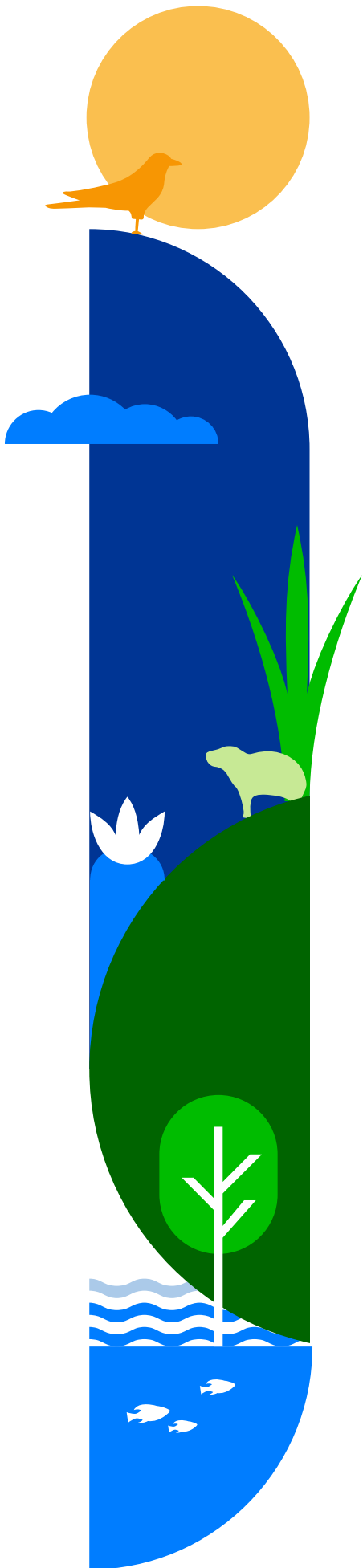




CBD COP16

Business views on a multilateral benefit sharing mechanism





Introduction

A well-designed Multilateral Benefit Sharing Mechanism (MLM) has the potential to enhance benefit sharing and support the goals of the Convention on Biological Diversity (CBD), including by developing a sustainable bioeconomy and incentivising research to develop solutions for tackling major challenges such as biodiversity conservation, climate change, health and food security. For the MLM to deliver on expectations, and encourage investments in biodiversity-based innovation, it should be workable in practice, comprehensive in scope to reflect scientific and business realities, and incentivise participation by both countries and a broad base of users. Benefit sharing is, however, only one of many sources of funding identified in the resource mobilisation strategy and can complement, but cannot not be expected to be sufficient on its own to close the financing gap.

Business continues to be ready to engage at COP16 and beyond, in the further work needed to build a workable mechanism which could provide legal certainty and have the broadest possible engagement from countries, rightsholders and stakeholders.

Key considerations

Below are some key considerations which business believes are essential to building such a mechanism - these are detailed further in the paper:

- Business engagement with the MLM will be incentivised by the assurance of legal certainty and a broad licence-to-operate, as well as by the knowledge and recognition that contributions will fund work towards reaching biodiversity goals.
- A truly multilateral mechanism with a single set of simple, transparent rules and operating procedures at a global level would help provide legal certainty and a level playing field for companies across countries, avoid fragmentation and also have the potential to promote alignment across the various multilateral ABS systems.
- For the mechanism to be proportionate, the expected level of benefit sharing should correspond to the scope of the MLM.
- Key terms and concepts underpinning whichever approach is agreed will need to be defined before the MLM can be operationalised, to ensure clarity and legal certainty for both users and governments when they have to implement the system on the ground.
- To enable and support research and innovation, the mechanism should be consistent with open access to data and recognise that tracking and tracing through the value chain is not practical, as set out in Decision 15/9, as well as encourage continued sharing of scientific information through the public database system.
- Many companies already engage in capacity-building projects within their sectors. This should be recognised, encouraged and strengthened as a voluntary track.
- Funds collected from the MLM should be used solely to further biodiversity conservation and sustainable use, based on needs and scientific evidence of merit. This includes supporting the role of indigenous peoples and local communities in all countries as stewards of biodiversity, according to their different needs and capacities, and building capacity in biodiversity-based research and innovation e.g., through public-private partnerships.

