Organization and process of the meeting
1. The Pandemic Influenza Preparedness (PIP) Framework Advisory Group (AG) met at WHO headquarters in Geneva, Switzerland, 11-14 October 2022. There were 12 AG members that participated in the AG meeting, 10 in person and 2 virtually. The list of AG members who participated in the meeting is available at Annex 1.

2. Prior to the AG meeting, two technical briefings were held virtually for the AG on the development of the High Level Implementation Plan (HLIP) III on 14 September 2022 and 6 October 2022.

3. Dr Sylvie Briand, the Director of the Department of Epidemic and Pandemic Preparedness and Prevention, opened the meeting and welcomed all participants. Declarations of Interest were reviewed by the Secretariat and relevant interests were disclosed. The Statement of Declarations of Interest is available at Annex 2.

4. The agenda of the AG meeting was adopted and is available at Annex 3.

5. The Chairperson informed the AG that observers from the WHO Global Influenza Surveillance and Response System (GISRS) would attend relevant technical sessions of the AG meeting. GISRS observers included representatives from WHO Collaborating Centres (CC), an Essential Regulatory Laboratory (ERL), WHO H5 Reference Laboratory and from National Influenza Centres (NICs).

6. In accordance with its standard practice, the AG convened a consultation with stakeholders on 12 October 2022. The list of participants in the AG meeting and consultation is available at Annex 4.

Presentation of the Health Emergency Context
7. The WHO Assistant Director-General, Emergency Preparedness updated the AG on the status of several initiatives relevant to pandemic preparedness and response.

8. The 10 proposals to build a safer world together – Strengthening the Global Architecture for Health Emergency Preparedness, Response and Resilience: draft for consultation presented at the Seventy-Fifth World Health Assembly (WHA) in May 2022 provided a synthesis of the more than 300 recommendations from independent reviews from the COVID response and was developed in consultation with Member States and partners.

9. The Working Group on Strengthening WHO Preparedness and Response to Health Emergencies (WGPR) continued its work which resulted in resolution WHA75.12 and

1 See https://www.who.int/influenza/gisrs_laboratory/GISRS_representation_20171010.pdf
decision WHA75(9). Through the former, the WHA adopted amendments to Article 59, and the consequent necessary updates to Articles 55, 61, 62, and 63 of the International Health Regulations (IHR) (2005), to enter force in May 2024. Through the latter, the WHA continued the WGPR with a revised mandate and name (the “Working Group on Amendments to the International Health Regulations (2005)” [WGIHR]) to work exclusively on consideration of proposed targeted amendments to the IHR (2005), consistent with decision EBI50(3) (2022), for consideration by the Seventy-seventh WHA in 2024. Pursuant to the same decision, a Review Committee on the IHR (2005) was convened to make technical recommendations on the proposed amendments. The Review Committee will submit its report to the Director-General by 15 January 2023 for consideration by the WGIHR.

10. The Intergovernmental Negotiating Body (INB), established in December 2021, has progressed with its mandate to draft and negotiate a WHO convention, agreement or other international instrument on pandemic prevention, preparedness and response. In July 2022, the INB identified that the provision of the WHO Constitution under which the new instrument will be adopted is to be Article 19, without prejudice to the suitability of article 21, making the instrument legally binding, with some non-legally binding provisions.

11. The working draft of the INB is moving to a Conceptual Zero Draft (CZD) which includes the agreed scope, general principles and specific provisions. The CZD is to be developed from INB discussions, written input from Member States, Regional committee meetings, informal focused consultations, and public hearings with negotiation likely to commence in February 2023.

12. The WHO Assistant Director-General, Emergency Preparedness informed the AG that during these processes, the PIP Framework has been referred to as a successful model to guide the future instrument as it was also a Member State led process.

**Update on Partnership Contribution and High-Level Implementation Plan (HLIP-II) Implementation**

13. The Secretariat provided an update on the collection of the Partnership Contribution (PC) which is one of the PIP Framework benefit sharing mechanisms. It was reported that as of 2 October 2022, the collection of 2021 and 2022 Partner Contribution was 71% and 46% respectively, of the invoiced amount of US$ 28 million per year. The collection for 2022 at this point in the year is consistent with previous years.


