

## DSI Working Group Highlights: Wednesday, 14 August 2024

Following progress reports from contact groups, the Committee of the Whole (CoW) continued deliberations on issues related to governance, public databases, and the global fund of the multilateral benefit-sharing mechanism from use of digital sequence information (DSI). Contact groups addressed provisions on the review of effectiveness of the multilateral mechanism, allocation of funding, and options for monetary contributions to the global DSI fund.

### Governance

EGYPT proposed additional text, noting that where a specialized international access and benefit-sharing (ABS) instrument establishes a multilateral benefit-sharing mechanism for DSI that is consistent with, and does not run counter to, CBD objectives and the Nagoya Protocol, the CBD multilateral mechanism for DSI does not apply to the parties to the specialized instrument in respect of the specific DSI covered. The EU said this goes beyond the Working Group's mandate, as DSI-related instruments are autonomous. EGYPT highlighted the CBD as the default instrument.

On the relationship between the multilateral mechanism and other instruments, discussion focused on Norway's proposal to establish a collective arrangement with other DSI-related instruments. TOGO preferred encouraging synergies. NORWAY explained their proposal refers to a forum for information exchange between bodies with competencies in DSI and not a negotiation platform. They noted that such an arrangement would prevent double payments in case the same DSI is used across instruments, adding that the CBD is in a good position to take initiative because its scope covers most available DSI. INDIA supported the multilateral mechanism working synergistically with other instruments "in accordance with Article 4 of the Nagoya Protocol" (relationship with international agreements and instruments). Noting that DSI is used in research irrespective of jurisdictional divides, CGIAR urged working towards mutual recognition of benefit-sharing payments between relevant instruments, while allowing users to access the entire global dataset.

Delegates then addressed a provision noting that parties should refrain from putting in place national measures that require benefit-sharing from the use of DSI available in public databases. URUGUAY and ARGENTINA called for harmonizing national measures with the multilateral system, noting that double payments would not necessarily occur. INDIA supported aligning national legislation with the multilateral mechanism, calling for further discussion on avoiding double payments. The EU said national legislation should not interfere with operation of the multilateral mechanism and would affect eligibility to receive benefits. The THIRD WORLD NETWORK (TWN) asserted the need for clear jurisdictional lines on what DSI will be considered

under the multilateral mechanism and what under national ABS legislation.

### Public Databases

EGYPT, PERU, JORDAN, CÔTE D'IVOIRE, and UGANDA stressed that public databases should ensure that published genetic sequences have been obtained legally and according to the laws and regulations of the country of origin, cautioning against inadvertently supporting biopiracy. NORWAY noted that this proposal implies tracking and tracing, adding that databases are probably not equipped to perform this task.

PERU highlighted that entities operating public databases should require information on the country of origin of DSI "or information on the legal access to biological or genetic material from which the DSI is obtained." ARGENTINA and COLOMBIA stressed that information on the country of origin should be a requirement and cases where this is not possible should be treated as an exemption. ARGENTINA further suggested that public databases require the provision of the relevant certificate of compliance in the case of DSI from genetic resources. AUSTRALIA questioned whether the CBD can instruct private entities to track origin. GUATEMALA suggested using unique DSI identifiers for tracking purposes. INDIA proposed a public database governance framework to deal with these entities in a structured manner. The EU, SWITZERLAND, and JAPAN opposed requiring information on the country of origin.

ARGENTINA and the EU suggested developing a definition of "public databases." URUGUAY urged distinguishing between people who deposit information into databases and users. CUBA stressed that parties should carry some of these responsibilities, including to ensure compliance.

The EU proposed encouraging operators to "take into account the FAIR and CARE principles in their operations, where applicable" rather than applying them. The INTERNATIONAL INDIGENOUS FORUM ON BIODIVERSITY urged implementing the FAIR and CARE principles as referenced in Decision 15/9 to engender trust. ECOROPA said the CBD is well-positioned to monitor databases for cases of biopiracy.

The DSI SCIENTIFIC NETWORK gave examples of information required by DSI databases, including on origin. Noting that respect for ABS principles promotes accountability without restricting innovation, and that most databases already provide solutions, TWN called for supporting both science and equity, including through provenance data with regard to traditional knowledge.

### Global DSI Fund

On policy and other measures by parties to encourage and enable businesses' contributions to the DSI fund, and, in the case of large and transnational companies, facilitate or ensure such contributions, JAPAN suggested that each party should take appropriate measures to incentivize contributions from DSI

users and relevant stakeholders. CHILE and CUBA asked to “ensure and enable,” rather than “facilitate” such contributions. SWITZERLAND and CANADA said that parties should be “invited” to take measures to encourage business contributions to the fund. ARGENTINA underscored that large and transnational companies from developed countries should be the contributors to the DSI fund, stressing that all modalities should be in conformity with national legislation. The EU and SWITZERLAND underscored that all companies from all countries should contribute to the fund.

JAPAN suggested adding that databases and academic institutions are not expected to make monetary contributions to the DSI fund. BRAZIL called for language requiring the provision of information on associated traditional knowledge when applicable.

On a provision stating that contributions to the fund may be made directly or through a relevant national authority, ARGENTINA and GUATEMALA expressed concerns regarding direct contributions, including transaction costs and other limitations. INDIA highlighted that companies should route contributions through national authorities but noted compliance challenges for transnational companies.

