# The DSI Informal Dialogue Partnership

## Global Webinar:

## Exploring the Implications of CBD COP 16/2 provisions

## on the DSI MLM

Thursday, 09 July 2026 – 12:00 to 14:00 UTC

Links to the recordings: EN – FR – ES

## Table of Contents




Funded by: Norway

Implemented by: CCC México – Centro de Colaboración Cívica; GeoMedia Environment·Communication·Development

## Executive Summary

This webinar brought together more than 300 participants from governments, industry, Indigenous Peoples and local communities (IPLCs), academia, civil society and international organisations to explore the interpretation of key terms in CBD COP Decision 16/2 establishing the Multilateral Mechanism (MLM) on Digital Sequence Information (DSI) and the Cali Fund. Recognising that implementation depends, in part, on a common understanding of key terminology, the webinar examined four concepts central to the operationalisation of the Decision: **publicly available**, **entities**, **indicative rates**, and **direct and indirect use**. The objective was not to provide definitive legal interpretations, but to identify areas of convergence, clarify differing perspectives, and explore their practical implications for implementation.

A strong consensus emerged on several overarching principles. Panellists agreed that **legal certainty** is essential for encouraging voluntary contributions to the Cali Fund, while **proportionality, fairness, scientific openness and administrative feasibility** should guide implementation. Speakers also emphasised that the four terms should be interpreted as interconnected elements of a coherent implementation framework rather than in isolation.

Discussions on the individual terms revealed both substantial convergence and important unresolved issues. Panellists broadly agreed that “publicly available” refers primarily to accessibility rather than unrestricted access or use, although questions remain regarding paywalls, licensing conditions and controlled-access databases. “Entities” was generally recognised as an intentionally broad concept, allowing for a more accurate appraisal of the unit from which contributions should be calculated – whether for corporate groups, subsidiaries, or products and services. There was a suggestion that the trade-off between understanding "entity" as something at the sub-corporate level for industry would be the need for greater disclosure of how the definition of the "entity" was reached. There was broad agreement that “indicative rates” are intended to guide implementation pending future COP review – although opinions differed on the degree of flexibility they should allow. “Direct and indirect use” was widely regarded as the most ambiguous concept, with broad agreement that clearer boundaries are needed to avoid uncertainty, multiple contributions along value chains and unnecessary administrative burdens.

The Chat contributions of participants expanded the debate beyond terminology to practical implementation challenges. Key themes included promoting equitable participation in DSI research and innovation, improving metadata and transparency, exploring the role of intellectual property information, and designing a Certificate of Compliance capable of providing legal certainty while preventing overlapping benefit-sharing obligations. The Certificate was widely seen as a critical instrument for building confidence among potential contributors.

Overall, the webinar highlighted broad support for preserving the architecture of Decision 16/2 while developing targeted clarification of key implementation issues. Rather than reopening negotiations, participants favoured incremental guidance on sector definitions, contribution rates and operational procedures to strengthen legal certainty, facilitate voluntary participation and support the effective operationalisation of the Multilateral Mechanism and the Cali Fund.

## Webinar Opening

The webinar was co-moderated by **Timothy Hodges, McGill University, Canada**, and **Julian Portilla, Centro de Collaboración Cívica (CCC), Mexico**.

**Tim** welcomed the participants and briefly introduced the agenda:

- Welcome Remarks
- Panel discussion on CBD COP 16/2 terms and provisions
    - Discussion rounds focused on understanding the terms:
        - “Publicly available”
        - “Entities”

        - "Indicative rates"
        - "Direct / indirect use."
    - Comments and further thoughts across terms and panels
    - Panellists consider contributions from the Chat
- Closing Remarks

He indicated that the Chat function would be open throughout the webinar and invited the 300+ webinar participants, representing all global regions and all relevant stakeholder groups, to share their questions and comments of which some would be addressed towards the end of the webinar. For an anonymized documentation of the Chat see Annex 1.

**Julian** explained that the webinar had been conceived in response to the adoption of the **Cali Fund and the Multilateral Mechanism on Digital Sequence Information (DSI)** under COP 16/2, which introduced several potentially ambiguous terms. Quoting a former teacher, he observed that *"first we fight over the words, and then we fight over the meaning of those words,"* emphasizing that the interpretation of terminology is a critical step in implementing the decision.

Julian noted that while many of the terms are familiar, they have acquired specific meanings within the context of Decision 16/2. Different stakeholders may interpret these concepts differently depending on their perspectives, and these interpretations have important practical consequences. In particular, they influence:

- the scope of the decision,
- who may be expected to contribute to the Cali Fund,
- the level of contributions,
- and the circumstances under which contributions would be expected.

The webinar therefore would focus on four key terms which repeatedly emerged during discussions and interviews with stakeholders from industry, governments, Indigenous Peoples and local communities (IPLCs), NGOs, academia, and other sectors. Rather than providing definitive interpretations, **the objective was to explore the range of reasonable understandings of these terms, identify where perspectives converge or diverge, and examine the implications for implementation**.

