



**Food and Agriculture
Organization of the
United Nations**



**International Treaty
on Plant Genetic Resources
for Food and Agriculture**

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

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

Rome, Italy, 1 – 4 April 2025

Report by the Drafting Group: payment structure

Executive Summary

At its twelfth meeting, the Working Group agreed that the Co-Chairs would establish a drafting group, with one representative per Region, to redraft the subscription mechanism to include two payment options, taking into account the criteria and factors provided in paragraph 9 of the Report.

This document contains the report of the Drafting Group, as received by the Co-Chairs.

DRAFTING GROUP
established by the Co-Chairs of the
Ad Hoc Open-ended Working Group to Enhance the Functioning of the Multilateral
System of Access and Benefit-sharing

REPORT

1. Introduction

The Working Group at its twelfth meeting (16-19 September 2024) agreed with a number of activities proposed by the Co-Chairs for the intersessional period. One of these activities is the establishment of a drafting group to work on the payment structure in the revised Standard Material Transfer Agreement.

The Working Group agreed that the payment structure is one of the areas in the draft package of measures that requires further development before the next meeting. It reiterated its strong support for the subscription mechanism, especially considering the objectives of establishing a simple, legally certain, and transparent system that increases user-based income to the Benefit-sharing Fund in a sustainable and predictable long-term manner. Since there is still no consensus on a subscription only mechanism, the Working Group agreed to explore developing a subscription mechanism with two payment options, based on a list of criteria and factors.¹

The members of the Drafting Group are Ms Rennie Hilukwa (Africa), Mr Park Won Seog (Asia), Ms Imke Thormann (Europe), Ms Mariana Marshall Parra (GRULAC), Mr Behzad Sorkhi (Near East), Ms Katlyn Scholl (North America), and Mr Stephen Hodge (South West Pacific).

2. Mandate

The mandate of the Drafting Group was “*to redraft the subscription mechanism to include two payment options, taking into account the criteria and factors provided in paragraph 9*” of the document IT/OWG-EFMLS-12/24/Report.

The Working Group “*agreed to explore developing a subscription mechanism with two payment options (the early payment option and a deferred payment option) and in doing so, take into account the following criteria and factors:*

Criteria

- *Predictability of income from mandatory payments through the subscription mechanism*
- *Simplicity of the system for users and providers*
- *Attractiveness to the broadest range of users*
- *Legal certainty*

Factors

- *Rates and their balance, with the deferred payment being higher*
- *Making the early payment option most attractive*
- *Payment basis, in particular for the deferred payment option*
- *How DSI/GSD could be addressed within the deferred payment option*
- *Defining a registration process separate from SMTA*
- *Renewal, withdrawal and other operational matters (such as period of payment)*
- *Maintain benefits of Articles 6.7, 6.8 and 6.11, including how to encourage availability of Products without restriction*
- *Exemptions from payment obligations*

- *Potential role for complementary measures, such as voluntary contributions and recognition to*

¹ IT/OWG-EFMLS-12/24/Report, paras. 8 and 9.

*subscribers.*²

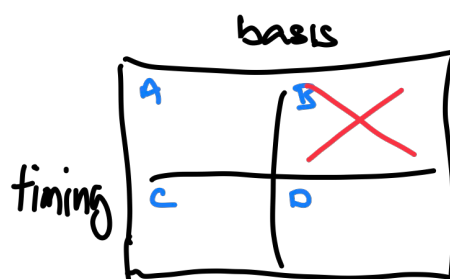
3. Ways of operating

The Drafting Group held two virtual meetings, on 28 November 2024 and 20 December 2024; and two physical meetings on 13 December 2024 and 15 December 2024, both in Frascati, Italy.³

In addition, it worked by electronic correspondence.

The Co-Chairs of the Working Group acted as facilitators of the Drafting Group, with support by the Secretariat.

