

April 2015



The International Treaty

ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE



**INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES
FOR FOOD AND AGRICULTURE**

**THIRD MEETING OF THE AD-HOC OPEN-ENDED WORKING GROUP TO
ENHANCE THE FUNCTIONING OF THE MULTILATERAL SYSTEM**

Brasília, Brazil, 2-5 June 2015

Draft Resolution For Consideration By The Governing Body, At Its Sixth Session:

**Measures To Enhance The Functioning Of
The Multilateral System Of Access And Benefit-Sharing**

Note by the Secretary

At its second meeting, the Working Group requested a draft Resolution be prepared using as a basis the various options identified so far for the measures to be presented to the Governing Body. The Governing Body, as a matter of practice, requires draft resolutions to be submitted for all substantive items of its agenda. The draft Resolution in this document comprises elements by which the various options could be implemented, taking into account the various submission received. The draft Resolution has been prepared after consultation with the Co-Chairs of the Working Group. The Working Group is invited to review and finalize the draft Resolution for consideration of the Governing Body at its Sixth Session.

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DRAFT RESOLUTION 1/2015

MEASURES TO ENHANCE THE FUNCTIONING OF THE MULTILATERAL SYSTEM OF ACCESS AND BENEFIT-SHARING

THE GOVERNING BODY,

Recalling that, at its Fifth Session, it had noted with concern the large shortfall of funding that had accumulated in relation to the target established for the *Strategic Plan for the Implementation of the Benefit-sharing Fund 2009–2014*;

Recalling Resolution 2/2013 by which it accordingly decided to establish the *Ad Hoc* Open-ended Working Group to Enhance the Functioning of the Multilateral System, with the tasks of:

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

Having considered the reports of the meetings of the *Ad Hoc* Open-ended Working Group, and having heard the report of the Co-Chairs;

Welcomes the consultations with a wide range of stakeholders, and in particular the direct and proactive engagement of the seed sector in this process;

Thanks the Working Group and the Co-Chairs for having substantially clarified the interdependent issues involved in this task, and for the considerable progress achieved in identifying the range of possible measures, and the analysis of the options;

Agrees that the following six measures, which are at different levels of development, will form the core of the package of measures, to enhance the Multilateral System, by generating sustainable and predictable income for the Benefit-sharing Fund, as well as key non-monetary benefits, while expanding the governance of the Treaty to its full scope.

MEASURE I: INCREASE THE AVAILABILITY OF PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE THROUGH THE MULTILATERAL SYSTEM

THE GOVERNING BODY

1. *Reiterates* that delays by Contracting Parties and natural and legal persons in making their plant genetic resources for food and agriculture available through the Multilateral System affect the trust in the full operationalization of the International Treaty, hinder plant breeding, and may have a long-term effect on user-based income for the Benefit-sharing Fund;
2. *Accordingly calls upon all Contracting Parties* that have not yet done so to notify the Secretary by [date] of the materials that they are required to make available, in accordance with Article 11.2 of the Treaty, and to take the necessary legal and financial steps to ensure that they are effectively available upon request;
3. *Requests Contracting Parties* to provide financial assistance and technical support to those Contracting Parties that need it to be able to do so;
4. *Welcomes* the efforts by Contracting Parties to encourage the seed sector to make its materials available, including the German and Australian initiatives, whereby private breeders have included varieties protected by plant breeder's rights in the Multilateral System, and requests other Contracting Parties to take similar measures and to notify the Secretary

accordingly;

5. **Encourages natural and legal persons** who wish to see an enhanced Multilateral System to make their materials available, and to notify the Secretary accordingly;
6. **Emphasizes** the importance of the inclusion in the Multilateral System of germplasm collections that are fully characterized and evaluated, including for specific traits, and appeals to both Contracting Parties and natural and legal persons who hold such collections to include them;
7. **Reiterates** the crucial role of a well-structured and searchable Global Information System that documents materials in the Multilateral System, in supporting plant breeding and food security;
8. **Recognizes** that the value for plant breeders and other stakeholders of collections of plant genetic resources for food and agriculture under the Treaty, and consequently their use, will be increased by linking information in the Multilateral System to that in the Global Information System;
9. **Therefore appeals** to Contracting Parties, stakeholders and the Secretary to give priority to such work;
10. **Calls for** all non-confidential information, including phenotypic and genotypic information that results from research and development, to be made available through the Global Information System, including through DivSeek and other initiatives;
11. **Appeals to countries not yet Contracting Parties** to now join the Treaty, to consolidate the Multilateral System as the main international source of plant genetic resources for food and agriculture.

