

Views on modalities of the multilateral benefit sharing mechanism

Businesses are committed to working with Parties and stakeholders towards a workable multilateral benefit sharing mechanism for the use of DSI (MLM) that can meaningfully contribute to conservation and the sustainable use of biodiversity, while supporting sustainable economic development, including the development of a bio-based economy.

While business had supported a multilateral approach as a way to simplify benefit sharing, the current modalities merely add complexity to the existing ABS landscape. Several key aspects of the current modalities lack the necessary clarity, certainty and enabling conditions that are essential to incentivise businesses to actively engage with the MLM and the Cali Fund (the Fund).

These enabling conditions and incentives include

- > A mechanism which offers a clear multilateral alternative option to national ABS systems and assurance of compliance with national ABS laws, with a clear pathway for broadening its scope to cover all “DSI” as well as genetic resources
- > A common understanding on modalities and key terms, with stronger global incentives, to ensure a level playing field
- > Reasonable and proportionate benefit sharing expectations
- > Avoidance of overlapping obligations or payments
- > Strengthened business participation in governance of the MLM and the Fund

We are committed to working with Parties and other stakeholders on solutions to these issues and provide specific details on these points below.

1. The MLM should provide a multilateral alternative option to national laws for global compliance

For the MLM to be truly effective as a multilateral mechanism, it should provide an option for companies to share benefits on DSI which is an alternative - and not additional - to national ABS obligations, and other multilateral ABS obligations over time. At minimum, companies which have contributed to the MLM should be explicitly deemed to be compliant with all national obligations relating to the scope of the MLM.

The COP16 Decision 16/2 (the Decision) lacks clarity in this respect, as it includes several exclusions and caveats concerning DSI that are subject to national laws, as well as the language ‘without prejudice to national legislation’.

To give companies certainty that contributing to the MLM will satisfy all national benefit sharing obligations for the use of publicly available DSI, we recommend the following:

- > Countries could formally state (e.g. on the ABS Clearing House) that they recognise contributions to the MLM as satisfying any benefit sharing obligations relating to the use of publicly available DSI in their national legislation.
- > The certificate referenced in paragraph 15 of the COP16 Decision could explicitly state that contributors have satisfied all ABS requirements in relation to their use of publicly available DSI under national laws, and are not expected to share any further benefits.

A clear pathway for broadening the scope of the MLM to genetic resources

There will be a much stronger incentive for companies to contribute if the MLM could provide users with global compliance for the use of all genetic resources and DSI.

- > There is a clear continuum between genetic resources, related DSI and any research and development outcomes that can be developed from them. DSI is derived from genetic resources and the two are often inseparable in research projects.
- > It is often not possible to separate “DSI products” from “genetic resource products”, with rare exceptions e.g. in the case of data products or services.
- > Providing the option of a multilateral approach to benefit sharing for the use of genetic resources by expanding the scope of the MLM would make sense from a scientific perspective. Biodiversity does not adhere to political borders and naturally spreads across countries, through natural dispersion and migration. It is also often not possible to identify a single center of origin for a species, which may exist in several countries.

We welcome the inclusion of the possible extension of the MLM to genetic resources but regret that this discussion is only planned for COP18 in 2028. In the meantime, we are open to discussing with any Parties and stakeholders possible approaches to operationalise this in a way that takes into account the needs of all.

2. A common understanding on modalities and key terms, with stronger global incentives, to ensure a level playing field

Companies operate in a global competitive environment, competing with other businesses around the world. There is currently a high risk that there will not be a level playing field across different countries, as:

- > the current text’s uncertainties and ambiguities are leading to different interpretations by Parties, with a high risk of divergent national measures which may result in competitive advantages or disadvantages based on a company’s location. Key points of confusion include the contribution modalities, the relationship between the MLM and national laws, as well as key terms such as “use” and “direct” versus “indirect” use, and what constitutes “digital sequence information”. This ambiguity, particularly around “indirect use”, complicates companies’ ability to determine if their activities bring them within the scope of the MLM ; and
- > the mechanism is not structured around clear and convincing incentives for a large number of businesses to contribute, regardless of applicable national measures or where they are based.

