing Fund gain relevance at multilateral level.

80. Partner institutions, donors, and Contracting Parties have increasingly emphasized the management of the knowledge and institutional learning about conservation and sustainable use of plant genetic resources which is uniquely accumulating in the Treaty through the execution of the benefit-sharing projects. The aim is to systematically utilize the unique substantive and institutional experiences generated by the projects on conservation and sustainable use and to leverage them as a comparative advantage of the Treaty and its Benefit-sharing Fund.

81. The Committee on the Funding Strategy has advised, at its second resumed meeting, that innovative approaches for the use of funds available in the Benefit-sharing Fund be explored during the next intersessional period. The contributions by partners to the functioning of the Benefit-sharing Fund should be further discussed and developed in this context.

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<sup>24</sup> IT/GB-13/Inf.4 Add.1, *Appendixes 5 & 6*.

### Other policy matters

82. At its Fourth Session, the Governing Body emphasized that quality, relevance according to selection criteria, and technical merit shall determine, in a transparent manner, the appraisal and approval of full project proposals in future rounds of the project cycle and recalled the elements adopted by the Governing Body at its Second Session –Appendix D.3,<sup>25</sup> that allow fair<sup>26</sup> distribution of benefits, and in addition acknowledges the importance of an inclusive process to which all regions feel committed, noting that the provision of helpdesk functions and language facilities, as well as support workshops, contributes to such a goal.

83. During the intersessional period, Contracting Parties have acknowledged again, within the Committee and the Bureau, the importance of an inclusive process to which all regions feel committed and have suggested the following package of measures:

- The Helpdesk should focus on support to under-represented regions that have special features, such as small state islands, on funding priorities that require specific technical expertise, such as technology transfer.
- Depending on cost implications (1) the inclusion of Arabic as a language for submission of pre-proposals and of project proposals or (2) the provision of language facilities in Arabic through the Helpdesk.
- The inclusion of the eight project proposals to be funded if funds became available by the end of the previous biennium in the third round of the project cycle. Detailed options for such inclusion were agreed at the second resumed meeting of the Committee.<sup>27</sup>
- The further refinement of selection criteria and screening procedures of pre-proposals in the review of the Operational Procedures.

84. The Governing Body may wish to welcome the measures taken to enable an inclusive process to which all regions feel committed.

85. During the intersessional period, the Contracting Parties, through the Bureau and in particular the Committee, have focused on improving the existing procedures and policies of the Benefit-sharing Fund. Building on the lessons learned from the two rounds of the project cycle, an effort has been made to streamline and make the rounds of the project cycle more cost effective and to enhance transparency and inclusiveness in the decision-making related to the use of funds of the Benefit-sharing Fund. The existing procedure for allocation of funds relies on a competitive process that has advantages and limitations as shown in the two rounds of the project cycle. The *Report on lessons learned* also provided lessons learned on the governance and institutional arrangements for the Benefit-sharing Fund<sup>28</sup> that should be taken into account in the further development of the operations of the Benefit-sharing Fund.

86. The Governing Body may wish to request that innovative approaches for the operations of the Benefit-sharing Fund be explored during the next intersessional period for its consideration at its next Session. The Committee has advised, at its second resumed meeting, that innovative mechanisms for the use of funds available in the Fund be explored in the next intersessional period, in order to strengthen the use of the Multilateral System and the non-monetary benefit-sharing mechanisms of the Treaty, in a more strategic, cost-effective and inclusive manner.

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<sup>25</sup> Operational Procedures for the Use of Resources under the direct control of the Governing Body.

<sup>26</sup> Does not imply imposition of quota per region.

<sup>27</sup> IT/GB-5/13/Inf.4/Add.2

<sup>28</sup> IT/GB-5/13/Inf. 10, *Report on lessons learned*, lessons learned #14 and #15.



### III. REPORT ON RESOURCES OF THE FUNDING STRATEGY NOT UNDER THE DIRECT CONTROL OF THE GOVERNING BODY

87. At its Third Session, the Governing Body, adopted Annex 4 of the Funding Strategy, Information and Reporting Requirements under the Funding Strategy, in order to facilitate the monitoring of the implementation of the Funding Strategy. Through such adoption, the Governing Body set out for the first time the requirements for information and reporting on resources not under the direct control of the Governing Body provided by Contracting Parties, non-Contracting Parties, international organisations with which the Governing Body has entered into agreements, and relevant international mechanisms, funds and bodies.

88. These information and reporting requirements are based, *inter alia*, on the provisions of Article 18 which state that the extent to which developing country Contracting Parties “will effectively implement their commitments under this Treaty will depend on the effective allocation, particularly by the developed country Parties, of the resources referred” to under the Funding Strategy.<sup>29</sup> Within the Funding Strategy, Article 18 refers to funds not under the control of the Governing Body by stating that “Contracting Parties that are developed countries also provide, and Contracting Parties that are developing countries and Contracting Parties with economies in transition avail themselves of, financial resources for the implementation of this Treaty through bilateral and regional and multilateral channels.”<sup>30</sup>

89. At its Fourth Session, the Governing Body requested the Committee to advise on the monitoring of the implementation of the overall Funding Strategy. The Committee, at its seventh meeting, emphasized the importance of providing information on the implementation of projects funded by the Benefit-sharing Fund, as it contributes to the monitoring of the Funding Strategy.

