



## Convention on Biological Diversity

Distr.  
GENERAL

CBD/WG2020/REC/3/2  
29 March 2022

ORIGINAL: ENGLISH

### OPEN ENDED WORKING GROUP ON THE POST-2020 GLOBAL BIODIVERSITY FRAMEWORK

Third meeting

Online, 23 August – 3 September 2021 and

Geneva, Switzerland, 14-29 March 2022

Agenda item 5

### RECOMMENDATION ADOPTED BY THE WORKING GROUP ON THE POST-2020 GLOBAL BIODIVERSITY FRAMEWORK

#### 3/2. Digital sequence information on genetic resources

*The Open-ended Working Group on the Post-2020 Global Biodiversity Framework,*

*Mindful of the objectives of the Convention on Biological Diversity and its Protocols,*

*Recalling decisions XIII/16 and 14/20,*

*Acknowledging the rights of indigenous peoples and local communities including with respect to traditional knowledge associated with genetic resources, and noting the special relationship that indigenous peoples and local communities have with nature,*

1. *Takes note of the outcomes of the meeting of the Ad Hoc Technical Expert Group on Digital Sequence Information on Genetic Resources;*<sup>1</sup>

2. *Also takes note of the co-leads' report on the work of the Informal Co-Chairs' Advisory Group on digital sequence information on genetic resources, including the co-leads' conclusions and recommendations from the discussions of the Informal Co-Chairs' Advisory Group on digital sequence information on genetic resources to the Open-ended Working Group,*<sup>2</sup> which advances the work outlined in CBD/WG2020/3/5, annex V, section A;

3. *Further takes note of the range of views presented during the informal online consultation*<sup>3</sup> as well as the views and information submitted following part I of the third meeting of the Open-ended Working Group;<sup>4</sup>

4. *Welcomes the recommendation of the co-leads for a step-by-step approach and takes note of the following information developed through the informal activities on digital sequence information on genetic resources carried out at the request of the Co-Chairs of the Working Group:*

<sup>1</sup> CBD/DSI/AHTEG/2020/1/7.

<sup>2</sup> Section V of CBD/WG2020/3/INF/8.

<sup>3</sup> <https://www.cbd.int/dsi-gr/forum.shtml>.

<sup>4</sup> <https://www.cbd.int/notifications/2021-063>

(a) The listing of potential policy options contained in annex I to the note by the Executive Secretary, noting also the possibility to develop further options, including hybrid options;<sup>5</sup>

(b) The listing of potential criteria for assessing policy options contained in annex II to the note by the Executive Secretary;<sup>6</sup>

5. *Recognizes* that a solution for fair and equitable benefit-sharing on digital sequence information on genetic resources should, inter alia:

(a) Be efficient, feasible and practical;

(b) Generate more benefits, including both monetary and non-monetary, than costs;

(c) Be effective;

(d) Provide certainty and legal clarity for providers and users of digital sequence information on genetic resources;

(e) Not hinder research and innovation;

(f) Be consistent with open access to data;

(g) Not be incompatible with international legal obligations;

(h) Be mutually supportive of other access and benefit-sharing instruments;

(i) Take into account the rights of indigenous peoples and local communities, including with respect to the traditional knowledge associated with genetic resources that they hold.

6. *Recognizes* that the monetary and non-monetary benefits arising from the use of digital sequence information on genetic resources should in particular,<sup>7</sup> be used to support conservation and sustainable use of biodiversity and inter alia benefit indigenous peoples and local communities;

7. *Also recognizes* the range of views regarding modalities and methodologies of a potential solution for the fair and equitable sharing of benefits arising from digital sequence information on genetic resources;

8. *Acknowledges* that the Co-Chairs of the Working Group on the Post-2020 Global Biodiversity Framework requested the Executive Secretary to commission an independent review and application of the framework for the assessment of the policy options using the performance matrix in annex III of document CBD/WG2020/3/4/Add.1;<sup>8</sup>

9. *Requests* the Executive Secretary to provide the findings of the preliminary assessment to the Informal Co-Chairs' Advisory Group as they become available;

10. *Also requests* the Executive Secretary to make the assessment of the potential policy options available for the information of the Conference of the Parties at its fifteenth meeting;

11. *Requests* the Co-Chairs of the Working Group on the Post-2020 Global Biodiversity Framework, pursuant to paragraph 7 of the terms of reference of the Informal Co-Chairs' Advisory Group on digital sequence information on genetic resources, to invite to the discussions of the Informal Co-Chairs' Advisory Group representatives of the scientific research community, private sector, civil society organizations, and databases dealing with digital sequence information on genetic resources, in a regionally-balanced way;

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<sup>5</sup> CBD/WG2020/3/4/Add.1.