MEASURE II: STRENGTHEN NON-MONETARY BENEFIT-SHARING MECHANISMS, SUCH AS CAPACITY-BUILDING, TECHNOLOGY TRANSFER AND INFORMATION EXCHANGE

THE GOVERNING BODY

1. **Decides** to strengthen its policy guidance related to information exchange, technology transfer and capacity-building mechanisms, through a multi-year programmatic approach, in order to play a catalytic role in international cooperation, with three particular focuses:
 - Developing an International Network of Centres of Excellence that provides training programmes for scientific and technical, policy and legal education in the conservation and sustainable use of plant genetic resources for food and agriculture, based on common curricula;
 - Establishing and managing nationally important *in situ* and on-farm conservation heritage sites for plant genetic resources for food and agriculture;
 - Ensuring that the further development of the Global Information System improves the transfer of information and technology to developing countries, including through DivSeek and other initiatives;
2. **Stresses the importance** of further developing the function of the Benefit-sharing Fund as a catalyst in the exchange of information, the transfer of technology, and the delivery of capacity-building, by supporting a number of practical programmes and initiatives in these focus areas, in the fourth call for proposals;
3. **Requests the Secretariat** to identify existing Centres of Excellence that provide relevant training and, which could be partners in developing the International Network of Centres of Excellence, with a common curriculum, and as part of an international fellowship training programme, and to host an initial scoping meeting during the forthcoming biennium;

4. ***Requests donors*** to provide resources to kick-start the International Network of Centres of Excellence;
5. ***Appeals to Contracting Parties and relevant International Institutions*** to support the establishment and management of key *in situ* and on-farm conservation heritage sites for plant genetic resources for food and agriculture;
6. ***Decides*** that the fourth call for proposals of the Benefit-sharing Fund should include a window to develop a capacity to manage such sites, within the context of the Multilateral System;
7. ***Requests*** the Secretariat to provide a report to its Ninth Session, on how the Global Information System is facilitating the transfer to developing countries of non-confidential information on plant genetic resources for food and agriculture in the Multilateral System, to support its further policy guidance;
8. ***Recognizes*** the potential value of the development and transfer to developing countries of technology packets for the conservation, characterization, evaluation and use of plant genetic resources for food and agriculture from the Multilateral System;
9. ***Therefore appeals to the partners*** in the Platform for the Co-development and Transfer of Technology Initiative to further operationalize their proposals, in the context of the Programme of Work on Sustainable Use;
10. ***Decides*** to monitor the implementation of the initiatives under these three focuses, as a standing item of its agenda, and requests the Secretariat to prepare a review of progress for its Eighth Session.

MEASURE III: DEVELOP A SUBSCRIPTION SYSTEM FOR USERS OF PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE UNDER THE TREATY

THE GOVERNING BODY

1. ***Notes*** that the work during the past biennium has shown considerable support from both Contracting Parties and stakeholders for the development of an effective Subscription System, as a major mechanism likely to generate predictable and sustainable user-based income, to increase legal certainty and to reduce the administrative burden for the user;
2. ***Thanks stakeholders*** for their constructive engagement in the work of the Working Group, and in particular the seed sector, for having made articulated proposals for the design of possible Subscription Systems;
3. ***Notes*** that the main elements that will need to be addressed in developing a Subscription System have been identified, as the basis for finalization in the forthcoming biennium;
4. ***Requests the Working Group*** to analyze further the potential of a Subscription System, on the basis of these elements, and the specific proposals submitted to the Working Group, to generate a user-based income stream for the Benefit-sharing Fund, while providing subscribers with reduced transaction costs and legal certainty, including in the context of the interface with the *Nagoya Protocol*;
5. ***Requests seed sector representatives*** who have made proposals to provide reasoned estimates of the projected income for the Benefit-sharing Fund to the Working Group in its first meeting in the next biennium;
6. ***Therefore requests the Secretary and the Co-Chairs*** to work with them to obtain a realistic picture of the willingness of individual companies to enter into the proposed Subscription System, and, on the basis of their net seed sales, to estimate the resulting income the Benefit-sharing Fund;