To encourage a more level playing field:

- > a common understanding of the modalities should be ensured to avoid divergent implementation in different countries, and to provide clarity to stakeholders on the ground;

- > convergence of national measures aimed at incentivising contributions should be encouraged; and
- > contributions should not result in competitive disadvantage for companies which participate (see below).

3. Expectations for benefit sharing should be reasonable and proportionate

The inclusion of indicative contribution rates was premature as they were not based on any proper analysis or impact assessment, as recognized by the Decision's call for a study to reassess the indicative rates. The current contribution modalities should be reviewed to avoid disincentivizing companies from contributing.

Innovation is expensive, and businesses investing large sums in R&D need to have a reasonable chance of return on their investment or they will not invest to innovate. Few research projects lead to commercially successful products, with success rates as low as 1%-10%.

We propose that the following considerations are taken into account when determining reasonable benefit sharing that would reflect the value of the use of publicly available DSI while ensuring meaningful contributions for biodiversity.

- > **Contributions should be proportionate to how publicly available DSI is used in and contributes to product development in companies**
 - Publicly available DSI is only one of many components necessary for the development of a commercial product. It is most often used alongside company-generated DSI, which may be derived from genetic resources in compliance with ABS rules, where applicable. Publicly available DSI is mainly used as a tool to improve the accuracy and speed of decision-making in the utilization of genetic resources, often in the discovery phase for screening or comparison. While it is important in supporting innovation, it adds little direct commercial value to a product as the value creation comes from a combination of expertise, skills and analytics using the various components necessary for a research project.
 - The benefit sharing contributions currently proposed for use of publicly available DSI are disproportionate to what a company typically pays for technology or value added data. By way of comparison, typical royalty rates on technology and/or know-how licenses are around 0.1- 1% of the sales revenue from a specific product (not on total company turnover), keeping in mind that the value of such licences lies in exclusive, or partially exclusive, rights for use.
 - Many companies also have diverse activities and businesses, not all of which use DSI or even genetic resources. A total turnover/profit approach would not fairly reflect benefits created from the use of publicly available DSI.
- > **Benefit sharing contributions should not put contributing companies at a competitive disadvantage**

A disproportionately high benefit sharing contribution may put companies at a competitive advantage or disadvantage depending on where they are based, given the likely differences in how, and whether, the MLM is implemented at national level around the world.
- > **Expected contributions should not discourage the development of the bioeconomy and create an entry barrier to the uptake of new technologies using DSI**

- Expected contributions that are too high may disadvantage and reduce the competitiveness of bio-based products and technologies. Companies which use publicly available DSI in the development of their products may be directly competing with companies which deliver other solutions that do not use DSI, and are not subject to the same benefit sharing expectations. The MLM should avoid distorting the market for biological solutions versus non-biological solutions, so as not to hinder the development of a sustainable bioeconomy.
- High contribution rates based on the whole turnover of a company may create entry barriers to the take-up of technologies requiring the use of publicly available DSI. If a company starts using DSI for only a very small part of its activities and is then expected to share benefits on its total turnover, this could be a strong deterrent to the use of such technologies, and to collaborations and technology transfer in this area. This can particularly impact smaller companies, and countries where the use of such technologies is only beginning.
- Companies of all sizes, as well as many parts of public research, are interdependent and linked by commercial and research relationships in complex value chains. Placing too high a financial burden on certain companies in the sector will likely have an impact on other actors in the whole bioeconomy and collaborative ecosystem.

> **The MLM should encourage companies to continue investments in biodiversity**

Companies invest to improve their environmental footprint through changes in their own operations and supply chains, by improving the impact of their products, through partnerships in public or private environmental initiatives, and in many other ways. The MLM should support companies in their transition towards more environmentally sustainable practices through expectations for contributions that are reasonable, and enable companies to justify continuing other investments in biodiversity.