Expressing the hope that the discussion would contribute to a clearer and more shared understanding of these foundational concepts for the operationalization of Decision 16/2, Julian concluded by introducing the panel of distinguished speakers. Short bios are provided in Annex 2):

- **Agata Makowska-Curran**, Grantham Research Institute on Climate Change and the Environment at the London School of Economics, United Kingdom;
- **Paul Oldham**, Tierra Viva AI, United Kingdom;
- **Daphne Yong-d'Hervé**, Director for Global Network Policy Engagement at the International Chamber of Commerce (ICC);
- **Pierre du Plessis**, adviser to the DSI Financial Readiness Coalition for Africa;
- **Hugo-Maria Schally,** former adviser for international environmental negotiations at the European Commission;
- **Maui Hudson**, Director of Te Kotahi Research Institute, New Zealand;
- **Martha Lucía Cepeda**, Director of Technology Transfer at Sciphage SAS, Colombia;

## Panel discussion 1st and 2nd round:

During the first round of the discussion each term was introduced with a short input by **Suhel al-Janabi, GeoMedia**, on **"What we found"** regarding the meaning of key terms related to the multilateral mechanism (see slides in Annex 3). The research examined how these terms are defined and used across dictionaries as well as in other international agreements and policy contexts to better understand potential implications for the operationalisation of decision 16/2.

## “Publicly available”

### Shared areas of convergence

- Broad agreement that "publicly available" primarily concerns **accessibility to the public without discretion for the data base operator**, not unrestricted access or use.
- Registration requirements and standard licensing conditions were generally viewed as compatible with being publicly available.
- Most speakers agreed that public databases remain the foundation for scientific collaboration, innovation and implementation of the CBD objectives.
- Several speakers stressed the need for legal certainty for users.

### Distinct perspectives / unresolved issues

- **Paywalls: Maui** and **Hugo** considered paywalls potentially compatible with "publicly available", provided access is available to everyone on equal, non-discriminatory terms, while **Martha** emphasized that any barriers reducing practical accessibility undermine scientific research. Instead, she suggested that information relevant for compliance should be captured through metadata – such as origin, depositor and associated information – rather than by restricting access to the sequences themselves.
- **Restricted databases: Maui** distinguished between publicly available databases and databases where owners exercise discretion over access, arguing the latter fall outside the concept.
- **Licensing restrictions:** Debate remained over how restrictive licensing conditions can become before data cease to be "publicly available".
- **National legislation: Hugo** argued that once DSI is placed in a publicly available database it should not carry additional national restrictions, whereas **Martha** stressed that national legislation applies before data enter the public domain.

## “Entities”

### Shared areas of convergence

- All agreed that Decision 16/2 provides **no precise definition** of "entity".
- Broad agreement that the term was intentionally broad and flexible, potentially covering companies and other organizations engaged in commercial use.
- All recognised that corporate structures vary enormously and that implementation needs to account for this diversity.
- Most agreed proportionality and fairness should guide interpretation.

### Distinct perspectives / unresolved issues

**Level of assessment:** The discussion focused on whether contributions should be assessed at the level of the subsidiary business unit, legal entity or entire corporate group.

- **Agata** highlighted trade-offs between group-level assessments (preventing avoidance through restructuring) and subsidiary-level assessments (better reflecting actual DSI use).
- **Daphne** explained that individual companies – whether independent or within a group - might use DSI only in some of their activities or product lines so that the assessment at the level of a company as a whole may be too broad in some cases. She argued that contributions should reflect the actual benefits arising from DSI use in order to remain proportionate, address the “fairness concern” raised by Agata, and avoid discouraging investment in bio-based innovation.
- **Paul** viewed "entity" largely as a useful concept that accommodates the diversity of corporate structures. Rather than redefining the term, he proposed practical implementation tools, such as decision trees and existing statistical classifications, to help companies determine their obligations.

- **Hugo** argued that "entity" is not problematic in and of itself. In his view, "entity" can be defined more easily when interpreted together with the sector lists and the concepts of direct and indirect use, thereby forming part of a coherent implementation framework.

## "Indicative rates"

### Shared areas of convergence

- Broad agreement that "indicative" means rates are not legally binding.
- All agreed the rates establish expectations and are intended to guide implementation pending future review.
- Consensus that COP review is expected to revisit the rates.

### Distinct perspectives / unresolved issues

- **Pierre** viewed the rates as a starting point or "floor" for future political discussion that could evolve significantly. He also suggested that the current contribution base is too narrow because it focuses only on large entities.
- **Hugo** argued for a much narrower interpretation: although provisional, the rates should function as fixed operational benchmarks until formally revised by the COP, particularly because they underpin issuance of certificates and legal certainty.