4. Discussion of payment options



a. Structure of payment options

Building on the various options that have been considered in the process to enhance the functioning of the Multilateral System since its start in 2013, the Drafting Group focused its discussion on:

- (A) a subscription mechanism with early/upfront benefit-sharing payments (as contained in both the current negotiating text⁴ and the “June 2019 draft package”);
- (B) a *crop-by-crop* or *Product-based subscription* (similar to Article 6.11 in the current SMTA);
- (C) a subscription mechanism with a deferred benefit-sharing payment;
- (D) a *crop-by-crop* or *Product-based benefit-sharing* payment (if Product-based, similar to Articles 6.7/6.8 in the current SMTA).

These options would be for the user to choose.

The Drafting Group agreed not to further consider option (B), because of its complexity and little attractiveness to users, as exemplified by Article 6.11 in the current SMTA.

b. Payment basis of the different options

The Drafting Group discussed that the payment basis for all payment options could range from covering sales of all PGRFA products in a recipient’s portfolio to covering only sales of a specific product that incorporates material accessed from the Multilateral System.

It suggested the following payment basis for each of the three options:

² IT/OWG-EFMLS-12/24/Report, para. 9.

³ Mr Stephen Hodge (South West Pacific) could not participate in the physical meetings.

⁴ IT/OWG-EFMLS-12/24/Report, Appendix 3.

Option (A): The early/upfront payment covers sales from all PGRFA products in a subscriber's portfolio.

Option (C): The deferred payment covers sales from all PGRFA products in a subscriber's portfolio (same payment basis as option A).

Option (D): The payment basis would either⁵ be sales of the Product (for example, sales of the commercialized carrot variety 1 that was developed with PGRFA accessed from the MLS) or sales of the crop group, meaning all products of the crop group to which the accessed material belongs (for example, sales of the commercialized carrot variety 1 that was developed with PGRFA accessed from the MLS, plus sales from all other carrot varieties 2, 3, 4, etc. commercialized by the recipient). These payment bases are the same as in Articles 6.7/6.8 and Article 6.11, respectively, of the current SMTA.

c. Timing / Trigger of payments

The trigger of payments under the different options would be as follows:

Option (A): The early/upfront benefit-sharing payment would be made from the first year following subscription.

Option (C): The deferred payment would either⁶ be triggered by the commercialization of a PGRFA product incorporating material accessed from the MLS⁷ or start after a fixed period of [X] years following subscription.

Option (D): The payment would be triggered by the commercialization of a PGRFA product incorporating material accessed from the Multilateral System.⁸

Under all options, yearly payments would be made.

For Option (C), a problem arises with regard to previously signed SMTAs by the subscriber. Article 1.3 of Annex 2 of the draft revised SMTA provides for all payment obligations for previously signed SMTAs to be waived on the basis that a subscriber would, on signing immediately begin to contribute to the Benefit-sharing Fund (subject to other provisions of the revised SMTA). If a subscriber taking the deferred payment option has benefit-sharing requirements from previous access waived but does not trigger a payment obligation from commercialization of material accessed under the revised SMTA there may be some inequity in their respective treatment.

Article 1.3 of Annex 2 of the negotiating text will need to be revised to apply only for the upfront/early payment option under the subscription mechanism and, possibly, for certain payments under the deferred payment option (payment on all products if and once triggered by period of time). The situation will be rather complicated in case the payments under the deferred payment option will be triggered by the commercialization of a Product.

d. Voluntary differentiation of rates within the same payment option

The current negotiating text provides for three payment rates for the subscription mechanism (Article 3 of Annex 2):

⁵ The drafting group were of the view that only one of these approaches should be developed for inclusion in the SMTA but wanted to further explore the two approaches.

⁶ The drafting group were of the view that only one of these approaches should be developed for inclusion in the SMTA but wanted to further explore the two approaches.

⁷ "Product" as defined in Article 2 of the SMTA.

⁸ "Product" as defined in Article 2 of the SMTA.