15. Enabling factors and challenges of HLIP-II implementation were also presented by the Secretariat. Enablers included the increased government attention to the importance of pandemic preparedness, integration of activities to increase efficiencies, development of guidance documents and stability in PIP program management. Challenges included the ongoing response to the COVID-19 pandemic and other concurrent humanitarian emergencies and outbreaks which increased staff demand, the many new global initiatives on preparedness, simultaneous requests for WHO technical support in technical areas where experts are limited and increased in operational costs (e.g., travel to meetings).
16. Representatives from the Regional Office for the Eastern Mediterranean and the Regional Office for Europe both presented progress on implementation of HLIP-II activities in their regions, with representatives from WHO Headquarters providing an update on initiatives in planning for future global pandemic product deployment.

Development of HLIP-III

17. The Secretariat summarized the development of HLIP-III (2024-2030), which builds on the achievements of HLIP-II, the results from HLIP-II mid-term review conducted in 2021, lessons learned from the COVID-19 response and the subsequent evolving landscape for pandemic preparedness and response, as well as considerations for influenza specific preparedness and response.

18. The anticipated outcome of HLIP-III is “strengthened pandemic influenza preparedness through a whole-of-government and whole-of-society approach that ensures a more equitable response by building stronger and resilient country capacities.” This is supported by four output areas of 1) Policy and plans that result in health systems prepared for pandemic influenza; 2) Laboratory capacity and resilient surveillance systems are maintained and strengthened through GISRS; 3) Community protection through strengthened community engagement, knowledge translation and infodemic management; and 4) Strong regulatory systems and a common approach to timely and affordable access, allocation and deployment of pandemic influenza products results in a more equitable response. Each of the outputs has deliverables to measure the impact of the HLIP-III.

19. The AG noted that there has been extensive stakeholder consultation throughout the development process and the Secretariat thanked the AG members for providing feedback.

Recommendation to the Director-General

The HLIP-II covers up until the end of 2023. The PIP Secretariat has developed the HLIP-III for 2024-2030. The AG recommends the Director-General approve the HLIP-III by February 2023 to enable operational workplan development for the 2024-25 biennium.

Partnership Contribution (PC) Formula

20. The PIP Framework specifies that the PC is collected from manufacturers that use GISRS, with the amount due from individual manufacturers calculated using the PC formula which divides the total PC amount among the manufacturers identified as contributors.

21. As the current PC formula was developed in 2013, industry associations, under the leadership of the International Federation of Pharmaceutical Manufacturers & Associations (IFPMA) and Biotechnology Industry Organization (BIO), have been working to revise the current PC formula. The Secretariat has been supportive of this initiative, with the following considerations: 1) that the target of the formula be the current PC amount, 2) that the revised PC formula be agreed to by the four associations that reflect the sectors involved in PC (IFMPA, BIO, AdvaMedDx and the Developing Countries Vaccine Manufacturers Network [DCVMN]), and 3) that the formula is fair and equitable.

22. The Secretariat reported that a revised PC formula was developed by a consultant hired by IFPMA, and in January 2022, IFPMA/BIO requested the support of the Secretariat to pilot
the new formula. However, as only three of the four associations were supportive of this revised formula, the Secretariat considered that having a pilot was premature. The Secretariat updated the AG that it has provided several suggestions for the revised formula and is awaiting response from industry. In the meantime, the existing formula is being used to determine the amount of PC contribution due from each manufacturer identified as a contributor.

23. The Secretariat confirmed that manufacturers identified as being a contributor to the PC is based on their use of GISRS, with use defined in 2012 as ‘receiving or using materials, services and information.’ Potential contributors are identified through an annual questionnaire sent by WHO to vaccine, diagnostic and therapeutic manufacturers that use new technologies, as well as older processes.

**Updating the level of PC**

24. The PIP Framework establishes in Section 6.14.3 that the level of the annual PC is to be equal to 50% of GISRS running costs, and that as the running costs may change over time, the PC should also be changed accordingly. The current level of PC is based on the 2010 estimated running costs of GISRS and has not been adjusted since the PIP Framework was adopted in 2011. Several methods to adjust the PC level to account for cost increases overtime have been considered by the PIP AG, resulting in their recommendation\(^2\) to use an inflationary adjustment to the 2010 estimated running costs of GISRS.

25. At the March 2022 AG meeting, the Secretariat presented the proposed methodology to develop a tool to adjust the PC based on an inflationary approach. Since then, an Excel-based tool that adjusts the 2010 GISRS running costs for inflation and scalability has been developed and finalized. The tool adjusts the current PC level for inflation using two data sources: the Federal Reserve Bank of St. Louis Economic Data (FRED) and the World Bank. The FRED data is updated monthly, and the World Bank data is updated annually.