## Direct / indirect use

### Shared areas of convergence

- Strong consensus that this is the **most ambiguous and problematic term** in Decision 16/2.
- Most speakers agreed clearer boundaries are required to avoid uncertainty for contributors.
- General agreement that proportionality and legal certainty require limiting overly expansive interpretations.

### Distinct perspectives / unresolved issues

- **Scope of indirect use: Agata** argued that the current wording could unintentionally capture downstream companies with only remote links to DSI, companies that, in her view, were never intended to be captured. She highlighted risks of pass-through costs and multiple contributions ("stacking"), particularly for suppliers such as laboratory equipment manufacturers and proposed either removing "indirect" or defining it narrowly.
- **Daphne** agreed with Agata and supported her suggestion to remove "indirect" because of risks of double counting, administrative complexity and competitive disadvantages for bio-based products if benefit sharing expectations are passed through the value chain.
- **Hugo** pointed out the challenges of removing such a controversial term, which micht be seen as a reduction in the scope of the system. He rather argued that "indirect" should be interpreted narrowly to cover purposeful outsourced use rather than passive downstream purchasers. He distinguished between upstream outsourced activities (which should remain covered) and downstream customers (who should not become contributors simply because they purchase products derived from DSI).
- **Agata** also highlighted practical risks of pass-through costs and contribution "stacking" along value chains.

## Cross-cutting themes

Across all four terms, several common themes emerged:

- **Legal certainty** was consistently identified as essential for encouraging voluntary participation in the Cali Fund.

- **Proportionality and fairness** were repeatedly cited as guiding principles, particularly regarding which entities should contribute and how contributions should relate to actual DSI use.
- **Scientific openness** remained a shared objective. Speakers broadly agreed that implementation should preserve open science while enabling benefit sharing.
- **Administrative feasibility** was viewed as equally important. Several speakers cautioned against solutions that would create excessive reporting burdens or require tracking DSI through complex value chains.
- **Interdependence of terms:** A notable point of convergence, especially in Hugo's and Julian's reflections, was that the terms should **not be interpreted in isolation**. Rather, "entity", "direct/indirect use", "sector lists" and "indicative rates" together form an integrated framework that could provide greater clarity than any single definition alone.

## Panel discussion 3rd round: Questions from the Chat

**Suhel** and **Carlos Ham, CCC**, presented key discussion points emerging from the Chat, which broadened the panel debate beyond definitions, focusing on how the Multilateral Mechanism (MLM) and Cali Fund can achieve fairness, legal certainty and practical implementation. Several overarching themes emerged.

**1. Publicly available DSI and equitable participation:** A recurring question was whether open access to DSI databases actually leads to equitable participation in research and innovation. Participants noted that while DSI may be publicly available, the scientific capacity, technology, infrastructure and intellectual property needed to use it remain concentrated in relatively few countries and organisations. This was reflected in the Chat where questions were raised about how the MLM could contribute to reducing these inequalities.

**Pierre** argued that this concern is legitimate but lies largely outside the primary purpose of the MLM. In his view, the mechanism was designed to mobilise financial resources from users of DSI for biodiversity conservation and benefit-sharing, not to solve all global inequalities in scientific capacity. Capacity development remains essential but should be pursued through complementary CBD mechanisms and international cooperation rather than through the Cali Fund alone.

**2. Relationship between public and private databases:** Several questions addressed whether identical DSI held in both public and private databases should be treated differently. Participants questioned whether the defining criterion should be the content itself or the ease of access to the data.

Related to this was the question of whether all DSI obtained from publicly available databases should automatically fall within the scope of the Cali Fund. While no definitive answer emerged, the discussion reinforced that accessibility rather than the biological sequence itself is likely to determine whether DSI falls within the mechanism's scope.

**3. Defining the relevant entity:** Questions were raised about whether an entity should be defined according to legal reporting obligations, such as maintaining balance sheets, and whether existing publicly available company information could already provide sufficient transparency to identify where value is generated.

The discussion acknowledged that governments already possess significant financial reporting information about companies, but practical challenges remain in determining how much commercial value is actually attributable to DSI use without imposing excessive administrative burdens on either governments or businesses.

**4. Indicative rates and their purpose:** Participants questioned whether the use of the term "indicative" reflected uncertainty about how contribution rates had been justified.

Although no consensus answer was provided, the discussion reinforced earlier panel views that the indicative rates in Decision 16/2 set the threshold for obtaining a certificate by contributors, pending future review and refinement through subsequent COP decisions.

**5. Intellectual property as a possible implementation tool:** The Chat introduced a new perspective by asking whether intellectual property (IP) systems could help clarify direct and indirect use of DSI.

The suggestion was that, because relatively few DSI-based innovations ultimately become commercially successful, but many involve some form of IP protection, patent information might provide a practical way of identifying commercial use and narrowing the sectors covered. **Martha** supported linking IP with improved metadata in publicly available databases, arguing that metadata and prior art could help identify where benefits arise, facilitate attribution and strengthen implementation of the Cali Fund.

