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Submission by Switzerland on “new or additional approaches, options or modalities on how to address digital sequence information on genetic resources under the Convention and the Nagoya Protocol”

Reference:

Switzerland thanks the Executive Secretary for the Notification 2021-063 inviting for the submission of views and new or additional approaches, options or modalities on how to address digital sequence information on genetic resources under the Convention and the Nagoya Protocol, based on but not limited to the information and elements contained in document CBD/WG2020/3/4.

Potential policy options

Switzerland supports the further considerations of constructive, workable, efficient and solution-oriented approaches to address DSI. Therefore, we acknowledge the efforts undertaken to summarize and categorize different policy options and criteria as contained in Annex II of document CBD/WG2020/3/4.

As outlined in the first paragraph of Annex II of CBD/WG2020/3/4, these potential “policy options” or “archetypes” draw upon a range of sources. The list is non-exhaustive and the options are represented in a relatively simple and practical manner. Therefore, the current status of these “policy options” may not represent sufficiently elaborated options that would allow a meaningful assessment, as it is foreseen to be undertaken in the intersessional period according to paragraph 49 of the draft report of the OEWG-3 (part I). Hence, the various potential options may first need to be further developed and refined.

In addition, the current lack of a common understanding regarding the terminology and the scope of DSI further contributes to the difficulty of assessing any potential implications of these “policy options”. Along the lines of the conclusions of the AHTEG (see e.g. paragraph 31 of Annex I of CBD/WG2020/3/4), we are of the view that potential implications would substantially depend on the scope of DSI and on the different approaches to benefit-sharing that might be taken. Therefore and as stated in earlier submissions on DSI by Switzerland (<https://www.cbd.int/abs/DSI-views/Switzerland-DSI.pdf>, <https://www.cbd.int/abs/DSI-views/2019/Switzerland-DSI.pdf>), clarifying the concept, scope and terminology related to DSI may be an important step in the further discussion.

Criteria

To move the discussion forward and assist in the development and refinement of potential options, Switzerland proposed a range of criteria or elements that should be taken into account for any approach to further address DSI (see statement and text proposal by Switzerland at OEWG-3 (part I)). In this submission, we are pleased to further illustrate our understanding of these criteria or elements as follows:

Contribution to sustainable use and conservation of biodiversity

Any approach to address DSI in the framework of the CBD should contribute to the sustainable use and conservation of biological diversity. The access to and the use of DSI are indispensable for scientific research on biological diversity, which lies at the core of sustainable use and conservation of biological diversity. In addition, the strengthening of capacities of Parties to generate, store, access and use DSI represents an important element to enhance the contribution to the sustainable use and conservation of biological diversity. In further elaborating the various approaches and policy options, it is crucial to include an in-depth analysis on how these approaches or policy options would contribute to the conservation and sustainable use of biological diversity.

Open access to DSI in public databases

Open access to DSI in public databases is crucial for scientific research and innovation in all sectors of the life sciences, including for research on biological diversity for its conservation and sustainable use. In our view, open and also timely access in public databases constitutes a benefit for all stakeholders. The value of open access to DSI has also been reiterated by the AHTEG (see paragraph 15 Annex I of CBD/WG2020/3/4). While the existing infrastructure of public databases generally represents a well-established and well-functioning system, different approaches to “open access” may be taken by different database holders. In order to better understand the underlying concepts and goals of these different approaches, as well as their potential advantages and disadvantages, a new study with an in-depth analysis following up on the combined studies on traceability and databases (CBD/DSI/AHTEG/2020/1/4) may be helpful for the further discussion. In such a study we would welcome the views of experts from various database holders and different relevant international organizations (i.e. FAO, WIPO, WHO) in order to better understand the different issues related to “open access” approaches to DSI in public databases.

