

European User Perspectives on the CBD Multilateral Mechanism for Benefit-sharing from the Use of DSI: Meeting Summary

18-20 March 2024

Vilm, Germany

Introduction

This document summarizes key outcomes of the meeting *User Perspectives on the CBD Multilateral Mechanism for Benefit-sharing from the Use of DSI*, which took place in March 2024 in Vilm, Germany under Chatham House Rule and involved commercial and non-commercial users of DSI and European negotiators. The contents of this document reflect Meridian Institute's interpretation of takeaways and areas of convergence among the group participating in the meeting. The Meridian team hopes this summary serves to inform and advance the discussion on the DSI multilateral mechanism (MLM) in the run up to CBD COP16. **Readers should not interpret the highlights presented here as representing consensus among this group.**

Key Outcomes

USER WILLINGNESS TO SHARE BENEFITS

Industry participants in the meeting indicated a willingness to share monetary benefits from the use of DSI, under the right conditions. Broadly speaking, industry participants emphasized that any system for **monetary benefit-sharing should be fair and affordable.** Users in this meeting desired a simple, easy-to-understand system that is futureproofed and provides legal certainty, without the need for tracking and tracing use of DSI.

In addition, **industry representatives noted they are already conducting non-monetary benefit-sharing** in various forms and will continue to do so whether or not the CBD establishes a monetary benefit-sharing system. They added that **non-monetary benefit sharing should not be required by the MLM** as accounting for non-monetary benefit-sharing would be highly complex.

Non-industry researchers and users also expressed willingness to continue sharing non-monetary benefits. The group acknowledged that increasing the technological research capacity of developing countries is key to successful global biodiversity research.

Users participating in the meeting supported the idea of a non-monetary benefit-sharing information clearinghouse, both to help users publicize their relevant activities and to provide associated metrics for the Global Biodiversity Framework monitoring framework.

FUTURE COP DECISION

The group acknowledged that **a COP decision on DSI at COP16 is the most realistic avenue for further constructing the DSI multilateral system**. COP decisions are not legally binding and therefore qualify as soft law yet create strong expectations regarding implementation by Parties. **A COP decision could result in Parties establishing legally binding measures at the country level via national legislation**.

Participants generally expressed that a COP decision encouraging Parties to adopt comparable, if not identical, mandatory benefit-sharing schemes for users would be the most effective approach in ensuring harmonization of implementation across jurisdictions. To best achieve this, participants suggested the **COP decision be as specific as possible** and outline modalities for national implementation of the MLM. Any international decision allows some national discretion in implementation and the group discussed that there may be jurisdictions where voluntary guidelines for benefit-sharing at the national level would be as persuasive for users as mandatory obligations.

Some in the group suggested the COP decision include a guarantee by ‘user’ countries of monetary benefits to ‘provider’ countries participating in the multilateral mechanism. Additionally, some pointed out that **IPLCs should also have a guarantee of benefits** given their roles as the foremost stewards of the world’s biodiversity. Relatedly, the group explored the possibility of carving out IPLC-sensitive data (such as sacred species and locations). Further discussion is needed on how to clearly define such data and ensure that it is distinguishable within broader datasets, including those already existing, before assessing feasibility for the MLM.

Participants expressed a general expectation that **once the MLM is fully operational, countries should not be able to obtain benefits through both their national laws and the MLM**. Given this expectation, a COP decision should clarify that countries which stand to benefit from the MLM should not implement any new national ABS obligations for the same use and materials/information.

The group posited that **all Parties to the CBD should obligate their users to share benefits from the use of DSI**. Additionally, the COP decision and MLM design should reflect the fact that monetary benefits shared through the MLM are not development assistance.

MLM DESIGN

Almost all participants expressed the desire for a system that is simple and offers legal certainty for users and providers. All agreed that **the MLM should be designed in a way that engenders trust building between Parties, users, and rightsholders**. Further trust building is needed in the lead up to COP16 to ensure a successful outcome in developing the MLM.

Participants explored whether **it might make sense for the MLM to have multiple streams of revenue generation** so that it is more likely to generate a significant level of benefits. If the MLM has multiple

streams, it is important to users that they do not pay more than once. Further discussion is needed on how to minimize the risk of multiple payments by users if there is more than one payment mechanism.