An incentive-based system

To ensure the MLM's success, it should be designed to incentivise both users and countries to participate, aiming at having the widest possible engagement.

To be effective, the MLM should be simple, provide legal certainty, give rise to low administrative costs and facilitate rather than discourage research and innovation, in line with the criteria agreed in Decision 15/9.

An important incentive for business is the clear and reliable assurance of legal certainty - that is, full licence-to-operate from an ABS perspective throughout the whole innovation and commercialisation process - supported by proof of compliance (e.g. through a compliance certificate upon yearly payment).

The COP16 decision should therefore clearly state that CBD Parties will recognise that complying with the requirements of the MLM will be deemed to also fulfil any equivalent national obligations. This is essential to provide legal certainty for users, and prevent the stacking of obligations and multiple payments. Additionally, there should be a commitment to work with other multilateral benefit sharing mechanisms towards the same end.

This incentive for business will increase in proportion to the comprehensiveness of the scope of the MLM, as a broader scope will lead to a broader licence-to-operate, and have increased value for companies.

Under the current proposed scope of the MLM, contributors would be considered compliant—and therefore gain legal certainty—only with national obligations related to the use of non-human digital sequence information (DSI) in public databases. If the MLM's scope is expanded to include all non-human DSI or genetic resources, contributors would also be recognised as being compliant with national benefit sharing obligations related to this broader scope. This expanded legal certainty, effectively serving as “licence to operate”, would offer a much stronger and more valuable incentive for companies to contribute. If only DSI in public databases is in scope, the licence-to-operate will be narrower and therefore less valuable to companies than a scope which includes all non-human DSI and genetic resources.

It should be noted that DSI in public databases represents only a fraction of the many inputs necessary in research and product development. Both DSI—representing information on genetic resources—and genetic resources are used in most research projects and product development.

An additional important incentive would be the assurance—and some form of public recognition—that companies contributing to the MLM are supporting conservation and sustainable use of biodiversity. This could also help encourage participation from a broader range of sectors.

For countries, the MLM should provide an attractive alternative to regulating benefit sharing on DSI at the national level. To incentivise countries, all Parties which engage with the system by recognising compliance with the MLM as fulfilling equivalent national ABS-related obligations should be assured of benefiting in some way from the funds from the MLM.

Ensuring an inclusive globally coherent system

Discussions at the second meeting of the Working Group on DSI indicated the possibility of diverse national approaches to the implementation of the MLM, with the risk of a fragmented landscape. A single set of simple, transparent rules and operating procedures at global level, which both users and countries could endorse, would provide legal certainty and ensure a level playing field for companies across countries, avoid fragmentation and have the potential to promote alignment across the various multilateral ABS systems, ensuring greater coherency and efficiency. Such a system would also allow all users to participate, including those in countries which decide not to join the system or are not Parties to the CBD.

Contribution mechanism

The contribution mechanism should be simple, affordable, and predictable, with proportionate contributions and a single point for annual payments.

For the mechanism to be fair and proportionate, benefit sharing should correspond to the benefits generated from the use of DSI within the scope of the MLM. The underlying rationale and the level of contributions should be clear, to facilitate communication and to incentivize broad engagement during implementation.

It should also be clear and straightforward for potential contributors to determine whether they are expected to contribute, when and how much, using a transparent calculation method to facilitate compliance and monitoring, as well as help build trust among governments and stakeholders.

A broad payer base with reasonable rates would help ensure a meaningful stream of funds, help raise awareness of the principle of benefit sharing and encourage a sense of collective responsibility among all sectors benefiting from biodiversity. A reasonable rate is one that will not negatively impact research and innovation, one of the criteria in paragraph 9 of Decision 15/9.