90. At its Fourth Session, the Governing Body requested the Secretary to strengthen cooperation with other international organizations to support the implementation of the Funding Strategy. It further requested the Secretary to intensify its efforts to compile further information on resources not under the direct control of the Governing Body to raise the profile of the Funding Strategy and to assess gaps and synergies in its implementation.

91. The Second Global Plan of Action for Plant Genetic Resources for Food and Agriculture was adopted by the FAO Council in 2011. The Second Global Plan of Action recognizes that through the monitoring of the Funding Strategy of the International Treaty, the Governing Body will be able to monitor resources available for the implementation of the Plan. The Commission on Genetic Resources for Food and Agriculture, at its Thirteenth Regular Session, invited the Governing Body, to provide, in its report on the implementation of the Funding Strategy, an assessment of its achievements, the gaps and the financial and other needs for the implementation of the Second Global Plan of Action, in order to strengthen the Funding Strategy, in particular the Benefit Sharing Fund.

92. The Secretariat has identified a number of bottlenecks in its previous efforts to compile information on resources not under the direct control of the Governing Body:

- Very few Contracting Parties or non-Contracting Parties provided information according to the standard format provided by the Secretariat. It remains difficult for governments to provide information in a standardized manner.
- Compiling information on the mandates, priorities, eligibility criteria, procedures and availability of resources of international mechanisms, funds and bodies relevant to the Funding Strategy is possible but it remains challenging to present and analyze it in a meaningful manner. There are many institutions to be considered.

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<sup>29</sup> Article 18.4(b)

<sup>30</sup> Article 18.4(c)

- There is a very wide range of activities that can be supported in support of the implementation of the Funding Strategy of the Treaty and many of these activities are part of larger programmes in support to, *inter alia*, food security, sustainable agriculture, biodiversity management or climate change adaptation.

93. The Governing Body may wish to discuss ways to overcome the current bottlenecks related to the Funding Strategy. It may wish to request Contracting Parties to inform the Governing Body on the measures they have taken to implement Article 18, in particular Articles 18.4(b) and (c), and on the impact of these measures for the achievement of the objectives of the Treaty. The Governing Body may also wish to advise the Secretariat to intensify efforts to gather and assess gaps and synergies in the implementation of the Funding Strategy during the next intersessional period. Such Report on the implementation of the Funding Strategy will enable the monitoring of resources available for the implementation of the *Second Global Plan of Action* and will support the Governing Body's further development of its Programme of Work on Sustainable Use.

#### **IV. INTERGOVERNMENTAL WORK DURING THE NEXT INTERSESSIONAL PERIOD**

94. In reconvening the *Ad Hoc* Advisory Committee on the Funding Strategy, the Governing Body requested the Committee to report on progress of its work to the Governing Body at its Fifth Session. The results of the work of the Committee during the intersessional are contained in the reports listed in paragraph 4 of this document. The Co-chairs of the Committee will have the opportunity to address the Governing Body during the Fifth Session.

95. The Committee, at its second resumed meeting, recommended that it should be reconvened, but under a substantially widened mandate, that acknowledges current challenges of implementation of the Treaty and prepares for decision-making of the Governing Body regarding the functioning of the Benefit-Sharing Fund in the context of the Multilateral System in an inclusive and comprehensive approach.<sup>31</sup> Such decision would take advantage of the accumulated extensive experience in the *Ad Hoc* Committee on the Funding Strategy whilst addressing current realities confronting the International Treaty's implementation.

96. The recommendations and advice from the Committee have had extensive implications for the substantive and programmatic orientation of the next biennium's work programme and has been taken into account in Work Programme Budget 2014-2015 by the Secretariat. Such recommendations required changes to be introduced in the documentation for this Session and delayed the issuance of final documents and work programme and budget. Nevertheless, the progress made by the Committee and its implications for the various areas of work of the Governing Body have been reflected in all parts of the documentation.

97. The title of the Working Group and the elements that could be included in its terms of reference have been included in the draft Resolution contained in document IT/GB-5/13/7 Add.3. Further information and the options available to the Governing Body for the structure, membership and programme of the Working Group, including their financial implications, have been set out and described in document IT/GB-5/13/7 Add.4. In view of the need for a stable and predictable funding source for the Working Group, these options are relevant in particular when finalizing the Core Administrative Budget 2014-15 and the Governing Body may wish to base its deliberations and decisions in this regard also on the financial estimates contained in document IT/GB-5/13/7 Add.4.

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<sup>31</sup> More information can be found in the IT/GB-5/13/Inf/4 Add.2 *Report of the second resumed session of the Seventh Ad Hoc Advisory Committee on the Funding Strategy*.