- A “default” payment rate;
- An option for the subscriber to choose, as an alternative:
 - A rate for sales of products that are *not* available without restriction to others for research and breeding;
 - A rate for sales of products that are available without restriction to others for research and breeding.

The Drafting Group recommends applying a voluntary differentiation also to option (C) to encourage users to make available material for further research and breeding.

The Drafting Group recommends replacing the option for the subscriber to choose the alternative (as in Article 3 of Annex 2) in option (A) with a single, discounted rate that subscribers can choose if they only commercialize PGRFA products that are available without restriction for further research and breeding (i.e. if a subscriber has products not available to others for research and breeding in their portfolio of products, they would only be able to access based on the default rate). The same should apply to option (C). If they commercialize or start commercializing products that are not available without restriction, they would have to pay or start paying the default rate.

e. Payment rates

The suggested payment structure would have a total of six payment rates to be negotiated by the Working Group (the Governing Body):

- (A) 2 rates: default rate plus a discounted rate for companies to choose if they *only* commercialize PGRFA products available without restriction to others for further research and breeding;
- (C) 2 rates: default rate plus a discounted rate for companies to choose if they *only* commercialize PGRFA products available without restriction to others for further research and breeding;
- (D) 2 rates: similar to Articles 6.7 and 6.8 in the “June 2019 draft package” (available with/without restriction).

This would bring the number of rates to be negotiated to six.

The Drafting Group did not discuss the concrete payment rates.

f. Multipliers on payment rates

Furthermore, the Drafting Group discussed the potential for multipliers that could be applied to subscribers in some circumstances, however did not finalize that discussion. These would have the effect of ensuring all subscribers made the equivalent of 10 years of payments in a 10 year subscription.

(1) Switching from Option (C) to Option (A):

In case a subscriber decides to switch from Option (C) to Option (A), a multiplier on the rate for Option (A) would apply for the first year that payments fall due, to compensate for the number of years where the user had access without having to make payments. This multiplier would equal the number of years that have passed since the subscription took effect. For example, if a subscriber commercializes a product and begins making payments 4 years after subscribing, the multiplier would be 4, ensuring the subscriber paid the equivalent of 4 years payments.

(2) First year of payments under Option (C):

For the first year that payments fall due under Option (C), a multiplier would apply on the payment rate of Option (C), equal to the number of years that have passed since the subscription took effect. This is to compensate for the number of years where the user had access without having to make payments. For example, if a subscriber commercializes a product and begins making payments 4 years after subscribing, the multiplier would be 4, ensuring the subscriber paid the equivalent of 4 years payments.

g. Balancing of payment rates

No discussions were held on how best to balance the different rates.

However, the Drafting Group recommends making the subscription mechanism with early/upfront benefit-sharing payments the most attractive option.

The rates under Option (C) should be higher than the corresponding rates under Option (A).

h. Voluntary payments (1) to be deducted from potential mandatory payments and (2) to cover DSI/GSD

For options (C) and (D), the Drafting Group suggests including, in the revised SMTA, a provision that would provide for the contribution of voluntary monetary benefit-sharing payments to the Benefit-sharing Fund by the recipient (D)/subscriber (C), which could demonstrate a commitment to monetary benefit-sharing and which could be deducted from their obligations should mandatory payments fall due under these options.

Example: Recipient R opts for payment option D. So far, no Product has been commercialized. They decide to make a voluntary payment in the amount of USD xx to the Benefit-sharing Fund. Nine years later, they are obliged to make payments under the provisions of option D, proportionate to their sales of the Product, amounting to USD yy. They may now deduct the amount of USD xx from the amount of USD yy, resulting in a payment of only USD zz. Any sum of voluntary payments made earlier could be deducted from the mandatory payment USD yy, no matter the amount. If the voluntary payments exceeded the obligations from mandatory benefit-sharing, no refund would be payable.

The draft Resolution would have additional provisions to explain the mechanics.