7. **Requests the Working Group**, where relevant in consultation with Stakeholders and on the basis of legal advice, to consider the legal and other implementation mechanisms by which a Subscription System could be given effect, through a coherent set of measures, including: the role of a revised Article 6.11 of the SMTA, in establishing a Subscription System for *Annex I* materials only; the integration of a revised Article 6.11 in a larger framework, established under a Protocol or Supplementary Agreement, especially in order to create overall legal coherence and legal certainty for users, including the possibility of direct agreements between the Governing Body and representative bodies of the seed sector;
8. **Notes** the World Health Organization (WHO) Pandemic Influenza Preparedness Framework has included a Subscription System, and **requests** the Secretary to consult WHO on lessons learned in the process of further developing any Subscription System under the Treaty.

**MEASURE IV: OTHER IMPROVEMENTS TO THE STANDARD MATERIAL
TRANSFER AGREEMENT TO INCREASE USER-BASED PAYMENTS
AND MAKE IT MORE USER-FRIENDLY**

THE GOVERNING BODY

1. **Recognizes** the need to increase incentives for use of the Multilateral System, in particular by the seed sector, and that an enhanced Multilateral System should minimize the administrative burdens for users arising from the Standard Material Transfer Agreement (SMTA), while at the same time providing them with legal certainty within the wider national and international access and benefit-sharing regimes, and facilitating the functioning of the Third Party Beneficiary;
2. **Recognizes further** that the current SMTA has not, for structural reasons, met expectations, either to generate an income stream for the Benefit-sharing Fund, or to enhance the use of materials under the Multilateral System, and that these reasons include: the comparative advantages of avoiding materials under SMTAs, the failure to generate voluntary payments, and the inclusion of a number of provisions that the seed sector does not consider as being consistent with normal commercial practice;
3. **Accepts** the need to resolve the tensions that exist between the Contracting Parties' aim to generate substantial user-based income, and the commercial practices of the seed sector, aware that any solutions that do not meet the aspirations of both sides cannot succeed;
4. **Notes** that consensus has not yet been reached regarding whether or not a Subscription System should be the sole option, or whether other payment options should be maintained;
5. **Reiterates** the importance of developing all user-based measures in a coherent and integrated manner, as a single package, supported by realistic overall income projections, for consideration of the Governing Body at its Seventh Session;
6. **Requests the Working Group** to resolve all stumbling blocks to the use of the Standard Material Transfer Agreement, including those raised by the seed industry, in the package of measures that it proposes to the Seventh Session, providing that a comprehensive analysis, including the economic one, demonstrates that this will result in an acceptable level of user-based contributions to the overall income of the Benefit-sharing Fund;
7. **Requests the Secretariat** to consult the International Centres that have entered into agreements under Article 15 of the Treaty, on the implications of a revision of the SMTA for their work, and resolve any technical problems that are identified.

**MEASURE V: OTHER WAYS TO ENHANCE INCOME TO THE BENEFIT-SHARING
FUND IN A SUSTAINABLE AND PREDICTABLE LONG-TERM MANNER**

THE GOVERNING BODY

1. **Recognizes** that, as a result of the implementation of package of measures, a number of income streams will each contribute income to the Benefit-sharing Fund, some of which will be mandatory and some of which will be voluntary, in accordance with sub-targets still to be agreed;
2. **Underlines** the need for all measures in the package to be accompanied by reasoned and realistic projections of the annual income expected from each;
3. **Establishes** the annual target of US\$ [xx million], as the level of income to work towards in the finalization of the package of measures;
4. **Decides** that it will review this target regularly;
5. **Invites the Working Group** to establish sub-targets for the various contributors, including what part of the individual sub-targets are to be mandatory;
6. **Further requests the Working Group** to work towards a package of measures where [xx]% of the overall target will be met through sustainable and predictable income;
7. **Decides** to further explore the development of a measure or measures to ensure contributions by Contracting Parties to the Benefit-sharing Fund in a sustainable and predictable manner, including through reviewing the financial rules and the Funding Strategy;
8. **Requests the Secretary** to update the *Strategic Plan for the implementation of the Benefit-sharing Fund*, for the period 2018–2023, on the basis of the targets and sub-targets agreed by the Working Group during the forthcoming biennium, in order to have a fully articulated and coherent package of measures.

