

DSI Working Group Highlights: Thursday, 15 August 2024

Delegates addressed a revised non-paper on modalities for operationalizing the multilateral mechanism for the fair and equitable sharing of benefits from the use of digital sequence information (DSI) on genetic resources, including a global fund.

Modalities of Multilateral Mechanism

Egypt, for the AFRICAN GROUP, and Argentina for the Latin American and Caribbean Group (GRULAC), noted their concerns that the non-paper fails to strike a balance between access, fair and equitable benefit-sharing, and data governance, noting that their views and text proposals have not been adequately reflected.

General Clause on Benefit-sharing: On a new introductory paragraph providing that DSI users should share benefits arising from its use, debate focused on: the operative verb indicating degree of legal obligation; qualification of users; and specification of DSI.

Delegates debated whether users “should,” “shall,” “will,” or “be encouraged to” share benefits. The AFRICAN GROUP, URUGUAY, and SAUDI ARABIA preferred “shall.” INDIA, NORWAY, JORDAN, and the EU supported “should,” with NORWAY stressing that “shall” constitutes treaty language, while discussions aim to develop a soft-law instrument. The UK proposed using “will” instead. SWITZERLAND and JAPAN said they prefer to “encourage” users, with SWITZERLAND stressing the importance of incentives.

INDIA and JORDAN, opposed by ESWATINI and SAUDI ARABIA, suggested reference to “all commercial users.” The EU and the UK preferred “all users,” adding that non-commercial users would focus on non-monetary benefit-sharing. INDIA withdrew the proposal on “commercial” users, stressing the need to define “users.”

The UK, with ARGENTINA, proposed indicating that DSI is held in public databases. The UK urged distinguishing between benefit-sharing from use of physical samples under bilateral mutually agreed terms, and benefit-sharing from use of DSI through the multilateral mechanism. The AFRICAN GROUP opposed, noting it limits the provision’s scope. URUGUAY and CUBA suggested referring to databases in general.

ZIMBABWE, supported by many, suggested adding that benefits should be shared “in a fair and equitable manner.” GUATEMALA, opposed by BRAZIL and CUBA, proposed referring to the sharing of “monetary or non-monetary benefits.”

Contributors to the Global Fund: Delegates discussed text providing that companies using DSI that generate profits/revenue/turnover from its use will contribute to the global fund, where their turnover is above an annual threshold. Uruguay for GRULAC, with INDIA, proposed that only companies from developed countries would contribute to the fund. SWITZERLAND opposed,

and preferred “users of DSI from all countries” as contributors to the fund. The EU noted that specifying developed country users would limit contributions to the fund.

The AFRICAN GROUP suggested that “users of DSI that generate monetary benefits,” as opposed to companies, “should” contribute to the fund. This was supported by the EU and JORDAN, among others. BRAZIL, with UGANDA, said that such formulation would create legal loopholes, and proposed that “users that generate profits/revenues/turnover from the use of DSI should share monetary benefits through payments to the global fund.” The AFRICAN GROUP proposed that the relevant users “will” contribute to the fund, with INDIA calling for them to make “mandatory contributions.”

URUGUAY called for defining “users,” and the parameters for their contributions, to protect small businesses, researchers, and start-ups. CÔTE D’IVOIRE supported users “generating profits/turnover from DSI” as contributors. UGANDA and CUBA called for a clear definition of the terms profit, revenue, and turnover.

The EU, with CANADA, SWITZERLAND, SOUTH AFRICA, and others, urged more work to identify a threshold formula for users to contribute to the fund. COLOMBIA, with ARGENTINA and CUBA, called for a minimum revenue threshold to determine users who should contribute to the fund. CANADA and SOUTH AFRICA noted that the monetary threshold that will be agreed should hold no matter where users are located.

Monetary Benefit-Sharing: Delegates addressed a paragraph with four options on: contributions by companies on the basis of DSI-based products and services; companies in sectors that rely on DSI use; contribution of 1% of the retail value of all DSI-linked products and services; and an encouragement to companies using DSI to contribute.

The AFRICAN GROUP, with the EU, suggested that all options refer to users of DSI rather than companies, and indicate that they benefitted from DSI use. On the option referring to sectors relying on DSI use, the EU added references to “sales” as alternative to profits and revenue. JAPAN noted that contributions depend on each company’s circumstances. CHILE asked to indicate the frequency of contributions. UGANDA suggested that the option referring to 1% of retail value refers to all products and services developed or created using DSI.

Non-Monetary Benefit-Sharing: The AFRICAN GROUP suggested that non-monetary benefit-sharing could be facilitated through a clearing house “by including a database to facilitate the exchange of information on DSI and its uses.” The EU, the UK, and NORWAY opposed, preferring use of existing arrangements. BRAZIL and the AFRICAN GROUP expressed concerns over language that the sharing of non-monetary benefits “will build on ongoing activities.”

The AFRICAN GROUP proposed that specific frameworks for sharing non-monetary benefits be developed for the sectors relying

on DSI-use, based on needs identified by parties. ZIMBABWE and others highlighted the need for part of the global fund to be dedicated to non-monetary benefits.

URUGUAY and others underlined that non-monetary benefits from companies generating revenues from DSI should not substitute monetary benefits. INDIA proposed that DSI users share non-monetary benefits over and above their specified monetary contributions, as applicable.

Many suggested streamlining the provision. The EU suggested focusing on: an obligation to share non-monetary benefits; facilitating capacity building through the activities of the global fund; and using existing clearing houses, databases, and frameworks to facilitate relevant activities. Deliberations continued in an evening contact group.