**6. Building trust through legal certainty:** Trust emerged as one of the strongest cross-cutting themes. Many comments argued that companies require clear and predictable rules before they will voluntarily contribute to the Cali Fund.

Several participants therefore emphasised the importance of an effective Certificate of Compliance. Suggestions included:

- Simplifying the certificate system;
- Making certificates product-specific where appropriate;
- Ensuring certificates provide global legal clearance;
- Preventing overlapping or multiple benefit-sharing claims ("stacking");
- Allowing the certificate system to evolve gradually as implementation progresses.

The certificate was widely viewed as an important mechanism for increasing confidence among contributors and encouraging participation.

**7. Keeping the mechanism focused:** In the concluding discussion, both **Pierre** and **Hugo** stressed that expectations for the MLM should remain realistic.

**Pierre** argued that the mechanism should primarily focus on what it was created to do: mobilise resources from users of publicly available DSI to support biodiversity conservation and benefit-sharing. Broader issues such as global scientific inequality require additional complementary measures.

Similarly, **Hugo** cautioned against reopening the overall architecture of Decision 16/2. Instead, he advocated targeted clarification at COP 17, particularly regarding:

- sector definitions;
- contribution rates;
- operational guidance for implementation.

In his view, incremental clarification would improve legal certainty and strengthen incentives for voluntary participation without requiring major renegotiation of the Decision.

For an anonymized documentation of the Chat see Annex 1.

## Closing

**Tim** concluded the webinar by thanking the panellists for sharing their extensive expertise and for contributing to a discussion that was both practical and constructive, while also demonstrating continued innovation and ambition in thinking about the implementation of the Multilateral Mechanism and the Cali Fund.

He expressed appreciation to the interpreters for enabling multilingual participation and ensuring effective communication throughout the event and closed by thanking everyone for their participation.

## Annex 1: Chat contributions grouped by key topics addressed

Direct responses and reaction to Chat contributions are listed as bullet points under the respective contribution. Except for the Chat contributions of panellists all contributions are anonymised.

**Publicly available DSI and equitable participation**

Will you also look at publicly available "in compliance with national legislation" - I think that is the harder part.

Is there a relationship to FRAND?

- FRAND stands for Fair, Reasonable, And Non-Discriminatory

Does the amount of "acceptable" restriction to "publicly available" depend on the number of people who are deterred by the restrictions?

In other fora they speak of DSI in the "public domain".

It could be related to (1) the location of its storage; (2) channel of availability; (3) nature and status of the database providing the DSI; (4) scope and nature of possible accessor to the DSI, etc.

I think that it is likely that we will find the same data, (same gene same sequence) in public databases and in private databases, so perhaps it's better to look at how easily you can access it rather than the content.

Framing issue - focus on publicly available obscures "genetic" (origin) question of DSI, taking up the story where data is are in the database and questions arise about access terms. IIFB takes the position that we have to ensure "publicly available" is UNDRIP Article 31 and Nagoya Protocol compliant. Underlying sequences can flow in multiple directions, but all come originally from some sample that is either covered or not covered by CBD and NP.

Maui: Kia ora, I am sorry I can't stay for the entire discussion because this is a really interesting topic. I just wanted to follow up on the idea of unencumbered. There is a difference between unencumbered for research (licensing and labels not a problem) and unencumbered for commercialisation (which is a point of tension). Data from publicly available open databases should automatically be included in scope for the Cali Fund. Restricted access databases will choose at the point of permitting access decide whether the obligation will be via Cali Fund for their own agreement (as per bilateral agreements). Metadata is important for transparency about what DSI has been generated and available. Restricted access databases (rather than proprietary databases) usually want people to know the data is there so they can get more users.

- You are referring to non-discriminatory access.
- Non-discriminatory access is very important.
- Non-discriminatory access is only one dimension. Not in agreement that all publicly available can have no restrictions. Cartagena Protocol is an example. Available does not allow for dangerous or harmful uses.
- "Dual use" nature of data.

Is there a link to the study examining options for making digital sequence information on genetic resources publicly available and accessible?

@Hugo, I think I partially agree with you. But what makes you think a country cannot run a publicly available database and seek benefits out of the use of such data.

- Hugo: Yes, it could, certainly, but it cannot impose additional conditions to the ones established for any database.
- This is not how it is working in practice. Several countries' permits, while granting permission to sample and upload sequences on public databases, request that

additional statements are uploaded on those databases requesting PIC for commercial use etc.

- Marta made an important point - Parties can set out whether material can be sequenced/uploaded at the point of access in PIC and MAT documents/MTAs/permits. As trust in the MLS/Cali fund dwindles, bilateral agreements are increasingly restrictive on this.
- I agree with Marta, which was my earlier point about Nagoya. Transition between "first digitization" of a GR needs to be evaluated against 1. what is within and without the CBD (EoF 1993) and the Nagoya Protocol (EoF 2014) for those countries that have become Parties. Article 6 of NP has a provision for IP&LC control over GRs in those cases where recognized by States. Publicly available should take into account requirements for PIC/FPIC/approval of the relevant providers/origins/sources.