MEASURE VI: EXPAND THE ACCESS AND BENEFIT-SHARING PROVISIONS OF THE INTERNATIONAL TREATY

THE GOVERNING BODY

1. **Reiterates** that the scope of the Treaty is all plant genetic resources for food and agriculture;
2. **Decides in principle** to extend its crop coverage to its full scope, in the context of the package of measures to enhance the functioning of the Multilateral System of Access and Benefit-sharing;
3. **In this context, requests the Working Group** to fully evaluate a possible [Protocol][Supplementary Agreement] to the International Treaty to address the expansion of the Treaty's crop coverage side by side with the assurances for making effective the benefit-sharing flow, from accessing and using plant genetic resources for food and agriculture, and, at the same time other relevant measures in the package it proposes, including to address the inter-relationship between the Treaty and other elements of the international legal framework for access and benefit-sharing, thereby providing more legal certainty to users of material within the scope of the Treaty.

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

THE GOVERNING BODY

1. **Recognizes** the important progress made by the *Ad Hoc* Open-ended Working Group to Enhance the Functioning of the Multilateral System in the last biennium, reflected in the Annex to its report, which forms a sound basis for further work;
2. **Extends** the mandate of the Working Group, for the 2016-2017 biennium;

3. **Requests the Working Group** to complete the full package of measures to enhance the Multilateral System, with all necessary texts and instruments to give it effect, for consideration for approval at the Governing Body's Seventh Session;
4. **Urges Contracting Parties** to provide support and significant financial resources, as necessary, for the Working Group to be able to fulfill its mandate on schedule.

INTERIM MEASURES TO MAINTAIN THE OPERATIONS OF THE BENEFIT-SHARING FUND, PENDING THE APPROVAL OF THE FINAL PACKAGE OF MEASURES TO ENHANCE THE FUNCTIONING OF THE MULTILATERAL SYSTEM OF ACCESS AND BENEFIT-SHARING

THE GOVERNING BODY

1. **Recognizes** that no, or very little, user-based income arising from the SMTA is expected in the forthcoming biennium;
2. **Therefore extends** the *Strategic Plan for the implementation of the Benefit-sharing Fund 2009–2014*, and its annual target of US\$ 23 million, on an *ad hoc* basis, for the 2012–2017 biennium, and emphasizes the importance for the Secretariat to continue its current work on resource mobilization, communication, promotion and the Treaty's branding and media presence, to enhance funding for, and the visibility of, the Benefit-sharing Fund;
3. **Urgently calls on Contracting Parties and other donors** to make contributions on an exceptional basis, to allow the launch of the fourth project cycle of the Benefit-sharing Fund by [date] at a level of US\$[xx million], and avoid an hiatus;
4. **Invites Contracting Parties** to consider making contributions, within this funding target, at a level that takes into account their indicative voluntary contributions to the Core Administrative Budget of the Treaty;
5. **Welcomes** the contribution made by the European Seed Association to the Benefit-sharing Fund and **appeals** to other natural and legal persons who wish to see an enhanced Multilateral System to make similar contributions;
6. **Appeals, as well**, to institutional partners, in particular the International Fund for Agricultural Development (IFAD) and the Global Crop Diversity Trust (GCDT), to cooperate in resource mobilization to allow the launch of the fourth project cycle of the Benefit-sharing Fund.

REVIEWS AND ASSESSMENTS UNDER THE MULTILATERAL SYSTEM, AND OF THE IMPLEMENTATION AND OPERATION OF THE STANDARD MATERIAL TRANSFER AGREEMENT

1. **Decides** to again postpone the reviews foreseen under Articles 11.4 and 13.2d(ii) of the Treaty to its Seventh Session.