On a provision noting that contributors to the fund are considered in conformity with CBD benefit-sharing requirements, UGANDA emphasized that the mechanism should go beyond financial contributions, to take into account non-monetary benefit-sharing, and moral and ethical responsibilities. ARGENTINA said that contributors should be considered in conformity when DSI “was shared in public databases in conformity with applicable ABS regulations.” JAPAN proposed encouraging those who are willing to contribute to the DSI fund, both DSI users and non-users, to do so and receive certificates to prove their contribution. SWITZERLAND, the UK, CHILE, CANADA, and others supported the proposal, with CHILE noting that certificates should only be issued for monetary contributions. INDIA preferred an international certificate of compliance. NORWAY and the EU noted that a receipt of payment could serve as a certificate. The EU and CHILE expressed concern that bringing non-monetary benefit-sharing into the multilateral mechanism could undermine existing bilateral relations. SWITZERLAND underlined that users contributing to the fund should be exempt from other benefit-sharing obligations.

On a provision encouraging additional contributions to the fund from businesses, governments, and others, INDIA called for distinguishing these contributions from those required from DSI-related users and businesses. Noting that the fund is not an official development assistance one, BRAZIL and COLOMBIA underscored that additional contributions should be complementary to the ones from DSI-related businesses.

EGYPT proposed additional language noting that users and sectors that benefit from DSI are required to make mandatory contributions to the fund to be in compliance with the Convention. The REPUBLIC OF KOREA urged incentives to motivate DSI users to contribute.

### ***Review of Effectiveness of the Multilateral Mechanism***

Co-facilitated by Joaquín Salzberg (Argentina), and Eliška Rolfová (Czechia), a Contact Group met to discuss the review of the effectiveness of the multilateral mechanism, including a list of review factors. Delegates considered the periodicity and timeframe of the review cycle, discussing a four-year cycle, starting at the 18<sup>th</sup> meeting of the Conference of Parties (COP 18). Some noted that there may not be sufficient experience by COP 18 to review the mechanism. Some delegations supported aligning this review cycle with reporting under the Kunming-Montreal Global Biodiversity Framework, with others calling to include this under the global review.

On the list of factors to be addressed under the review, a party suggested considering the sustainability of the finances in the fund. Another proposed referencing new and emerging

technologies relevant to the mechanism. Delegates also debated whether to delete an element calling for a review of estimates of the scope and value of the non-monetary benefits facilitated by the multilateral mechanism. One party called for a periodic review of the entire list. Delegates also agreed to placeholder text prepared by the CoW Co-Chairs on indicators for monitoring the sharing of benefits from DSI use through the multilateral mechanism.

### ***Allocation of Funding***

Co-facilitated by Salima Kempnaer (Belgium) and Nneka Nicholas (Antigua and Barbuda), the Contact Group was asked to consider a series of questions on factors to be considered in any formula to calculate country allocations, and metrics for measuring those factors, including possible combinations and weighting. Following a discussion on the necessity of the exercise at this stage of deliberations, Co-Facilitator Kempnaer indicated that it would feed into the initial formula for allocation. Delegates proposed criteria ranging from: equity, vulnerability to environmental change, historical DSI contributions, and need for capacity building; to biodiversity richness and threat, and many more. It was understood that weighting could happen at a later stage. A number of delegates recommended referring to existing metrics, such as biodiversity-related ones developed by the Global Environment Facility; and results-based approaches. Many indicated openness to the fund receiving direct applications from Indigenous Peoples and local communities and including their stewardship role in the metrics.

### ***Contributions to the DSI Fund***

Co-Facilitators Rolfová and Salzberg invited delegates to focus on options for contributions to the DSI fund. Discussions centered on three options: companies in sectors that are highly dependent on the use of DSI contributing a percentage of their profits or revenue; a contribution of 1% of the retail value of all products and services linked to the utilization of biological resources; and encouraging companies which actively use DSI on genetic resources to contribute a portion of their revenue or profit.

The Secretariat of the International Treaty on Genetic Resources for Food and Agriculture provided an overview of payment modalities under the Treaty’s Multilateral System and the outcomes of an analysis of sales and profitability in the seed sector.

Some delegates underscored that a model based on a percentage of revenues or profit can be used as a basis for discussion, noting that it provides a broader basis to generate monetary benefits and include services related to DSI, in addition to products. Delegates discussed the pros and cons of profit- and revenue-related calculations. They emphasized that reference to companies “highly dependent” on DSI use introduces a degree of subjectivity, suggesting referring to companies “that benefitted from DSI use” or “relying on the use of DSI for their commercial activities.” They further discussed a list of sectors highly dependent on DSI use, with some suggesting additions. Discussions continued into the night.

### ***In the Corridors***

As negotiations continued at full speed, delegates expressed mixed feelings regarding progress. On the one hand, many pointed to the collegial atmosphere, the productive ideas shared, and the successful first full reading of the non-paper developed by the CoW Co-Chairs, which means that a revised version will be available on Thursday for further discussion.

On the other hand, some delegates expressed concerns regarding the proliferation of diverging positions due to submissions of new proposals and the gap in views on various key issues, including but not limited to modalities for monetary benefit-sharing. Considering the urgency to operationalize the multilateral mechanism, a delegate lamented that “sometimes it feels like we’re going two years back in time.”