<sup>6</sup> Ibid.

<sup>7</sup> This list is not exhaustive. A more extended list is included in the proposed decision for the Conference of the Parties for later debate.

<sup>8</sup> CBD/WG2020/3/INF/8, section III.C.(b)

12. *Requests* the Informal Co-Chairs' Advisory Group on digital sequence information on genetic resources to continue its work<sup>9</sup> on the assessment of consequences of potential policy approaches, options or modalities for benefit-sharing arising out of the utilization of digital sequence information on genetic resources, based on the elements referred to in paragraphs 5 and 6 above, and in addition to provide advice on the following areas:

- (a) Hybrid approaches, options or modalities;
- (b) The findings from the assessment referred to in paragraph 8 above, as they become available;
- (c) Elements of a definition<sup>10</sup> for digital sequence information on genetic resources, based on the work of the Ad Hoc Technical Expert Group on Digital Sequence Information on Genetic Resources and any other relevant information;
- (d) Legal feasibility;
- (e) Tracking and tracing, and their implications for the potential policy approaches, options or modalities;
- (f) The next steps in the approach that should be considered on the way forward to finding a solution on the fair and equitable sharing of the benefits arising out of the utilization of digital sequence information on genetic resources in the context of the post-2020 global biodiversity framework;
- (g) The role, rights and interests of indigenous peoples and local communities, and the need to take these into account in considering potential policy approaches, options or modalities;
- (h) The roles and interests of, and implications for, the scientific research community, private sector, civil society organizations, and databases dealing with digital sequence information on genetic resources;

13. *Requests* the Co-Chairs of the Working Group on the Post-2020 Global Biodiversity Framework to take into consideration the findings of the assessment of the potential policy options and the work of the Informal Co-Chairs' Advisory Group on digital sequence information on genetic resources in their report to the Conference of the Parties at its fifteenth meeting;

14. *Recommends* that the Conference of the Parties at its fifteenth meeting adopt a decision along the lines of the annex below;

15. *Recommends* that the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol on Access and Benefit-sharing at its fourth meeting consider this recommendation as well as any decision prepared by Conference of the Parties at its fifteenth meeting.

*Annex*

**RECOMMENDATION OF THE WORKING GROUP ON THE POST-2020 GLOBAL BIODIVERSITY FRAMEWORK TO THE CONFERENCE OF THE PARTIES FOR CONSIDERATION AT ITS FIFTEENTH MEETING**

*[The Conference of the Parties,*

*Taking into account* the need to agree on the scope of “digital sequence information [on genetic resources]” and the [subsequent] appropriate terminology,

*[Recalling* that some Parties have adopted domestic measures that regulate the access to and use of digital sequence information on genetic resources as part of their access and benefit-sharing frameworks,

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<sup>9</sup> Terms of reference of the Informal Advisory Group on Digital Sequence Information on Genetic Resources, CBD/WG2020/3/5, p. 167.

<sup>10</sup> Exact statement of the nature, scope or description.

as recognized in paragraph 5 of decision 14/20][*Recognizing* multiple approaches taken to addressing digital sequence information in domestic measures],

[*Recognizing also* that digital sequence information on genetic resources is an intrinsic part of genetic resources,]

[*Recognizing further* that traceability of the correlation between digital sequence information and genetic resources is conducive to the development of a mechanism for digital sequence information on genetic resources,]

[*Acknowledging* the linkage between digital sequence information and country of origin,]

[*Acknowledging also* the need to take into account human rights obligations and commitments relating to the enjoyment of a clean, healthy and sustainable environment<sup>11</sup> in the implementation and follow-up to Sustainable Development Goal 15.6, bearing in mind the integrated and multi-sectoral nature of the Sustainable Development Goals,]

[1. *Agrees* that “digital sequence information [on genetic resources]” is constituted of [information on][sequences and chemical structures on][annotated sequences of] [DNA, RNA, proteins, epigenetic modifications,<sup>12</sup> metabolites, [and other macromolecules, [derivatives]] and recognizes the relevance of associated information [particularly traditional knowledge]];

[1.*alt.* *Agrees* to define the scope of digital sequence information taking into account the work of the multi-stakeholder dialogue as referred to in paragraph 9;]

[1.*alt.2* *Agree* that digital sequence information on genetic resources means the genetic sequence data that describe the order of nucleotides in DNA or RNA in genetic resources;]

[2. *Decides* to address digital sequence information on genetic resources in the context of the post-2020 global biodiversity framework by [...]]