Some **participants believed the MLM should have a mechanism by which companies can pay directly into the fund.** For multinational corporations with locations in several countries, such a single-point-of-payment mechanism could help streamline the process for making payments.

Many users indicated a strong desire to combine benefit-sharing for genetic resources (GR) and DSI under the MLM. Industry users believed the MLM for DSI should be able to include GR. To this end, the group discussed how the MLM could potentially provide an option for countries to input their GR and relinquish national ABS laws. They also discussed incorporating incentives for more countries to input their GR into the MLM. Further discussion is needed on what ‘inputting’ GR into the MLM would look like and what implications this inclusion might have for PIC and on the amount of monetary benefits shared.

Participants emphasized that the MLM should minimize obligation stacking. Users feel strongly they should not have to pay twice for the same DSI. There are two kinds of potential obligation stacking for users of DSI: stacking between the MLM and national DSI regulations; and stacking between international instruments that already, or may in the future, address DSI (e.g., the International Treaty on Plant Genetic Resources for Food and Agriculture). Users suggested that **minimizing stacking between national DSI systems and the MLM should be the top priority** to consider in the design of the MLM. Many participants also encouraged exploring ways to **harmonize across the international instruments** ahead of COP16 and in the following years. Some users indicated that they would share monetary benefits at a higher rate if the system reduced obligation stacking.

In addition, many in the group clearly indicated a requirement that **the MLM not require tracking and tracing of specific DSI, either within supply or product development chains or as a metric for calculating benefit-sharing allocation amounts to countries.** Given the scientific reality of how DSI is used in practice, “hard” tracking and tracing is currently infeasible.

BENEFIT-SHARING VARIABLES

The group explored variables considered critical to determining how the MLM can ensure reasonable levels of monetary benefit-sharing while meeting expectations regarding the volume of funds to be generated from the MLM. Those variables are the breadth of who pays (i.e., payer base) and payment rates.

Further discussion is needed regarding the general parameters by which users (e.g., industry sectors, non-industry users, governments) should be obligated to pay and on what activities or products. There was no strong convergence among participants regarding which sectors should pay, and where on the value chain payment should be collected.

Further discussion is also needed on what a fair and affordable payment scheme would look like and if it would vary based on sector, product portfolio, user location, and/or the size of an entity. There is also further discussion needed regarding on what basis payments should be calculated (e.g., turnover, EBIT, profit, or some other metric). There is also a need for economic modelling to understand how different

payment schemes would impact different sectors and affect incentives to invest in the scientific use of DSI. Payment scheme options also need to be assessed for their simplicity and what they would generate for the total amount of monetary benefit-sharing from the use of DSI.

Theoretically, a broader payer base could both generate a greater volume of contributions to the global fund and reduce the financial burden on any individual payer because more entities could pay lower amounts and still achieve benefit-sharing expectations. To this end, the group discussed the potential need for more than one payment mechanism. These included:

- An annual fee to obtain license to operate based on a percentage of turnover from industry;
- Payment to cloud service providers for analytical services on DSI-related information;
- Capturing micro payments on electronic transactions for purchases made in relevant sectors; and
- Governments potentially paying into the fund themselves to meet fund size expectations.

Some thought that payment at the retail level was simplest, while others felt that a single payment by each user in a value chain would be the simplest.

Participants discussed whether and how governments should serve as intermediaries between users and the global fund. More discussion is needed on whether governments should populate the fund themselves and then recuperate funds from users; enable users to pay directly into the fund themselves; or some combination of both methods.

TRANSITION PERIOD

Given the likelihood the MLM will be established via a non-binding COP decision, the group recognized the need for a transition period to build trust and confidence in the mechanism. The transition period would allow Parties reluctant to implement the MLM immediately time to assess how it is working before deciding how to manage their sovereign resources, whether they would like to join the system, and at what scope (e.g., DSI or DSI plus GR).

Participants also discussed **the possibility of a ratcheting mechanism where the rate individual users pay would increase as more countries join the system over time.** The rates might go up even further if GR is included in the DSI system. However, some participants made it clear that such a ratcheting mechanism would need to be incorporated from the start to ensure that the MLM would be affordable when operating at its full scope.