Regarding DSI/GSD, the Drafting Group considers the general approach in paragraph 43 of the draft Resolution to be a good way forward and a viable solution for the subscription mechanism with upfront/early payments, option (A). The same applies to the subscription mechanism with deferred payments under option (C), but only once the payments are made and only if the payment basis is the same as in option (A).

The draft Resolution would additionally include a provision regarding digital sequence information/genetic sequence data in the context of voluntary upfront payments:

Should the voluntary payments amount to a rate of x% of the sales of the whole PGRFA product portfolio in a year, the expectation is that these payments would meet the expectations for monetary benefit-sharing from the use of digital sequence information on genetic resources under the multilateral mechanism⁹ established under the Convention on Biological Diversity, for that specific year.

This possible positive consequence of such voluntary payments as well as the possibility to deduct them from mandatory payments triggered later, could be important incentives to voluntarily contribute certain amounts to the Benefit-sharing Fund.

5. Assessment of payment options

Overall, the Drafting Group recommends keeping the payment structure of the enhanced Multilateral system simple and clear. The reason for suggesting additional options and sub-options is to attract as broad a range of users as possible.

The Drafting Group assessed all options against the criteria and considered the factors, both mentioned above (page 1). In particular, the Drafting Group is of the opinion that the subscription mechanism with an upfront/early payment best meets most of the criteria, with the exception of the attractiveness to the broadest range of users.

Additionally, the Drafting Group emphasizes that any user of the Multilateral System should be aware of the objectives of the International Treaty. The aim of the Multilateral System is not to “punish” users by making them pay, but to contribute to the conservation and sustainable use of plant genetic resources for food and agriculture by sharing the benefits arising from their utilization.

⁹ “Multilateral mechanism for benefit-sharing from the use of digital sequence information on genetic resources, including a global fund,” Decisions [15/9](#) and [16/2](#) of the Conference of the Parties to the Convention on Biological Diversity.

6. Additional recommendations

The Drafting Group supports the approach of the Working Group, in the subscription mechanism, to only keep the exemption based on yearly sales and delete the other exemptions included in the earlier draft text. This exemption will cover all users who are not expected to make mandatory payments, including those who have no intention of commercializing PGRFA products. This exemption will only be applicable in options (A) and (C).

The addition of further options to the subscription mechanism contained in the current negotiating text may require assessing possible implications on the following elements by each option:

- The withdrawal clause; for the deferred payment option, withdrawal after ten years or withdrawal after ten years of payment?
- The consideration of digital sequence information/genetic sequence data.

The Drafting Group also considered whether in option (A), there could be a cap on payments for subscribers, to make option (A) most attractive. Defining such a cap would require negotiations together with the payment rates.

Finally, the Drafting Group recommends not defining a registration process outside the SMTA, as this may add further complications to the process at this late stage, especially with regard to the legal and administrative structure under which the International Treaty operates.

However, the Drafting Group suggests structuring the revised SMTA in a way that makes clear to each recipient/subscriber, which of the Annexes are relevant to them. Also, the Working Group could work towards making the practicalities of the subscription smooth and user-friendly. This could include a possibility for an active subscriber to provide a subscription number when signing future SMTAs. In Easy-SMTA, only the relevant Annexes could pop up, to make the SMTA shorter.

