29 September 2021

**EU and its Member States Submission**

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Submission of views and new information on policy approaches, options or modalities for digital sequence information on genetic resources

Looking forward to a constructive discussion at the physical meeting of the Open-ended Working Group on the Post-2020 Global Biodiversity Framework in January, the EU and its Member States wish to highlight the importance of further work in the intersessional period to further advance with the discussion on Digital Sequence Information (DSI). In this context, the EU and its Member States are pleased to submit additional views on the approaches, options or modalities on how to address digital sequence information on genetic resources, based on the information and elements contained in document CBD/WG2020/3/4 “Digital sequence information on genetic resources”. The views expressed here build upon and further complement the EU and its Member States statement on Digital Sequence Information made at the virtual OEWG3 (plenary on 23 August 2021) and that was submitted to the CBD Secretariat. The EU and its Member States views contained in that statement retain their validity in the ongoing process. That said, the EU and its Member States wish to reiterate that the views contained in this submission provide an initial assessment and might be further developed in future. They are not to be considered as final conclusions or choice on the policy options. They rather indicate initial views with respect to some elements and criteria, which make some options or modalities more preferable to the EU and its Member States than others.

The EU and its Member States are of the opinion that any potential solution for the issue of DSI must:

* + Preserve open access to DSI from databases;
  + Be practical, easily implementable, efficient and cost-effective, i.e., it should generate more benefits than costs;
  + Ensure that the benefits generated will contribute to the conservation and sustainable use of biodiversity (thereby also supporting the SDGs);
  + Ensure legal certainty;
  + Be ‘future-proof’, to allow technological developments to be addressed
  + Be adaptable to the requirements of other ABS instruments, including possible future instruments.

Our preliminary analysis is built on these criteria and elements. We would like to highlight the possible impact and consequences of the different options contained in document CBD/WG2020/3/4. “Option 0” (status quo) might contribute to further increase the complexity and variety of the international ABS landscape, thereby not ensuring legal clarity and certainty and also negatively affecting research and development, including such research and development which is necessary to achieve the first two CBD objectives. This option would likely generate additional costs for both providers and users. Similar considerations would apply to those options purely or mainly based on a bilateral approach as designed under the Nagoya Protocol (namely options 1, 2.1 and 2.2). These types of options would entail tracking and tracing, whose implementation will require a new level of technical sophistication and additional costs and depending on its set-up have a considerable ecological footprint. Both from a provider and user perspective enforcement will still be very challenging. Transaction costs and administrative burden will substantially increase on both sides and scientific research and international collaboration risk to be significantly hampered (many access permits and/or benefit-sharing agreements would be needed when large numbers of sequences are screened and it can be imagined that DSI subject to restrictions or conditions concerning access and utilization will be avoided). Such options would lead to a significant decrease in the sharing of non-monetary benefits and thereby also have negative consequences for the first and second CBD objectives. Open access will be negatively affected; generation and sharing of monetary benefits will remain uncertain and legal certainty will to some extent be undermined as the regulatory landscape will be very fragmented, since each country might have its own regulation, including in the case of option 2.2 where permits would not be applicable, but users will still need to sign multiple MATs with different provider countries.

Therefore, although the EU and its Member States have not made any final choice on the options put forward until now, we note that at this stage those options based on a multilateral approach appear, in principle, to be better suited and more efficient for DSI than those based on a bilateral model. This preliminary assessment takes also into account the way DSI is typically used, which significantly differs from the traditional understanding of the utilisation of a genetic resource under the terms of the Nagoya Protocol. It seems that with DSI the real value typically does not reside in any one single set of data, as such, but rather in having access to as many datasets as possible at the same time and in having the possibility to compare them. In addition, DSI entries mostly show high levels of similarity making it difficult to allocate the value derived from them to a single entry. In such a context, options including tracking and tracing risk being impossible to implement, or very costly and challenging in terms of applicability and have little added value in the generation of benefits that can be shared. We are therefore more interested to explore further the operational implications of multilateral approaches, such as those envisaged under options 3.1 and 3.2. We also remain open to consider new modalities or options which preserve open access, do not require putting in place tracking and tracing, and ensure legal certainty as well as cost-effectiveness.

The EU and its Member States would like to underline that in order to be able to assess whether any potential option, including those based on a multilateral approach, would not negatively affect “open access”, it is fundamental to build a common understanding of open access, and clarify better what type of measures could be compatible with it. The ongoing discussion on “open access” has shown very different understandings of and approaches to this concept. -While respectful of these different views, we believe that additional clarification on these different understandings of open access is needed. For instance, in our understanding open access is the practice of providing online access to scientific information that is free of charge and without restrictions on use. Disproportionate administrative burden, or different restrictions to access, use and exchange of DSI may negatively affect the research community and hinder scientific and technological progress (with detrimental consequences also for the generation of monetary and non-monetary benefits as well as for the conservation and sustainable use of biodiversity). It is thus important to bear in mind that any potential modality to address DSI will not operate in isolation, but should rather take into account research practices and the work done under other relevant fora, such as UNESCO on open access and open science (for instance, the draft recommendation on open science, which aims precisely at promoting a common understanding of open science, associated benefits and challenges, as well as further developing an enabling policy environment for open science[[1]](#footnote-1)).

Finally, considering the importance to also develop and increase further capacity in all countries to generate, access, analyse and use DSI, we would like to stress that any potential modality or approach to address benefit-sharing from DSI should be coupled with capacity-building, in line with what is envisaged in option 4.

We also believe that the ongoing discussion on DSI, as well as on ABS in the context of the GBF offer a general opportunity to improve the efficiency of the implementation of ABS systems.

The EU and its Member States wish to recall the importance of using the intersessional working period effectively to work on those areas related to the DSI discussion which require additional study and where common understanding is not built yet, such as open access. We take this opportunity to stress once more that a further and more in-depth analysis of the options and modalities summarized in document CBD/WG2020/3/4, as well as of other new options and modalities including information on the costs and benefits deriving from each option, is needed. Such information is crucial to compare the options with essential issues, such as viability, costs, efficiency, enforceability or capacity requirements, as well as other key criteria identified to consider for policy options. While acknowledging that the timeframe until OEWG3 resumes in Geneva might be too limited to carry out an in-depth analysis concerning the cost-effectiveness of all the proposed options, we would like to suggest to (at least) start carrying out a SWOT-analysis, the results of which should be available before the physical meeting in Geneva. We would like to reaffirm our commitment to continue the DSI discussion and are ready to work further on this important subject in the intersessional working period.

1. The draft *UNESCO Recommendation on Open Science* recognizes the urgency of addressing complex and interconnected environmental, social and economic challenges for the people and the planet, including – inter alia - poverty, health issues, access to education, increasing science, natural resource depletion, loss of biodiversity, and climate change. It also builds on the acknowledgment ofthe vital importance of science, technology and innovation to respond to these challenges. It aims at creating an enabling environment for more open, transparent, collaborative and inclusive scientific practices, coupled with more accessible and verifiable scientific knowledge subject to scrutiny and critique, which is a more efficient enterprise that improves the quality, reproducibility and impact of science, and thereby the reliability of the evidence needed for robust decision-making and policy and increased trust in science. [↑](#footnote-ref-1)