Preliminary recommendations for process to review expectations for contributions

We welcome the process to review expectations for contributions. It will be important not to rely solely on theoretical academic recommendations and allow enough time for sufficient consultation of business stakeholders, as these have the most relevant information and concrete experience to feed into the planned study.

As preliminary input for this process, we recommend the following:

- > **Review expectations with respect to contributions** so that they
 - are proportionate to the current narrow scope of the MLM, and the use and role of publicly available DSI in product/service development and its contribution to commercial value
 - do not result in competitive disadvantage for contributing companies or barriers to entry
 - avoid discouraging the development of the bioeconomy and the spread of new technologies using DSI
 - encourage companies to continue investments in enhancing the conservation and sustainable use of biodiversity
- > **Explore how the diversity of use of publicly available DSI by companies can be taken into account**, while maintaining simplicity and avoiding tracking and tracing obligations.

4. The MLM should not create overlapping obligations and payments

- > It is essential that Parties ensure that the different ABS processes do not result in overlapping payments and obligations for users. We welcome the stated aim to avoid the stacking of obligations with other international ABS instruments on DSI, and urge Parties to ensure that this happens in practice.
- > To avoid overlapping payments between the MLM and under national laws, a country's commitment not to impose national obligations on contributors could be recognized as a criterion for funding allocation. This would also provide CBD Parties with the confidence that all countries are playing by the same rules and are obtaining benefits either through the Cali Fund or through national laws, but not through both.
- > Even if they are guaranteed compliance with national laws relating to publicly available DSI, companies will still need to maintain their current compliance processes to monitor and track ABS compliance in their internal operations and supply chains for genetic resources and other types of DSI. A MLM which allows countries to include genetic resources would considerably help avoid potential overlapping payments and obligations.

5. Business participation in MLM and Fund governance should be strengthened

We welcome the inclusion of principles of transparency and accountability, and the expectation that specific entities designated to receive the funds will operate according to international fiduciary standards and provide regular reports.

As the modalities of the MLM and the Cali Fund are still under development and not yet tried and tested, it is critical to facilitate constructive input by companies, through full membership of business representatives in the Steering Committee. Sufficient seats are also necessary to reflect the diversity of business stakeholders, as in the case for IP&LC representation, and to take into account the differences within and between sectors concerned. This inclusion would allow business, as the expected primary contributor, to be an integrated part of the decision-making process.

- > Participation in decision-making would help build trust and confidence with the business community, and incentivise their active engagement towards ensuring the Fund's success¹.
- > Increased representation would allow for a broader spectrum of business perspectives and expertise from different sectors and regions.
- > Equal representation of IP&LCs and business in decision-making would ensure that the two constituencies with the strongest interest and concrete involvement in the Fund can contribute to, and inform, the decision-making process.
- > An increasing number of both voluntary and regulatory initiatives require businesses to consider and disclose all financial implications, risks, opportunities and activities relevant to biodiversity in furtherance of Target 15 goals. Participation in the decision-making would allow business representatives to advise on alignment of the Fund with Target 15 goals², helping incentivise contributions from companies while advancing implementation of the GBF.
- > Business participation in the decision-making structures on an equal basis with other actors, together with transparency and accountability around the use of funds, will be a key factor in helping to obtain internal support for contributions.

¹ See the [Advisory Board of the Climate Technology Centre and Network \(CTCN\)](#)

² Target 15 aims to progressively reduce negative impacts and increase positive impacts on biodiversity and promote actions to ensure sustainable patterns of production

We therefore strongly recommend that the initial composition of the Steering Committee be revised at COP17 to establish full and increased representation by business. Business should have a direct role in decisions affecting the design and implementation of the MLM and Cali Fund to help ensure that they are workable on the ground and in a real world, and real economy context.

We look forward to working with Parties and stakeholders towards a workable MLM that can make meaningful contributions to biodiversity and take into account the needs of all.