7. Draft language for the negotiating text

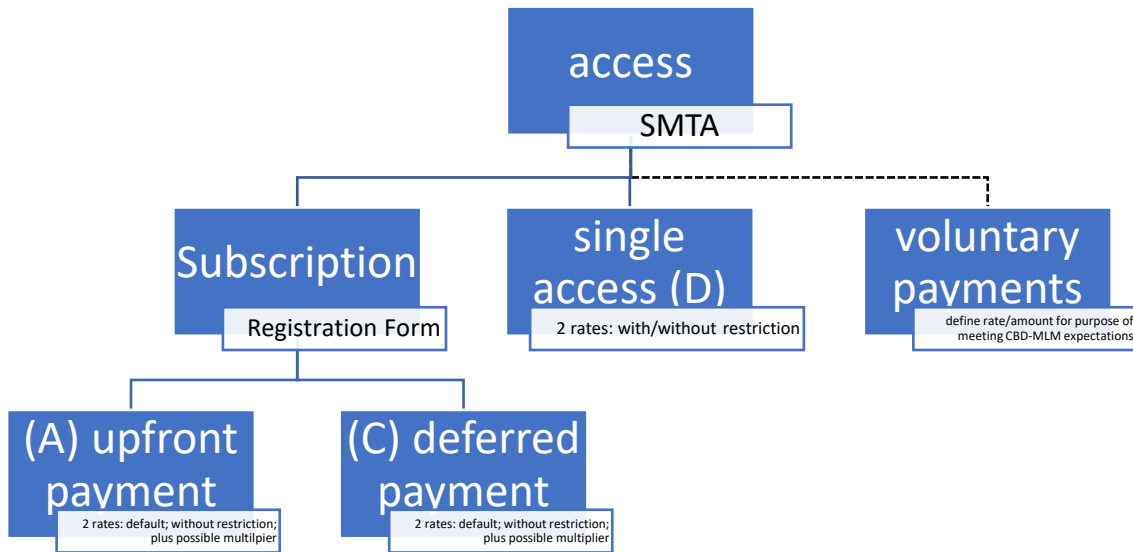
The Drafting Group had an exchange about possible text for the draft revised SMTA, which is attached to this report. It did not have sufficient time to finalize the text but advised the Co-Chairs on its finalization based on the recommendations in this report.

Regarding the voluntary payments under options (C) and (D), the draft Resolution would need to include a provision on the intention to cover the possible payment expectations regarding DSI/GSD under other access and benefit-sharing arrangements, especially the CBD.

The Drafting Group recommended that the Co-Chairs consider the implications of each payment option on the need to revise further provisions of the negotiating text.

The Drafting Group also recommends including language in the revised SMTA that requests the Subscriber to indicate his active subscription, for example through a subscription number in the signature part (Article 10 of the SMTA). A Subscriber would receive his subscription number from the Secretariat of the International Treaty and would be requested to use it for any future access to PGRFA from the Multilateral System, including through Easy-SMTA.

8. Summary



The Drafting Group suggests including three primary payment options in the revised SMTA. Sub-options for the payment rates should attract further users.

The Working Group will have to negotiate six payment rates (point 4.e above), the trigger for option (C), the multiplier in case of a subscriber switching from option (C) to option (A), the multiplier for the first year of payment under option (C), the threshold for exemptions from payment (point 6), the rate for voluntary payments (point 4.3), the withdrawal clause for option (C), and a possible cap for upfront payments (point 6).

The Drafting Group provided recommendations to the Co-Chairs on drafting a proposal for the negotiating text, which are attached, but was not able to finalize the draft text itself.

28 January 2025.

Attachment: Possible draft text discussed by the Drafting Group

Attachment: Possible draft text discussed by the Drafting Group

Possible language for draft text

6.11 The **Recipient** may, at the time of signing of **this Agreement** or at the time of acceptance of **this Agreement**, opt for the **Subscription System**, as set out in *Annex X* to **this Agreement**, by submitting the **Registration Form** contained in *Annex Y* to **this Agreement**, duly completed and signed, to the **Governing Body** of the **Treaty**, through its Secretary (“**Subscription**”). If the **Registration Form** is not received by the Secretary, the modality of payment specified in Articles 6.7 and 6.8 will apply unless the **Recipient** has already opted for the **Subscription System** earlier.

6.11 bis Should the **Recipient** opt for the **Subscription System**, the terms and conditions of the **Subscription System**, as set out in *Annex X* to **this Agreement**, apply. In this case, *Annex X* to **this Agreement** constitutes an integral part of **this Agreement** and any reference to **this Agreement** shall be understood, where the context permits and *mutatis mutandis*, to also include *Annex X*.