Public Databases: On entities operating public databases, the AFRICAN GROUP proposed that “entities managing public databases on DSI are strongly encouraged to verify that new sequences are obtained in compliance with the legal framework of the country of origin and have received authorization from the relevant authorities for publication.”

The EU, JAPAN, and AUSTRALIA opposed. PERU, with UGANDA, suggested that the entities require information on the country of origin “and the legal access of the genetic resources from which DSI was derived.” ARGENTINA called for provision of legal proof of access.

The EU, with CANADA, noted that the Conference of the Parties (COP) has no authority over entities operating public databases and suggested that they be “invited to” take the suggested actions; and, with the UK, proposed that the entities, “when providing public information consider” applying the FAIR and CARE principles. NORWAY proposed that the entities “provide open access to DSI, consistent with current international practice, taking into consideration” the FAIR and CARE principles.

On requiring disclosure of the origin of traditional knowledge, JAPAN and the REPUBLIC OF KOREA suggested deleting the reference; the EU “parking” it; BRAZIL and TOGO retaining it; and CANADA, with UGANDA, replacing it with “biocultural metadata.”

JAPAN and CANADA opposed by ZIMBABWE, proposed that databases and academic institutions are not required to make monetary contributions to the fund. JAPAN suggested deleting a requirement to inform users to comply with applicable access and benefit-sharing obligations.

The THIRD WORLD NETWORK (TWN) proposed new language that “parties funding, sponsoring, and/or hosting sequence databases shall ensure such databases will take measures for effective implementation” of this and future COP decisions. The UK called for more time to consider the proposal, with the DSI SCIENTIFIC NETWORK noting that this would be impractical due to the large volume of sequences submitted.

Party Measures: Delegates debated whether parties should take measures to facilitate or require contributions to the global fund, “consistent with national legislation.” The reference was retained. CHILE, supported by COLOMBIA, but opposed by NORWAY, CÔTE D’IVOIRE, and JAPAN, proposed “ensuring and requiring” contributions rather than “facilitating” them. SWITZERLAND, with JAPAN, suggested “incentivizing and facilitating” contributions.

CHILE, CUBA, and the UK, opposed by the EU, suggested reintroducing the reference to contributions “in particular from large, transnational companies.” ARGENTINA and COLOMBIA urged clarifying which entities should contribute.

INDIA stressed that the Convention should inform parties on users’ compliance and national legislation should ensure enforcement. KENYA called for adoption of minimum administrative, policy, and legislative measures. TWN, supported by EGYPT,

suggested that parties determine, by notification or other measures, the DSI on genetic resources from their territory that is under the scope of the multilateral mechanism and require users to use CBD databases and share the benefits in line with the provisions of the multilateral mechanism.

Contributions and Conformity with Benefit-Sharing Requirements: Delegates addressed two paragraphs noting that contributions to the fund may be made directly or through a respective national authority, and that users that make monetary contributions are considered in conformity with benefit-sharing requirements. They discussed the issuing of annual receipts, and decided to place this in a separate provision.

SWITZERLAND proposed that certificates provide proof of compliance of the respective users and exclude them from any additional benefit-sharing claims from the use of genetic resources. INDIA asked to indicate that compliance is met only when specified monetary contributions are made. UGANDA warned that this could exclude non-monetary benefit-sharing. The EU suggested it indicate conformity with monetary benefit-sharing obligations.

Additional Contributions: Delegates debated whether to encourage “additional,” “voluntary” or unqualified contributions to the global fund from businesses, non-profit, or philanthropic organizations and governments, or to qualify businesses “that do not use DSI.”

Use of Funding: On a provision that funding should support biodiversity conservation and sustainable use and CBD objectives, and build relevant capacities, GRULAC, opposed by the EU, suggested that support should be directed toward developing countries. CUBA called for referring to “capacity building and development.” The EU supported retaining additional reference to biodiversity conservation and sustainable use while the DEMOCRATIC REPUBLIC OF THE CONGO (DRC), CUBA, and TOGO suggested deletion, pointing to reference to the CBD objectives. JAPAN called for deleting references to conservation, sustainable use, and capacity building.

TOGO suggested reference to Indigenous Peoples and local communities (IPLCs), including women and youth. The EU and CANADA proposed “IPLCs and women and youth within those communities.” The DRC called for reference to technology transfer, with the UK and CANADA adding “upon mutually agreed terms.” The EU, with NORWAY and CANADA, suggested clarifying that capacity building should foster biodiversity conservation and sustainable use as well as contribute to scientific research on biodiversity.

In the Corridors

On the penultimate day, delegates focused on a revised non-paper containing the modalities of the multilateral benefit-sharing mechanism, developed by the Co-Chairs on Wednesday night. While the negotiating atmosphere remained constructive and delegates put forth many positive suggestions, challenges and disagreements remained.

At the outset, two regional groups expressed consternation that their views had not been adequately reflected in the revised text. This meant that much of the day’s deliberations were a rehashing of proposals already shared in order to ensure that all options remain on the table. At the end of a long day, following a contact group’s night deliberations, a delegate was heard sharing that “we are not quite there yet ... many technical issues are much clearer now, but we need serious political compromises to reach consensus at the COP.”

The *Earth Negotiations Bulletin* summary and analysis of the DSI Working Group will be available on Monday, 19 August 2024 at enb.iisd.org/oewg-2-digital-sequence-information-genetic-resources-dsi-cbd