I am no expert, but aren't things even more complex? Why is nobody even mentioning BBNJ and the PABS-system under WHO?

- KEI made this proposal this week at the WHO negotiations on the PABS Annex. https://www.keionline.org/41357

Which mechanisms and processes are ensuring that UNDRIP and ILO Conventions are upheld and that DSI data on 'public' databases is accessible to Indigenous Peoples, especially those whose data is being publicized? Who is liable for the harm to Indigenous Peoples of these data shared 'publicly' without implementation of core international instruments? Are UN financial instruments that facilitate the financialization of Indigenous Peoples' knowledge responsible for remediating harm? States are increasingly in flux so all states will not be held accountable. Businesses are less reliable to restore harm.

- Supported, and extended to UNDROP (peasants' rights)!

**Defining the relevant entity**

Is it relevant for the term "entity" whether or not it is legally required to have a balance?

I think subsidiaries have to pay taxes to the country they are based on, but the whole idea of the mechanism is to be as multilateral as it can be, so it could be best to charge it at the head level?

It should be reminded of the Article 31 of the Vienna Convention on Laws of Treaties which reads that the term should be interpreted in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose. I believe that here, especially in their context and its object and purpose.

Like in royalties on patents, is the base the product, or the value of part of the product?

Daphne Yong-d'Herve's pizza example seems to fit non-monetary benefits, but does it also fit monetary benefits?

Maui: A couple of general framing comments about the discussions. 1) Why do the words need this level of specificity when the mechanism is voluntary? 2) When I was part of negotiations between government and tribal entity, if both parties were acting in good faith, then the words were functional ends to the goal rather than a site of negotiation. 3) There are currently no contributions going into the Cali Fund (except from Paul Oldham). If entities don't contribute of their own volition in a manner consistent with the scope of the Cali Fund, then DSI providers will be disincentivised to continue putting DSI into public databases and look for other ways to generate a share of the value.

**Indicative rates and their purpose**

I think we have multiple levers that we can use to better determine contributions, but then again measures that require a difficult tracking of where value is generated and how much could be complicated both for parties and the private sector, but we as Parties already have access to "public" information from companies that could help towards clarifying some of those grey zones.

Is the use of the term “indicative” a way to avoiding the challenge of justifying the rate?

Maui: As an aside here is a link to a serious game on benefit sharing https://benefitsharingcompass.com/

Is there a figure that represents that total annual contribution, that collectively should be made?

How will the given indicative rates work - will they reduce the entity's profit or increase the product's market price?

- Contributions, like taxes, increase the costs of providing products and services. The incidence on prices will depend on the market structure and relative elasticities of supply and demand.

I think we can consider that, the idea is not to charge more just to charge more to consumers, nor is the best idea to be part of the race to the bottom, just come up with a number that is reasonable and stick with that.

“[A] study on contribution rates, including implications for revenue generation and economic competitiveness”. Because the term “competitiveness” has several meanings, economists often eschew it (doi:10.1016/S2212-5671(15)00248-8). What is the meaning here? Given that “economic” and “study” are in the same sentence, will the study be conducted by economists who recognize the fields of the Economics of Information and Public Finance as the most appropriate? As such will “rent”, “excess burden” and “fungibility (adverse selection)” enter the [economic] “study”?

IMO the way to fix the mechanism is to design a certificate of compliance under paragraph 15 of 16/2 that is 1) issued through a cost-efficient and fast process; 2) that is recognized under national ABS laws of CBD Parties; and 3) that covers a scope (entity, DSI, direct/indirect use, other ABS regimes ...) proportionate to the expected payment.

- I agree, the certificate has room for improvement.
- Maybe a question for Paul Oldham in his capacity as the first contributor: what are his views on the certificate?

Would it help if the validity of patents depends on reasonable payments to the Cali Fund?

Yet the patent system indicates that the vast majority of non-human DSI in use is not from biodiverse sources but from standard laboratory species, animals, food crops.

Little of the total use of DSI will result directly or indirectly to commercially successful products. Almost all those uses which are commercially successful enjoy some sort of intellectual property protection (IP). Yet IP is glaringly absent in the Decision. Monitoring and tracking IP would be the gateway to ABS. Is its absence indicative of regulatory capture?

**Direct /indirect use**

“[D]irectly or indirectly” are complements. Their inclusion is not verbose, only if emphasis is inferred that whether the use is direct or indirect, an equal obligation is incurred. Is this the intended meaning? If not, what is?

If you remove “indirect” you still have to define “direct”, which will lead you back to what is indirect and not direct.