6.11 ter By opting for the **Subscription System**, the **Recipient**, as **Subscriber**, shall have no payment obligations with regard to the **Material** received, during the term of the **Subscription**, and the **Product** that incorporates the **Material**, other than the payment obligations provided for under the **Subscription System**.

6.7 In the case that the **Recipient** does not opt for the **Subscription System** and the **Recipient** or any of its affiliates **commercializes** a **Product** that is a **Plant Genetic Resource for Food and Agriculture** and that incorporates **Material** as referred to in Article 3 of **this Agreement**, and where such **Product** is **not available without restriction** to others for further research and breeding in accordance with Article 2 of **this Agreement**, the **Recipient** shall pay, for the period for which the restriction is applicable, a fixed percentage of the **Sales** of the **commercialized Product** into the mechanism established by the **Governing Body** for this purpose, in accordance with *Annex Z* to **this Agreement**. After the restriction comes to an end, the **Recipient** or any of its affiliates commercializing the **Product** will continue to make payments at the rate referred to in Article 6.8 below.

6.8 In the case that the **Recipient** does not opt for the **Subscription System** and the **Recipient** or any of its affiliates **commercializes** a **Product** that is a **Plant Genetic Resource for Food and Agriculture** and that incorporates **Material** as referred to in Article 3 of **this Agreement** and where that **Product** is **available without restriction** to others for further research and breeding in accordance with Article 2 of **this Agreement**, the **Recipient** shall pay for a period of ten years a fixed percentage of the **Sales** of the **commercialized Product** into the mechanism established by the **Governing Body** for this purpose, in accordance with *Annex Z* to **this Agreement**.

6.8 BIS For a particular **Product** the **Recipient** shall be required to make payments for not more than 25 years combined under the terms of 6.7 and 6.8.

Annex X – Subscription System

ARTICLE 1 — SUBSCRIPTION

1.1 The **Recipient**, who opts for the **Subscription System** in accordance with Article 6.11 (hereinafter referred to as the “**Subscriber**”), agrees to be bound by the following additional terms and conditions (the “**Subscription Terms**”).

1.2 The **Subscription** shall take effect upon receipt by the Secretary of the **Governing Body** of the duly signed **Registration Form** contained in *Annex Y*. The Secretary shall notify the **Subscriber** of the date of receipt. The **Subscriber** shall not be required to sign *Annex Y* of any subsequent Standard Material Transfer Agreement, during the period of **Subscription**.

1.3 The **Subscriber**, making payments according to Article 3 below, shall be relieved of any obligation to make payments under any previously signed Standard Material Transfer Agreement, and only the payment obligations in these **Subscription Terms** shall apply.

[...]

ARTICLE 3 — MONETARY BENEFIT-SHARING

3.1 In order to share the monetary benefits from the use of **Plant Genetic Resources for Food and Agriculture** under the **Treaty**, the **Subscriber** shall make annual payments based on the **Sales** of products that are **Plant Genetic Resources for Food and Agriculture** (“**early payment option**”).

3.2 The applicable rate of payment on **Sales** of products that are **Plant Genetic Resources for Food and Agriculture** for the **early payment option** shall be [yy]%.

3.2 BIS At the request of the **Subscriber**, through the **Registration Form** contained in *Annex Y*, who only commercializes products that are **Plant Genetic Resources for Food and Agriculture** that are **available without restriction**, the rate of payment shall be [xx]%.

3.2 TER Alternatively, the **Subscriber** may, through the **Registration Form** contained in *Annex Y*, opt for the following payment modality (“**deferred payment option**”): In the case that the **Subscriber** or any of its affiliates **commercializes** a **Product** that is a **Plant Genetic Resource for Food and Agriculture** and that incorporates **Material** as referred to in Article 3 of **this Agreement**, but no later than a period of X years from the date that the **Subscription** took effect has lapsed, the **Subscriber** shall make annual payments based on the **Sales** of products that are **Plant Genetic Resources for Food and Agriculture**.