26. The PIP Partnership Contribution Adjustment tool was demonstrated to the AG by the developer. The AG observed that running the tool using the two data sources provided comparable results for the adjusted PC level.

27. The use of the tool was discussed by the AG who decided that an adjusted PC level be implemented at the commencement of HLIP-III from 1 January 2024. The AG suggested the PC level be determined using the World Bank data as the source for the inflationary adjustment. The AG requested that the PIP Secretariat develop standard operational procedures (SOPs) for using the PIP Partnership Contribution Adjustment tool to adjust the PC level, to address matters such as the frequency of update. The AG also suggested that the development of such SOPs include consultation with stakeholders.

**Recommendation to the Director-General**

*The current PC has been at the same level since 2011. The AG recommends that the Director-General apply the new PIP Partnership Contribution Adjustment tool from 1 January 2024 onwards.*

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\(^2\) see page 4 of the PIP AG Meeting report from October 2019 accessed at https://cdn.who.int/media/docs/default-source/pip-framework/pip-framework-advisory-group/pipagmr_oct2019e97d5072-9912-42a6-9d3c-8bda7d3e71c5.pdf?sfvrsn=c978deec_1
**SMTA2 update**

28. The Standard Material Transfer Agreement 2 (SMTA2) is the other PIP Framework benefit sharing mechanism; it secures real-time access by WHO to future pandemic response products through legally binding agreements.

29. The PIP Secretariat provided the following updates: 1) an influenza vaccine manufacturer has committed to start negotiations for a SMTA2; 2) an antiviral manufacturer has committed to signing an agreement with WHO under PIP Framework Section 6.8 to provide access to WHO of antiviral treatment courses at the time of the next pandemic; 3) the SMTA2 review process with an influenza vaccine manufacturer was completed, and the revised agreement signed.

**Challenges of influenza virus sharing: update on the work of the AGWG**

30. Section 7.2.1 of the PIP Framework states that the AG is ‘to monitor and provide guidance to strengthen the functioning of the WHO GISRS and undertake necessary assessment of the trust-based system needed to protect public health and to help ensure implementation of this Framework.’ The AG receives regular briefings on influenza virus sharing activities for both seasonal influenza viruses and influenza viruses of pandemic potential (IVPPs).

31. The AG has been updated on challenges related to seasonal influenza virus sharing during previous meetings, notably the use by manufacturers of candidate vaccine viruses (CVVs) developed by GISRS. This issue may be due in part to the growing number of countries that are implementing national Access and Benefit Sharing (ABS) laws, rules, or regulations, including those implementing the Nagoya Protocol (NP) (together referred to as “ABS/NP”).

32. The AG established a working group (the AGWG) after the October 2021 PIP AG meeting to explore options for addressing concerns related to the timely sharing of seasonal influenza viruses with GISRS and/or their potential commercial use. The AGWG was tasked to develop a report, for consideration by the PIP AG in October 2022, describing such options and proposing a way forward. The AGWG was composed of 12 previous and current AG members and held 17 meetings between January and September 2022, including five consultations with relevant stakeholders from industry, civil society organizations and GISRS. There were four options considered by the AGWG:

- Option 1: Revise the WHO GISRS National Influenza Centre (NIC) Terms of Reference (TORs) for seasonal influenza viruses
- Option 2: Expand the PIP Framework to include seasonal influenza viruses and have the amended PIP Framework recognized as a specialized international ABS instrument (SII) within the meaning of Article 4(4) of the Nagoya Protocol
- Option 3: Have GISRS recognized as a SII within the meaning of Article 4(4) of the Nagoya Protocol
- Option 4: Create a new international framework for seasonal influenza (this option was added as a result of stakeholder consultation).

