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Mr. Shakeel Bhatti  
Secretary General  
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Nyon, 19 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 – Access mechanisms**

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 Access mechanisms 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 Access mechanisms was developed. On the issue defining payment modalities, ISF still feels that a user-friendly sMTA and subscription system must impose minimal administrative burden for users. For instance, if complying with the sMTA necessitated putting in place an all-encompassing track and trace system, most companies, but especially smaller enterprises, would be discouraged from accessing genetic resources from the multilateral system. This would result in fewer users of the multilateral system material and less income.

ISF would like to underline the necessity to keep flexibility for users. Focusing on seed companies, the diversity of size and internal policies demonstrate that putting in place only one system of payment would not be broadly suitable.

Moreover, upon expiration, a recipient may continue to use any materials received during the subscription period without any further obligations for payment and reporting. A recipient agrees to pay the remainder of payments due under the agreement if they decide to terminate before the expiration of the initial agreement or any extensions thereof.

ISF thinks that a multi-optional system should remain. It should be constituted of:

- Subscription fee on a crop-by-crop basis, and a multiple-year renewable agreement (in the context of article 6.11 of the sMTA)

As it is currently stated in article 6.11, the access to PGRFA should be established on a crop-by-crop basis over multiple years. The subscription fee should be structured so as to allow a reduction when a company requests a subscription for multiple crops (“volume discount”). The recommended payment would be much lower than the current percentage in Article 6.11 to attract researchers and breeders to subscribe.

The fee may be based on the seed sales / turnover (gross revenues of seed sold minus taxes and other expenses plus revenues from seed treatments and tech fees not derived from the original material from the MLS) of the applicable crop (or collection of crops) and will be paid only during the membership years.

During the subscription period the subscriber would be allowed to access any material from the MLS of the crop covered under the subscription. Payments at the agreed percentage of a recipient’s yearly net seed sales for the applicable crop would be made regardless of whether or not a product is developed.

Commercialized products that include PGRFA of the applicable crop from the MLS that are restricted for research and breeding, and where the grounds for the restriction can be tracked from the original material of the applicable crop received from the MLS as demonstrated by standard breeding records (tracking and tracing), would be subjected to benefit sharing for a maximum of ten years after the subscription expires and has not been renewed. A different rate of payment as described below would be applied. A recipient, subject to the payment for restricting a Product, would submit a calculation on how the amount of payment was determined. All details of payment i.e., the crop, the payment calculation and exact amount must be kept confidential.

No further payment would be required after expiration of the initial subscription period for products developed with accessions acquired from the MLS as long as these products are available for further research and breeding without restriction. A recipient will have the right to voluntarily terminate a subscription on a yearly basis, after the 10 years subscription, as we have described in our submission on termination.

- Royalty at commercialization only on a restricted product basis

This option is very much like the current article 6.7. In principal there should not be an obligatory payment for commercial products that are freely available for research and breeding. However, if this is changed in the future, and if payments should be required of all users of MLS material upon commercialization, then ISF proposes two different rates based on a percentage of sales of a product. Royalty rates would be higher for products restricted for research and breeding versus those available for research and breeding. Royalties would be payable as long as a material is restricted in any manner for the time that the product is not free for research and breeding or until the expiration term of the sMTA is reached.

We note that the FoCC sub group on Crop/User Categories has concluded that “crop factors” would be unduly complex and recommends against their development. We agree with many aspects of this recommendation, but wish to remind the Working Group that this concept was introduced to an effort to recognize commercial and economic realities that will impact utilization of PGRFA from the MLS under a sMTA. Breeders simply cannot share more benefits than they receive.

- Limited number of accessions based benefit sharing modality

To address the likely situation that some breeders will only want request a small number of accessions (<20) with long gaps in time between request (multiple years), and recognizing that long delays in benefit sharing income are undesirable, we propose an access-based benefit sharing modality. Perhaps a flat fee per accession payable to the 3<sup>rd</sup> party beneficiary at the time of the request would be attractive to users and providers. This would confer the right to breed with the material supplied, and benefit sharing obligations would have been fulfilled by the payment.

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