3. *Recognizes* the need [to develop, in a timely manner,][of] a practical approach [to [ensuring][ensure] [facilitated access to genetic resources and to digital sequence information on genetic resources and] the fair and equitable sharing of the benefits arising from the [use][utilization] of digital sequence information on genetic resources] [with a view to identifying][and for] a solution to [the fair and equitable sharing of benefits from] digital sequence information on genetic resources [in line with the key points in paragraph 5 of recommendation 3/2 of the Open-ended Working Group on the Post-2020 Global Biodiversity Framework];

4. [*Recognizes* the following key points of potential convergence which may lead to foundational criteria for a solution on digital sequence information on genetic resources in the post-2020 global biodiversity framework, including regarding the sharing of benefits from the use of digital sequence information on genetic resources;]

4.*alt.1* [[*Recognizes*][*Agrees on*] the following key points of potential convergence which [may][should] lead to [foundational] criteria for [a [solution][decision]][assessing a way forward] on [benefit-sharing for] digital sequence information on genetic resources [in the [context of the] post-2020 global biodiversity framework]:

[4.*alt.2* *Agrees on* the key point of potential convergence of views that [access and benefit-sharing][benefits], which can include non-monetary or monetary benefits as appropriate, from the use of digital sequence information on genetic resources should be shared in a fair and equitable way, provided that agreement is found on general principles as well as on practical modalities, which include that:] *if consensus on this alt, then (a) is deleted.*

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<sup>11</sup> A/HRC/RES/48/13

<sup>12</sup> CBD/DSI/AHTEG/2020/1/3, section 2.3.3

[(a) Benefits, which can include non-monetary [or][and] monetary benefits [as appropriate], [arising] from the [use][utilization] of [digital sequence information on] genetic resources [that may entail the use of digital sequence information can] [should be][are] shared in a [more effective] fair and equitable way[, in accordance with the provisions of the Convention] [and solutions should be found on [fair and equitable benefit-sharing [through a multilateral [process][mechanism]]][how to share such benefits];]

[(b) Access [and benefit-sharing] to digital sequence information on genetic resources in public databases remains open [and unrestricted][, addresses challenges for fair and equitable sharing of benefits in the current international and national practices [and standards][and norms], including to protect traditional knowledge][[as per current international and national practices [and standards][and norms]], [subject to provisions to protect traditional knowledge, as necessary and appropriate]][, ensuring the traceability with the information of the country of origin of the resources used][while taking steps to promote transparency, including through use of location tags for new submissions to public databases] [under the human rights approach]; *suggestion to switch order of (a) and (b)*

[(b) *alt.* Access to digital sequence information on genetic resources in public databases remains open, subject to provisions to ensure benefit-sharing and the protection of traditional knowledge associated with genetic resources, as necessary and appropriate;]

(c) Indigenous peoples [and][,] local communities [and traditional small-scale farmers] are stewards of biological, biocultural and genetic diversity and holders of traditional knowledge and their role [should be duly taken into account] and [their] rights should be [duly taken into account][given effect to][respected] in addressing digital sequence information on genetic resources;

[(d) Traceability of the correlation between digital sequence information and genetic resources is conducive to the development of a mechanism for digital sequence information on genetic resources ;]

(e) [Promotion of research,] Capacity-building [and][,] technology transfer [recognizing that technology includes biotechnology] [[for][to] developing countries] [shall be provided and/or facilitated under fair and most favourable terms including on concessional and preferential terms, where mutually agreed] [and increased mobilization of resources][on mutually agreed terms and non-monetary benefits based on the open science regime] [are][must be] integral parts of [the][any] solution [to address] [on] digital sequence information on genetic resources [in the post-2020 global biodiversity framework];

(f) [Use][Utilization of genetic resources in the form][Benefits from the use] of digital sequence information on genetic resources [[should][could] contribute][contributes] to conservation and sustainable use of biological diversity [but it can also carry risks];

[(g) Users of digital sequence information must inform the source country prior to accessing in case of both commercial and non-commercial use to ensure better traceability;]

[(h) A [solution][way forward] [for fair and equitable benefit-sharing] on digital sequence information on genetic resources should:] /5. Also recognizes that a solution for fair and equitable benefit-sharing] on digital sequence information on genetic resources should:

*Two alternates: the elements below would either be sub-sub-paragraphs to 4(h) in which case the chapeau of paragraph 5 would be deleted; or they would be sub-paragraphs to 5 in which case 4(h) would be deleted and elements below re-numbered as (a), (b), (c), etc."*

- (i) [Maintain the open science model and] [Be supportive of [responsible]][[Not hinder] research and innovation [, public health and food security];
- [(ii) Recognize that open access [does not mean free and unrestricted access][is not free access] and should be based on regulations, standards [terms] and conditions to be agreed upon by Parties;]
- (iii) Provide legal clarity and certainty [, in particular on fair and equitable sharing of benefits][for providers and users of digital sequence information on genetic resources];

- [(iv) Be efficient, feasible and practicable, [with a [favourable][positive] cost-benefit ratio][and generate more benefits than costs];]
- [(v) Be consistent with [international] [human] rights and obligations [under international law][under existing relevant instruments][under the Convention and the Nagoya Protocol];]
- [(vi) Be mutually supportive of and adaptable to other access and benefit-sharing instruments;]
- [(vii) Be effective in ensuring fair and equitable sharing of benefits;]
- [(viii) Be held to environmental and ethical principles.]