Legal certainty

As the experts of the AHTEG highlighted (paragraph 26 Annex I of CBD/WG2020/3/4), legal certainty regarding usage of digital sequence information is important for all sectors in the life sciences and any approach to benefit-sharing should provide legal certainty. Legal certainty and predictability are important preconditions to incentivize the use of digital sequence information and to support research and innovations based on DSI. In our view, legal certainty related to the DSI discussions could be enhanced by further clarifying terminology and scope of DSI. In fact, table 1 and 2 in Annex I of CBD/WG2020/3/4 illustrate substantial differences among the different “groups” of what could be understood as DSI and this could have major implication on any scenarios taken to address DSI within the framework of the CBD. Moreover, legal certainty also means that one needs to take into account other international agreements, which are relevant in the context of digital sequence information.

Practicability

Any approach to address DSI should be practical and easily implementable for all Parties and stakeholders. In view of different possible approaches, it is important that any processes are accessible, transparent, efficient and simple and do not comprise large administrative burdens. For example bilateral approaches that would require the negotiations of PIC and MAT for access to single sequences or any tracking or tracing of country of origins or monitoring of downstream uses of DSI may not be practical. Likewise, the AHTEG highlighted that any approach to benefit-sharing should decrease unnecessary burdens in monitoring, tracing, and tracking requirements (paragraph 26 Annex I of CBD/WG2020/3/4). Depending on the approach to benefit-sharing, e.g. in the case of a multilateral approach, traceability of digital sequence information to the provider countries and monitoring its use along the value chain may not be required (paragraph 19 Annex I of CBD/WG2020/3/4). Practicability also means that any approach to address DSI should take into account as far as possible the existing practices of generating, storing, accessing and using DSI. This requires a fair and transparent collaboration with and among those generating DSI, those storing DSI and those accessing and using DSI.

A favorable cost-benefit ratio

Any further approach to address DSI should be carefully assessed and must be favorable regarding its cost-benefit ratio. Along the lines of the criteria in Annex II of CBD/WG2020/3/4, this could mean that transaction and administration costs as well as institutional, infrastructural and governance costs should be minimized relative to the benefits shared. Thus, it is important that potential approaches do not comprise large administrative burdens or costly tracing and tracking. Related to this, experts of the AHTEG also noted the potential cost of developing systems that could be used to trace and monitor the use of digital sequence information along the value chain (paragraph 20 Annex I of CBD/WG2020/3/4) and generally highlighted the importance of a cost-effective approach (paragraph 30 Annex I of CBD/WG2020/3/4).

Support of innovations based on DSI

As outlined above, access to DSI as well as legal certainty for accessing DSI are crucial elements to support scientific research as well as innovations based on DSI. Likewise, practicability and a favorable cost-benefit ratio can promote research and innovation. Furthermore, in this context it also must be emphasized that potential approaches to DSI should include the strengthening of capacities of all Parties to generate, store, access and use DSI in order to support scientific research and innovations based on DSI and the generation of benefits for all stakeholders. In this context, Switzerland remains open to further explore different areas for potential capacity-building as discussed by the AHTEG (in particular those in paragraphs 35 to 37 and 39 of Annex I of CBD/WG2020/3/4). In fact, such capacity-building activities could support innovation and research based on DSI in all regions.

A multilateral approach

As DSI by their nature are generated, stored, accessed and used in very different ways as compared to genetic resources, a bilateral approach may generally not be appropriate to address DSI. The main value of DSI most of the time does not arise from a single sequence from a single or specific genetic resource, but rather from a large quantity of sequences from different genetic resources that can be compared and analyzed together in order to generate new insights. DSI can also be used in big data analyses, where the specific nature of underlying genetic resources may no longer be relevant. Moreover, similar sequences may originate from many different provenances, raising issues of "jurisdiction shopping" as well as questions of the allocation of benefits. In view of this "multilateral nature" of DSI, a multilateral approach appears to be most appropriate to address DSI. Indeed, from a general perspective, the existing system may be seen as a multilateral approach to which various stakeholders contribute and from which many stakeholders benefit. In case of a decision to elaborate a new multilateral approach to address DSI, also the bilateral ABS-approach under the Nagoya Protocol should be reconsidered in order to potentially find a uniform, simple and workable solution for the utilization of genetic resources and DSI.