The LSE presentation clearly demonstrates that the mechanism becomes 'unworkable at scale' if we do not narrow the definitions of 'indirect use' and avoid cumulative pass-through costs. However, the most critical risk is not just double-counting between digital sequences, but a direct double-payment on the very same end-product. In practice, products that already fulfil benefit-sharing obligations for accessing the physical genetic resource under national bilateral frameworks would be penalized with a second levy for accessing the corresponding DSI. As noted in the Chat, a lack of trust is driving countries to overlay restrictive bilateral clauses even within public databases.

The indicative list of sectors has a much too narrow view of industries that use DSI. Biotechnology is use very widely across industry.

To build real trust and attract voluntary compliance from downstream users, the Cali Fund must ensure absolute legal certainty: compliance with a simplified, product-specific multilateral mechanism (Option 1a) must automatically provide global clearance, explicitly precluding any overlapping parallel claims from pre-existing physical bilateral agreements on the same value chain.

- There are two use cases here. Bilateral agreements, at least from some IP&LC perspectives, captures value from bundles of benefits - usually GRATK as a bundle, where TK is a value added and use of TK and GRs requires PIC/FPIC/A&I. The second is case involves legitimately publicly available digital sequences. There are issues of double payments that need to be addressed, but not a straightforward bilateral/multilateral dichotomy.

Hugo: To underline what I just said about direct/indirect, I would see it the following way, linked to Enclosure 1 to decision 16/2: The listed sectors are characterised by entities that actively use DSI in their R&D or production processes. The model is an entity making deliberate, purposeful use of DSI (directly or through contractors/licensees), not one that passively purchases/markets resulting products.

- Appreciate your kind clarification^^
- 100 percent agree to Hugo.

**General comments**

*Si les bases de données demeurent ouvertes tandis que les brevets et les capacités technologiques restent concentrés entre les mains d'un petit nombre d'acteurs privés, le mécanisme multilatéral ne risque-t-il pas de légitimer une nouvelle forme d'extraction de valeur à partir de la biodiversité des pays du Sud ? Quelles mesures sont envisagées pour prévenir cette concentration du pouvoir économique ?* – DeepL: If databases remain open whilst patents and technological capabilities remain concentrated in the hands of a small number of private actors, is there not a risk that the multilateral mechanism could legitimise a new form of value extraction from the biodiversity of countries in the Global South? What measures are being considered to prevent this concentration of economic power?

*Au-delà du partage des avantages, quel type de collaboration selon vous a construire avec la société civile pour réduire les inégalités en matière d'accès aux données, aux technologies, au financement et aux capacités scientifiques, afin que les pays riches en biodiversité deviennent également des producteurs de connaissances et d'innovation ?* – DeepL: Beyond the sharing of benefits, what sort of collaboration do you think we should build with civil society to reduce inequalities in access to data, technology, funding and scientific capacity, so that countries rich in biodiversity can also become producers of knowledge and innovation?

*Le partage des avantages peut-il réellement réduire les inégalités si les chaînes de valeur, les brevets et les infrastructures scientifiques demeurent concentrés entre les mêmes acteurs ? Quels leviers économiques permettraient de corriger cette asymétrie ?* – DeepL: Can benefit-sharing really reduce inequalities if value chains, patents and scientific infrastructure remain concentrated amongst the same players? What economic levers could be used to redress this imbalance?

*La question centrale n'est pas seulement le partage des bénéfices, mais qui contrôle les connaissances, les technologies et les chaînes de valeur issues de la biodiversité.* – DeepL : The key issue is not just the sharing of benefits, but who controls the knowledge, technologies and value chains derived from biodiversity.

*La justice ne consiste pas uniquement à redisuer une partie des revenus, mais aussi à modifier les rapports de pouvoir qui permettent l'appropriation de la biodiversité par les acteurs les plus puissants. La biodiversité, les semences, les connaissances traditionnelles et les données génétiques devraient être considérées comme des biens communs, au service de la souveraineté alimentaire, de la santé publique et de l'intérêt général, plutôt que comme des actifs destinés à l'accumulation privée.* – DeepL: Justice is not merely a matter of redistributing a portion of income, but also of changing the power dynamics that enable the most powerful actors to appropriate biodiversity. Biodiversity, seeds, traditional knowledge and genetic data should be regarded as common goods, serving food sovereignty, public health and the public interest, rather than as assets intended for private accumulation.

This constant back and forth of issues that are supposed to be carried out in good faith does not obscure the fact that Decision 16/2 is a failure and it must be overhauled taking the lessons from the roundabout discussion of the issues here

- Procedurally, one of the problems with 16/2 is that it only refers to "additional" modalities for consideration at SBI-7 and COP17, so that a full overhaul is likely not possible.
- We could adjust key specific issues, definitions, fixing contribution rates – perhaps lowering them, but we got decisions in a row in line with "benefits should be shared", I don't expect a new one saying "revert everything "

The slow growth of CBD MLM is not an interpretation problem, it's a problem of announcing a system operational, when it is not actually fully operation-ready. We should look forward to complete the Mechanism, rather than getting into debates of legal meaning of the words used in the decision 16/2, anyway the decision language is not binding on anyone anything. Ultimately its mechanism to be used by the Parties and Parties can rightfully choose how to use the mechanism. We need to focus on finishing the mechanism.