Care should be taken with overall turnover figures for sectors and companies as, in many cases, these represent in large part the sales of products or services whose development has not involved the use of DSI within the current proposed scope.

Whichever approach is taken to contributions, key terms and concepts underpinning this will need to be defined before the MLM can be operationalized, to ensure clarity and legal certainty for both users and governments when they have to implement the system on the ground. As mentioned above, companies need to be able to determine whether, when, how much and to whom they should make contributions, as well as to understand why. Clarity on key terms and concepts is essential for legal certainty, effective implementation and to avoid ambiguity.

Non-monetary benefit sharing

Many companies already voluntarily engage in capacity-building projects within their sectors and are likely to continue to do so, regardless of the MLM. The value of these contributions towards reaching biodiversity and other Sustainable Development Goals should be recognised.

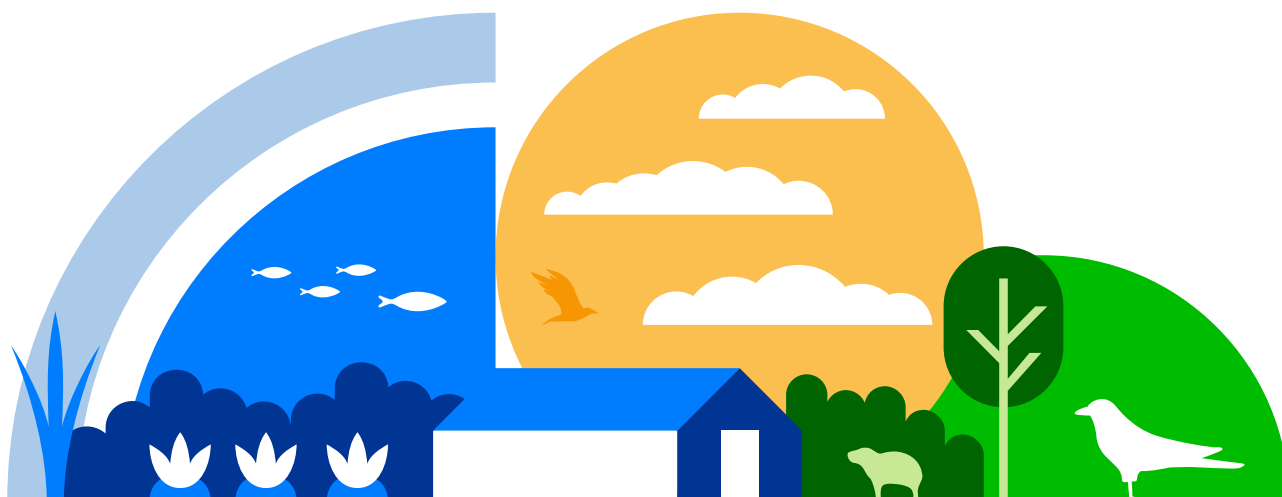
Non-monetary benefit sharing should not be a mandatory obligation within the MLM but should be encouraged and strengthened as a voluntary track. The diversity of industry players would make it very difficult to develop a one-size-fits-all mandatory mechanism. For some companies, non-monetary benefit-sharing activities may be strategically well-aligned, while for others such activities could be impractical or very challenging.

Fund disbursement

It is very important for businesses that funds collected from the MLM are used solely to further biodiversity conservation and sustainable use, based on needs and scientific evidence of merit. This includes supporting the role of indigenous peoples and local communities in all countries as stewards of biodiversity, according to their different needs and capacities, and building capacity in biodiversity-based research and innovation, e.g. through public-private partnerships.

The methodology for disbursement of funds should ensure that their use is as effective as possible in achieving these objectives. It should also incentivise countries to participate in the MLM by ensuring that all participating countries benefit in some way from the fund.

The principles underlying the governance of the fund should ensure transparency in fund distribution and accountability through regular reporting. Fund governance would benefit from equal representation from all relevant stakeholder groups.



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