6. *Recognizes* that a solution for fair and equitable benefit-sharing on digital sequence information on genetic resources should:

- (a) Not hinder [responsible] research and innovation;

7. *Agrees* that monetary and non-monetary benefits should:

- (a) [Primarily] benefit indigenous peoples and local communities;
- (b) Support, among other things, technology transfer, scientific cooperation, research and innovation and capacity-building for the purpose of conservation and sustainable use of biodiversity;

[8. *Also recognizes* that the [solution][practical approach] referred to in paragraph 3 above [may][shall] include the establishment of a multilateral benefit-sharing mechanism as described in [the appendix] to this decision[, as a contribution of resource mobilization for the implementation of the post-2020 global biodiversity framework, and hereby decides to establish a multilateral benefit sharing mechanism as described in decision 15/--];]

[9. *Decides* to establish a [multi-stakeholder][inter-governmental] dialogue for cross-sectoral coordination on matters related to digital sequence information on genetic resources [, inviting in addition multi-stakeholder and international organizations,] [in particular matters related to capacity-building for and technology transfer for developing countries] with [cooperation of] relevant international organizations [and academic institutions[, scientific communities and industries]] associated with digital sequence information, with a view to promoting consistency including on terminologies, as appropriate, across relevant treaty bodies and international legal norms, while keeping within the bounds of the respective mandates and instruments of each organization;]

[9.*alt Requests* the United Nations General Assembly to establish an intergovernmental committee to negotiate a legally binding instrument governing access to and benefit-sharing for digital sequence information on genetic resources;]

[10. *Encourages* Parties to safeguard their sovereign rights over genetic resources by explicitly including measures to control access to digital sequence information in their national legal, administrative and policy measures taken pursuant to Articles 3 and 15 of the Convention on Biological Diversity as well as the Nagoya Protocol;]

[11. *Decides* that mandate of the extended Ad Hoc Technical Expert Group established under decision 14/20 be renewed to discuss the diversity of issues in relation to digital sequence information on genetic resources, including the outcomes of the multi-stakeholder dialogue, referred to in paragraph 9 of this decision, and requests the Ad Hoc Technical Expert Group to submit its recommendations for consideration to the Conference of the Parties at its sixteenth meeting.]

*[Appendix to the decision recommended to the fifteenth meeting of the Conference of the Parties*

**PROPOSAL FOR THE ESTABLISHMENT OF A MULTILATERAL BENEFIT-SHARING MECHANISM**

1. A multilateral benefit-sharing-mechanism may operate as follows:<sup>13</sup>

(a) Each developed country Party shall, in accordance with Articles 20 and 15.7 of the Convention, take legislative, administrative or policy measures, as appropriate, to ensure that 1 per cent of the retail price of all commercial income resulting from all utilization of genetic resources, traditional knowledge associated with genetic resources or digital sequence information on genetic resources is shared through the multilateral benefit-sharing mechanism to support the conservation and sustainable use of biological diversity, unless such benefits are otherwise being shared on mutually agreed terms established under the bilateral system;

(b) All monetary benefits shared under the multilateral benefit-sharing mechanism shall be deposited in a global biodiversity fund operated by the Global Environment Facility, as the financial mechanism of the Convention, and this global fund shall also be open for voluntary contributions from all sources;

(c) The global biodiversity fund shall be used, in an open, competitive, project-based manner, to support on the ground activities aimed at the conservation of biological diversity and the sustainable use of its components, in line with the ecosystem-based approach, carried out by indigenous peoples, local communities and others, in pursuit of spending priorities identified from time to time by the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services through scientific assessments.

2. The Executive Secretary would be requested, in consultation with all Parties and the Global Environment Facility, to prepare options for national legislative, administrative or policy measures to implement a multilateral benefit-sharing system and to report to the Conference of the Parties at its sixteenth meeting;]

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<sup>13</sup> The inclusion of this suggested option is without prejudice to discussions at the Conference of the Parties and is not intended to indicate any preference among potential options/solutions.