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## Submission by Switzerland on digital sequence information on genetic resources

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Reference: S222-0805

Switzerland thanks the Executive Secretary for the Notification 2019-012 inviting for views and relevant information regarding the specific aspects on digital sequence information on genetic resources in accordance with decisions CBD 14/20 and NP-3/12. This submission represents the current reflections of Switzerland regarding the points raised in notification 2019-012, but does not prejudge the Swiss position in the upcoming negotiations.

### 1. General comments

The science- and policy-based process on digital sequence information on genetic resources (in the following “DSI”) launched by decisions CBD 14/20 and NP-3/12 will be an important contribution to the common understanding of the concept of DSI and its potential implications on the objectives of the Convention on Biological Diversity and the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity. As stated in the submission on DSI by Switzerland in 2017 (<https://www.cbd.int/abs/DSI-views/Switzerland-DSI.pdf>), we are of the opinion that clarifying the terminology related to DSI is an important first step for the ongoing discussions on this topic in different fora.

Technological developments, such as the increased generation, availability and use of DSI, may be highly relevant for the conservation and sustainable use of biological diversity, and hence to achieve the first two objectives of the Convention. In the context of the third objective of the Convention and the objective of the Nagoya Protocol, a deeper understanding of the relevance of DSI for access to genetic resources and the fair and equitable sharing of benefits arising from their utilization is required. While the discussions on DSI are ongoing, particular caution is to be exercised not to take steps that run counter to these objectives, such as decisions, which may hinder the characterization and documentation of biological diversity, including of genetic resources. As a first priority, the implementation of the Convention should be promoted and strengthened, as well as the implementation of the Nagoya Protocol and its ratification by all Parties of the Convention and other countries.

### 2. Responses to the specific points raised pursuant to decision 14/20, paragraph 9

- (a) *To clarify the concept, including relevant terminology and scope, of digital sequence information on genetic resources and if and how domestic measures on access and benefit-sharing consider digital sequence information on genetic resources;*

Clarification of the concept of DSI, including relevant terminology and scope:

The discussions on DSI under the Convention and the Nagoya Protocol as well as in other international fora are challenging due to the general lack of consensus or definition of what technically constitutes DSI. Therefore, we are of the opinion that a clarification of the concept and terminology as well as an operational definition of DSI form an important basis for further discussions. Taking note of other fora's discussions on the scope and definition of DSI is a further important element for clarifying the concept.

The report of the AHTEG (CBD/DSI/AHTEG/2018/1/4) lists several different types of information that the term DSI may refer to or that may be relevant in this context. The broad range of different types of information reflects the complexity of this issue. If Parties aim to define a concept for DSI in order to obtain more clarity on potential implications in the framework of the Convention, the concept of DSI must refer to a clearly defined range of information and processes to obtaining, proceeding and transferring that information. Furthermore, it is important to note that not all information listed in the report of the AHTEG necessarily represents information, which is resulting from the utilization of a genetic resource as defined in the Nagoya Protocol (see AHTEG report paragraphs 2 and 3, information (e) to (i)).

For further clarification of the terminology of DSI, the use of the alternative term "genetic sequence data" (GSD), as suggested by some Parties in the Commission on Genetic Resources for Food and Agriculture (see [CGRFA-17/19/4/Inf.1](#)) and used within the WHO PIP Framework (Chapter 5.2), should be considered, as well as other potential alternative terms. Those terms also need to be assessed regarding clarity of their concept and scope.

Furthermore, DSI may have several properties and characteristics that are distinct from those of genetic resources (e.g. they are intangible, they may be modified, they are often used in bulk, etc.) and potential provisions on DSI may affect other fields of law besides environmental law (e.g. data protection, intellectual property rights, trade secrets, etc.). Therefore, it should also be carefully examined, which work related to DSI lays primarily within the scope and mandate of the Convention.

While there is a need for clarification of the concept and terminology of DSI, in the view of Switzerland it is essential to be consistent with the use of terms as defined in Article 2 CBD and Article 2 Nagoya Protocol, and other relevant Articles, as they represent the state of the negotiated outcome, which form the base on which Switzerland has ratified these instruments. In the context of the current discussions, the definitions of the terms "genetic resources" as "genetic material of actual or potential value" and "genetic material" defined as "any material of plant, animal, microbial or other origin containing functional units of heredity" are of particular relevance. In the view of Switzerland, the terms "genetic resources" and "genetic material" clearly refer to tangible matter, while DSI does not fulfil the criteria of the definitions of either "genetic material" or "genetic resources" under the Convention and the Nagoya Protocol, and therefore is not covered by those instruments. In addition, the use of these terms may be of relevance for other international instruments dealing with genetic resources.

Switzerland is well aware that the generation, availability and use of DSI is rapidly increasing, and takes note of the current ambiguity of the term and concept of DSI, which indeed offers different interpretations. Therefore, Switzerland is supportive of the development of a comprehensive and fact-based overview of the technical concept of DSI in different fora as well as of an in-depth understanding of the current respective legal situations in order to contribute to the further discussions on this topic.

Domestic measures on access and benefit-sharing considering DSI:

The access and benefit-sharing legislation in Switzerland relies on the definitions of terms in the Convention and the Nagoya Protocol at the time of ratification. Accordingly, domestic measures in Switzerland do not explicitly address DSI, as these terms and definitions do not cover DSI. Nevertheless, as stated in the previous submission on DSI by Switzerland (<https://www.cbd.int/abs/DSI-views/Switzerland-DSI.pdf>), research on the genetic or biochemical composition of genetic resources

can generate different forms of DSI and hence, such information can play a role during the process of utilization of genetic resources. The specific conditions under which a particular genetic resource can be utilized, can be negotiated and defined in the mutually agreed terms (MAT) between the country providing a genetic resource and the user at the time of access to this genetic resource. Swiss contract law indeed provides that the parties may freely determine the terms of a contract. This contract may thus also include partner's mutually agreed provisions regarding DSI resulting from the utilization of the particular genetic resource (e.g. provisions concerning the publication of digital sequence information on the genetic resource). Hence, the use of DSI as well as benefits arising from its use can be covered by MAT (in line with paragraph 7 of decision CBD/COP/DEC/14/20).

*(b) On benefit-sharing arrangements from commercial and non-commercial use of digital sequence information on genetic resources.*

In Switzerland, users of genetic resources have to submit a notification of compliance with the due diligence requirement to the National Competent Authority before market authorization or commercialization of products developed on the basis of utilized genetic resources. However, as the domestic measures in Switzerland do not explicitly address DSI, we do not have any specific information on benefit-sharing arrangements from commercial and non-commercial use of DSI.