33. The Chair of the AGWG summarized the AGWG report for the AG, which is available at Annex 5. The three key findings of the report were that 1) there are no quick solution(s) to the issues with seasonal influenza virus sharing and/or the potential commercial use; 2) no
solution will provide 100% guarantee that legal certainty will exist for every situation and 3) the solutions are not mutually exclusive and some of them could be implemented in parallel. The recommendations of the AGWG were also presented to the AG for their consideration:

(i) Option 1 – Revise NIC TORs: Recommend that the Director-General continue to support this option and WHO:
   a. Ensure that the revised TORs, SIMTA and information pack:
      i. Clarify all the uses that may be made by GISRS laboratories with seasonal influenza viruses shared with GISRS, notably the development of reference viruses, CVVs and other viruses or materials that may be shared with industry for development and production of vaccines or other products (e.g., diagnostics, antivirals)
      ii. Provide a list of the benefits of being a member of GISRS, including that recognition by WHO as a member of GISRS is in-and-of-itself a benefit that could be sufficient for some countries with respect to their national ABS/NP legislation, rules, or requirements.
      iii. Clarify that acceptance of the revised TORs in full by GISRS countries satisfies all relevant national ABS/NP requirements
      iv. Require confirmation that the national signatory of the revised NIC TORs is duly authorized to do so
   b. Where a country indicates that it cannot accept the revised TORs in full, establish a process to, at a minimum, ensure that the NIC continues to share seasonal influenza viruses with GISRS for public health purposes, and continue discussion of the issues that would need to be addressed for the NIC to accept the TORs.

(ii) Option 2 – Expand the PIP Framework to include seasonal influenza viruses: recommend that the Director-General take this option forward in discussion with Member States, recognizing that this will be a long-term solution requiring lengthy negotiations among Member States and relevant stakeholders. The AGWG further recommends that the component of Option 2 to have the PIP Framework recognized as an SII be deferred until such time that the process of designating an SII is determined, and the PIP Framework has been amended.

(iii) Option 3 – Have GISRS recognized as an SII: recommend that the Director-General not pursue this option at this time given that the current structure of GISRS is inconsistent with the draft criteria for SIIs.

(iv) Option 4 – Develop a new international instrument for seasonal influenza viruses: Recommend that the Director-General not pursue this option at this time as Option 2 was considered to represent a more efficient approach.

34. There was discussion on whether a multi-lateral and legally binding solution was required, as historically GISRS has been operating based on goodwill and trust. The feasibility of having another Member State led initiative given the current WGIHR and INB processes was also discussed. Noting that the global context has changed, as evidenced further during the COVID-19 pandemic, the AG suggested that a formalized approach would be more appropriate to address the issues with seasonal influenza virus sharing and/or their use for commercial purposes.
Recommendation to the Director-General

The AG agrees with the findings and recommendations of the AGWG as presented in their report (and reproduced above in paragraph 33) and recommends that the Director-General consider these recommendations in moving forward.

Influenza virus sharing

35. The AG received an overview of influenza virus sharing including through the influenza virus tracking mechanism (IVTM) from 1 September 2021 to 31 August 2022. The Secretariat explained that most issues in IVPP sharing were due to understandable reasons which included the depletion of clinical specimens for confirmatory testing, low viral loads in clinical specimens, national requirements for dangerous pathogens transport and the continued impact of the COVID pandemic.

Q&As with GISRS representatives

36. GISRS representatives brought to the AG’s attention their concerns arising from the considerable impact (human resources and operational costs) of the COVID-19 pandemic, as well as surveillance activities for SARS-CoV-2 and other respiratory pathogens, on the core functions of GISRS specific to influenza surveillance. GISRS representatives suggested that an assessment of their operations might be useful to understand the status of the network. GISRS representatives also reported that although seasonal influenza activity decreased during the pandemic, zoonotic influenza outbreaks continued.

37. The role of the AG pursuant to Section 7.2.1 of the PIP Framework to ‘to monitor and provide guidance to strengthen the functioning of the WHO GISRS and undertake necessary assessment of the trust-based system needed to protect public health and to help ensure implementation of this Framework’ was discussed as a means to assess these concerns.

38. The AG acknowledged that a well-functioning GISRS is critical to pandemic influenza preparedness and response. The AG agreed with the GISRS representatives that understanding the status of the current functioning of GISRS would assist the AG in providing evidence-based recommendations to address these matters.

39. The Secretariat clarified that an exercise is being undertaken by GIP in response to a WHA request for information on the financial and human resources implications of proceeding with the GISRS+ approach. The AG welcomed this initiative and requested that they be provided with the report prepared for the MSs to advocate for greater support for integrated surveillance of respiratory viruses of epidemic and pandemic potential.

PIP Advisory Group 2021 Annual Report to the Director-General

The AG reviewed and approved its 2021 Annual Report, which will be submitted to the D-G as required by PIP Framework Section 7.2.5.