3.2 QUATER The applicable rate of payment on **Sales** of products that are **Plant Genetic Resources for Food and Agriculture** for the **deferred payment option** shall be [vv]%.

3.2 QUINQUIES At the request of the **Subscriber**, through the **Registration Form** contained in *Annex Y*, who only commercializes products that are **Plant Genetic Resources for Food and Agriculture** that are **available without restriction**, the rate of payment for the **deferred payment option** shall be [uu]%.

3.2 SEXIES For the first payment under the **deferred payment option**, the applicable rate shall be multiplied by [x¹⁰].

3.2 SEPTIES If the **Subscriber** makes voluntary payments before the **Subscriber** or any of its affiliates **commercializes** a **Product** that is a **Plant Genetic Resource for Food and Agriculture** and that incorporates **Material** as referred to in Article 3 of **this Agreement**, but no later than a period of X years from the date that the **Subscription** took effect has lapsed, the **Subscriber** may deduct such payments from any payments due under Articles 3.2 TER to 3.2 SEXIES above.

3.2 OCTIES If the **Subscriber**, who had opted for the **deferred payment option**, opts for the **early payment option**, through the **Registration Form** contained in *Annex Y*, the applicable rate for the first payment under the **early payment option** shall be multiplied by [y¹¹].

3.3 Notwithstanding the above, no payment shall be required for a **Subscriber** in a year in which its **Sales** do not exceed US\$ [xxx].

[...]

Annex Y – Registration Form

¹⁰ This multiplier would equal the number of years that have passed since the subscription took effect. For example, if a subscriber commercializes a product and begins making payments 4 years after subscribing, the multiplier would be 4, ensuring the subscriber paid the equivalent of 4 years payments.

¹¹ This multiplier would equal the number of years that have passed since the subscription took effect.

[Recipient declares to opt for Subscription System]

[Tick-box: (optional) Recipient chooses the rates under Article 3.2BIS of Annex X.]

[Tick-box: (optional) Recipient chooses the deferred payment option]

[Tick-box: (optional) Recipient chooses the rates under Article 3.2QUINQUIES of Annex X.]

Annex Z – terms and conditions for payments under Article 6.7

1. The **Recipient** shall pay each year [bb] percent ([bb] %) of the annual **Sales** of the **Product**, if the **Product** is **not available without restriction** to others for further research and breeding.
2. The **Recipient** shall pay each year [aa] percent ([aa] %) of the annual **Sales** of the **Product**, if the **Product** is **available without restriction** to others for research and breeding.
3. No payment shall be due from the **Recipient** when the **Product**:
 - (a) has been purchased or otherwise obtained from another person or entity who has already made payment on the **Product**;
 - (b) is sold or traded as a commodity; or
 - (c) contains a genetic contribution of less than 6.25% by pedigree of the **Material** and does not contain a trait of commercial value that was contributed by the **Material**.
4. If the Recipient makes voluntary payments before the **Recipient** or any of its affiliates **commercializes** a **Product** that is a **Plant Genetic Resource for Food and Agriculture** and that incorporates **Material** as referred to in Article 3 of **this Agreement**, the **Recipient** may deduct such payments from any payment due under Article 1 or Article 2 of Annex Z.

[...]

Overview rates:

NB: The variables do not indicate any relation of rates between Options (A), (C) and (D). The rates under Option (C) would be higher than the corresponding rates under Option (A).

	Default rate	With restriction	Without restriction	Other
Subscription upfront/early payment (A)	yy %		(optional for subscriber if they only commercialize products without restrictions) xx %	—
Subscription deferred payment (C)	vv %		(optional for subscriber if they only commercialize products without restrictions) uu %	<i>Voluntary early rate to be defined (in draft Resolution)</i>
Single access (D)	—	bb %	aa %	<i>Voluntary early rate to be defined (in draft Resolution)</i>