- The mechanism is complete, as agreed in Cali, it's voluntary, but no one's contributing and those who are supposed to contribute keep on raising all sorts of legal, definitional, philosophical and largely speculative issues, therefore, the voluntary system as designed in Cali is a failure. The sooner Parties will realize that would be good for everybody so that the system is rebuilt from the ground up and the service this webinar can do is to develop a new framework for MLM with all those issues raised addressed effectively, not left hanging for another webinar.
- Nithin's comment integrates with my complaint about the placeholder "digital sequence information on genetic resources" (I spell it out so as not to suppress "on genetic resources".) The complain remains: the cart is not only before the horse, but nowhere in sight. As they say in Spanish, the COP is building the house starting with the roof.

Does "fair and equitable benefit-sharing" imply universalism? If so, the CBD respects intellectual property rights which enable economic rents. Will fairness and equity imply rents for DSI?

- Just a view. May be wrong.
- The 2024 WIPO treaty focuses on disclosure, relating to an invention.
    - Yes, but not yet in force. Transparency also sidestepped issues we are trying to deal with here by kicking actual compliance measures to other instruments - particularly CBD.

- Validity of patents is subject to the jurisdiction of the peoples affected. Indigenous Peoples' juridical authority governs patents using their peoples' biodiversity, knowledge, or other products of their collective development. The Cali Fund benefits select parties according to unquantified criteria.
- Indigenous Peoples are not governed by UN instruments, unless they specifically and with FPIC agree to be governed by UN instruments.

All of this could have been avoided had we understood that Article 10 of the Nagoya Protocol and the GMBSM approved in 2010 were sufficient to address the issue. If we still struggle to grasp the wording of the decisions – seeking to interpret them in ways that reduce or eliminate obligations – and if the proposals aim to lower ambitions, it seems to me that the mechanism will take a long time to get off the ground.

- Article 10 of the GMBSM deals with “genetic resources”. You are correct that it would be the vehicle of “DSI on genetic resources” is within scope. However, the Decisions 15/9 and 16/2 seem to be a manoeuvre to take de-materialized genetic resources out of scope. However, that sets up a contradiction. If DSI is out of scope, why are Users amenable to negotiate these Decisions? One answer is to avoid accusations of biopiracy on a vast and almost unimaginable scale.
- The Nagoya Protocol includes a GMBSM which, if we had recognized that the object of ABS is ultimately information, could have served to create an enabling environment for natural information to flow unencumbered. Redundancy, yet another layer of rules and principles under D16/2, is highly inefficient.
- I too agree with XXX’s point on Article 10 – what a missed opportunity that could have served everyone all this headache

What is the sense of how much of the relevant DSI has a traditional knowledge component?

- Hugo: Very limited.

Data is inherently valuable, and its important for developing countries to think about how to realize that value by orderly and accountably making available DSI for global R&D and not by putting DSI out there in anonymous databases.

Commercial activities that rely a lot on DSI use rely as well on heavy GR use, that means dealing with Nagoya or national ABS. The relationship between the MLM and the existing ABS requires a lot of nuance.

The UN has not formalized its engagement with Indigenous Peoples and DSI structures are vague because affected peoples have been excluded. CBD Secretariat should reply to UN financial instruments that demanded DSI accessibility for business and develop processes and mechanisms that formalize UN engagement with Indigenous Peoples, here on DSI. It might help if UN financial instruments and states heard that DSI could equitably support innovation better through UN formalization of its engagement with Indigenous Peoples' authorities affected by its various decisions.

“Trust” in international relations is probably at the lowest point post-WWII. The alternative modality of “Bounded Openness over Natural Information” minimizes the need of trust.

## Annex 2: Short bios of the panellists

**Agata Makowska-Curran** is an environmental economist and PhD researcher at the Grantham Research Institute on Climate Change and the Environment at the London School of Economics, working on biodiversity finance, the revenue potential of the Cali Fund, and the distributional properties of its allocation formula. She is currently a consultant to the CBD Secretariat on the operationalisation of the Cali Fund ahead of COP17.

**Paul Oldham** is the founder of Tierra Viva AI, a new start-up firm that is using AI to promote biodiversity-based innovation and local solutions to global environmental challenges. He is also Director at One World Analytics.

**Daphne Yong-d'Hervé** is the Director for Global Network Policy Engagement at ICC (International Chamber of Commerce). In addition to supporting ICC's global network of National Committees and members in 170 countries in the different areas of ICC's policy work, she also focuses on the specific area of ABS, having coordinated business engagement in the CBD discussion on ABS, including DSI, for many years.

**Pierre du Plessis** is a veteran of global negotiations about ABS and DSI, having represented Namibia and Africa in related policy processes at the CBD, FAO, WIPO and WHO. He is currently involved in setting up the DSI Financial Readiness Coalition for Africa.