Consultation with Stakeholders

40. The Chair welcomed stakeholders, thanked them for their ongoing contributions, and provided a brief update on the AG’s work.
41. The Secretariat provided a presentation which covered PC collection and proportional distribution of funds, progress in implementing HLIP-II, and the development of HLIP-III for 2024 to 2030. The Regional Office for the Eastern Mediterranean and the Regional Office for Europe both presented progress on implementation of PIP activities in their regions, with the WHO Headquarters providing an update on initiatives in planning for future global pandemic product deployment.

42. The Chair of the PIP AGWG summarized the work of the AGWG to explore four options that could address the issues related to the timely sharing of seasonal influenza viruses and/or their potential commercial use. He stated that the AGWG report had been presented to the AG, but not yet considered, and presented possible outcomes that the AG could take.

43. The consultants that developed the Excel-based PIP Partnership Contribution Adjustment tool that adjusts the PC level based on inflation and scalability provided a live demonstration. Considerations for implementing the tool were presented to the stakeholders and their input is to be collected by the Secretariat prior to the next AG meeting in March 2023.

44. Three stakeholders provided presentations to the AG:

- The representative from the IFPMA and BIO emphasized that the PIP Framework scope should not be expanded, that they had concerns about the transparency of the AGWG process and that the increased costs associated with GSIRS+ should not be included when adjusting the PC level.

- The representative from Third World Network (TWN) reiterated that creating a new international framework for seasonal influenza was their preferred option to address the issues with seasonal influenza virus sharing and that they appreciated the opportunity to provide comments on the results hierarchy and draft HLIP-III.

- The representative from International Pharmaceutical Students Federation (IPSF) summarized the challenges they identified from the stakeholder consultation at the March PIP AG meeting including in workforce, surveillance and managing infodemics, and provided suggestions for how youth-led organizations could contribute.

45. The AG welcomed the three presentations and responded with the following:

- The adjustment to the PC Level does not include the increased costs associated with GISRS+, because the inflationary factor is applied to the 2010 estimate of the GISRS running costs, which were only based on influenza.

- The AG is yet to consider the findings of the AGWG report but noted that the views of all stakeholders were considered by the AGWG.

- All comments received on the HLIP-III were considered in the review process.

46. The next meeting of the AG will be held the week of 27 March 2023.
Meeting of the Pandemic Influenza Preparedness Framework Advisory Group
11-14 October 2022

List of Advisory Group participants

Dr Roberto Eduardo Arroba Tijerino, Ministerio de Salud, Costa Rica
Dr Kedar Prasad Baral, Professor of Public Health, Patan Academy of Health Sciences, Nepal
Dr Farida Ismail Al Hosani, Executive Director Communicable Diseases Sector, Abu Dhabi Public Health Center, UAE
Dr Dragana Dimitrijevic, Institute of Public Health of Serbia, Belgrade, Serbia (virtual)
Dr Elizabeth Ferdinand, Former Chief Medical Officer (a.i.), Ministry of Health, Barbados
Dr Mohammad-Mehdi Gouya, Assistant Professor, Faculty of Medicine, Iran University of Medical Sciences, Director General of Centre for Disease Control, Ministry of Health and Medical Education, Islamic Republic of Iran
Dr Heidi Meyer, Head of Section, International Coordination / Regulatory Service, Paul-Ehrlich-Institut, Germany
Dr Howard Njoo, Interim Vice President, Infectious Disease Programs Branch, Public Health Agency of Canada, Ottawa, Canada
Professor Soe Lwin Nyein, Department of Public Health, Ministry of Health and Sports, Myanmar (virtual)
Professor Lokman Hakim Bin Sulaiman, Professor of Public Health, International Medical University, Malaysia
Dr Enrique Tayag, Department of Health, Philippines
Dr Phonepadith Xangsayarath, Director of the National Center for Laboratory and Epidemiology, Lao People’s Democratic Republic

Dr Jane Ruth Aceng (Uganda), Dr Sulaiman Al Busaidi (Oman), Dr Anne Margareta von Gottberg (South Africa), Dr Mbayame Ndiaye Niang (Senegal) and Dr Liana Torosyan (Armenia), and Dr Vivi Setiawaty (Indonesia) were unable to attend.
In accordance with WHO policy, in advance of the meeting, all PIP Framework Advisory Group members were asked to provide a duly completed Declaration of Interests form to inform WHO about real, potential or actual conflicts of interests that they might have in relation to the subject matter of the meeting. Over the course of the meeting, the Advisory Group discussed, reviewed, or was provided updates on implementation of the Framework, including: a) virus sharing; b) Standard Material Transfer Agreement 2, and c) Partnership Contribution implementation.

