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ESA is the voice of the European seed sector. ESA's members are national associations and individual companies active in research, breeding, production and marketing of seeds of agricultural and ornamental plant species. ESA represents more than 7000 seed businesses in the EU and beyond.

ESA
European Seed Association
Rue du Luxembourg 23
B-1000 Brussels
T. +32 (0) 2 7432860
secretariat@euroseeds.eu

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POSITION

ON THE STANDARD MATERIAL TRANSFER AGREEMENT

AS PROVIDED UNDER THE INTERNATIONAL TREATY FOR PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE— A PERFECT CERTIFICATE OF COMPLIANCE WITH PIC AND MAT AS REQUIRED BY THE NAGOYA PROTOCOL

Article 6 of the Nagoya Protocol sets out the basic framework for access to genetic resources and within that framework foresees that contracting parties shall provide for the issuance – at the time of access - of a permit or an equivalent which will serve as evidence that prior informed consent (PIC) has been granted and mutually agreed terms (MAT) have been established.

The FAO International Treaty on Plant Genetic Resources for Food and Agriculture (IT) has, in its Article 10, set up a multilateral system for access and benefit-sharing (MLS) which covers plant genetic resources for food and agriculture listed in Annex I to the IT and under the control of the contracting parties. Facilitated access to plant genetic resources in the MLS is ensured via a standard material transfer agreement (sMTA) which has to be signed by the recipient when accessing the material from the MLS.

Whenever the IT applies, the Nagoya Protocol does not (*lex specialis derogat legi generali*). This is also confirmed by Article 4(4) of the Nagoya Protocol which allows for the making use of such different access and benefit-sharing instruments as long as they do not run counter to the objectives of the CBD and the Nagoya Protocol.

The sMTA is consistent with the aims of the CBD and the Nagoya Protocol. Especially it conforms to the requirements as set out in Article 15(4) and (5) of the CBD as well as in Article 6(3)(e) and Article 17(3) of the Nagoya Protocol.

In all cases the sMTA provides perfectly well for PIC and MAT and therefore can serve as a certificate of compliance with these principles.

In line with the above plant breeders ask the Governing Body to express itself on this matter accordingly and to request the CBD to recognize the sMTA as a legitimate certificate of compliance with PIC and MAT as required under the Nagoya Protocol.