**Hugo-Maria Schally** is a former adviser for international environmental negotiations the European Commission. He is an experienced negotiator and policy architect in EU and international environmental affairs.

**Maui Hudson** is a Professor and Director of Te Kotahi Research Institute and council member of Local Contexts, working on intersecting issues of Indigenous data sovereignty, indigenous Biodiscovery, ABS and research reciprocity.

**Martha Lucía Cepeda**, a member of the DSI Scientific Network, is Director of Technology Transfer at Sciphage SAS, a Colombian deep biotech spin-off of Universidad de los Andes, and a Research Associate at Corpogen, one of Colombia's leading biotechnology research centres. With a background in research management at two Colombian universities, she bridges biotechnology, intellectual property strategy, and regulatory affairs across academia and industry.

## Annex 3: “What we found” by the DSI Informal Dialogue Partnership

### "publicly available"

*The MLM [...] covers, [...], digital sequence information on genetic resources: (a) that is made publicly available in compliance with national legislation, where applicable;*

**Common meanings**

- Information accessible or obtainable by the public ('anyone’).
- Focuses on accessibility rather than actual use.

**International practice**

- Often interpreted broadly.
- Information may remain publicly available even if access requires, e.g.:
  - Registration, user accounts, acceptance of terms of use, payment of a fee.
  - The underlying common principle is that **public availability is not the same as unrestricted access**.
- The use of publicly available information may be restricted, i.e. subject to certain conditions (e.g. patent information).

**Potential ambiguity in Decision 16/2**

- What level of restriction is compatible with "publicly available"?
  - Required registration? Paywall? Licensing conditions? Restricted-access databases?

**Possible implications**

- **Scope of DSI covered by the mechanism**.
- Consistency of implementation across sectors and jurisdictions.
- Legal certainty for users of DSI.

### "entity"

*3. Having regard to paragraph 13, entities that, on their balance sheet dates, exceed at least two out of three of thresholds...... ;*

*4. In the light of the studies on national and international standards for the identification of small, medium and large entities and on contribution rates...*

**Common meanings**

- Broad term denoting any actor with a distinct and independent existence.
- Commonly includes companies, universities, research institutes, NGOs, public bodies, and state-owned enterprises.

**International practice**

- Generally used as an umbrella term broader than "company" or "legal person".
- Usually interpreted consistently throughout a legal instrument unless otherwise specified.

**Potential ambiguity in Decision 16/2**

- The core question is not what an entity is, but **what constitutes the relevant unit of responsibility** (e.g. for benefit sharing).
  - Individual legal person? Subsidiary? Parent company? Entire corporate group or parts thereof?

**Possible implications**

- Scope of expected contributions to the Cali Fund.
- Consistency and (legal) certainty for implementation.

## "indicative rates"

*.....should contribute to the global fund 1 per cent of their profits or 0.1 per cent of their revenue, as an indicative rate.*

**Common meanings**

- Suggested or reference-level rates.
- Provide guidance on magnitude, not obligation.

**International practice**

- Widely used in UN, OECD, finance, and procurement contexts.
- Function as benchmarks or planning tools, typically meaning:
  - Non-binding reference
  - Used for guidance, calibration or negotiation
  - Often intended to shape expectations

**Potential ambiguity in Decision 16/2**

- Are they purely **illustrative or normative** benchmarks (e.g. for obtaining a certificate)?
- Do they influence expectations for contributions?
- How flexible are they over time?

**Possible implications**

- May influence expectations regarding contribution levels even if not formally binding.
- Different interpretations may affect predictability and consistency of contribution practices.

## "direct/indirect use"

*Users of digital sequence information on genetic resources in sectors that directly or indirectly benefit from its use in their commercial activities should contribute*

*The provisions of paragraph 3 do not apply to entities active in the sectors listed in enclosure I that do not directly or indirectly use digital sequence information on genetic resources.*

**Common meanings**

- Direct = immediate use or benefit
- Indirect = mediated or downstream effects

**International practice**

- Broad recognition (e.g. ITPGRFA, UNESCO) that benefits may arise through multiple actors and forms of application.
  - However, none of them has fully resolved the "how far downstream?" question.
- Interpretation of "indirect" in other contexts
  - Antitrust: foreseeable, proximate effects.
  - Tax, anti-money laundering (AML): traceable through ownership/control chains.
  - ESG/supply chain management: defined upstream/downstream relationships.

**Potential ambiguity in Decision 16/2**

- The boundary between direct and indirect use is not defined.
- No defined limit to causation or attribution: **How far does "indirect" extend**?
  - Identifiable value chain only? Or including more remote contributions where DSI forms one of many inputs/applications?

**Possible implications**

- Scope of covered use and actors may vary depending on interpretation of "indirect".
  - Significant differences in how the terms "direct/indirect use/benefit" are typically interpreted in different sectors.
- Users may be uncertain in determining whether and how their activities relate to the mechanism.