During the meeting, the Advisory Group also interacted with manufacturers and other stakeholders regarding the implementation of the PIP Framework.

Members, in the exercise of their functions on the Advisory Group, serve in their individual capacity acting as international experts serving WHO exclusively. The experts participating in the Advisory Group meeting were, by WHO region:

Africa
- Dr. Farida Al Hosani (United Arab Emirates)

Americas
- Dr Elizabeth Ferdinand (Barbados)
- Dr Roberto Eduardo Arroba Tijerino (Costa Rica)
- Dr. Howard Njoo (Canada)

Eastern Mediterranean
- Dr Mohammad Mehdi Gouya (Iran)

Europe
- Dr Heidi Meyer (Germany)
- Dr Dimitrijevic Dragana (Serbia)

South-East Asia
- Dr Kedar Baral (Nepal)
- Dr Soe Lwin Nyein (Myanmar)

Western Pacific
- Dr Enrique Tayag (Philippines)
- Dr Lokman Hakim Bin Sulaiman (Malaysia)
- Dr Phonepadith Xangsayarath, (Lao People's Democratic Republic).

Jane Ruth Aceng (Uganda), Dr Sulaiman Al Busaidi (Oman), Dr Anne Margareta von Gottberg (South Africa), Dr Mbayame Ndiaye Niang (Senegal) and Dr Liana Torosyan (Armenia) were unable to attend.
Given that discussions in the meeting were on the use or allocation of Partnership Contribution resources, and in the interest of transparency, the following interests and/or affiliations are relevant to the subject of work and are hereby disclosed:

<table>
<thead>
<tr>
<th>Name</th>
<th>Interest declared</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dr Elizabeth Ferdinand</td>
<td>Former Civil Servant</td>
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<tr>
<td>Dr Enrique Tayag</td>
<td>Civil Servant</td>
</tr>
<tr>
<td>Dr Howard Njoo</td>
<td>Civil Servant</td>
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<tr>
<td>Dr Mohammad Mehdi Gouya</td>
<td>Civil Servant</td>
</tr>
<tr>
<td>Dr Roberto Arroba</td>
<td>Civil Servant</td>
</tr>
<tr>
<td>Dr Soe Lwin Nyein (Myanmar)</td>
<td>Civil Servant</td>
</tr>
</tbody>
</table>

No comments were received as a result of the Public Notice and Comment period. No other interests declared by members of the Advisory Group were deemed relevant to the work of the group. In consultation with the Compliance and Risk Management and Ethics unit, it was determined that there is no conflict in respect of these members.
Annex 3

Meeting of the Pandemic Influenza Preparedness Framework Advisory Group
11-14 October 2022
Agenda

1. Welcome remarks
2. Declarations of Interest
3. Adoption of agenda
4. Presentation of the Health Emergency Context
5. Update on Partnership Contribution and High-Level Implementation Plan (HLIP-II) Implementation
6. Development of HLIP-III
7. Partnership Contribution (PC) Formula
8. Updating the level of PC
9. SMTA2 update
10. Challenges of influenza virus sharing: update on the work of the AGWG
11. Influenza virus sharing
12. Consultation with Stakeholders
13. Q&As with GISRS representatives
14. Close of meeting
Meeting of the Pandemic Influenza Preparedness Framework Advisory Group  
11-14 October 2022  

List of Participants

GISRS representatives\(^1,2\)
- Rodney Daniels, The Francis Crick Institute, London, UK
- Summer Galloway, WHO Collaborating Centre for Surveillance, Epidemiology and Control of Influenza, US Centers for Disease Control and Prevention, United States of America
- Olav Hungnes, Director, National Influenza Centre, Norwegian Institute of Public Health, Norway
- Eric Karlsson, Deputy Head, Virology Unit, Director, National Influenza Centre of Cambodia and H5 Reference Laboratory, Coordinator, WHO Global COVID-19 Referral Laboratory, Institut Pasteur du Cambodia

Civil society organizations\(^2\)
- Sangeeta Shashikant, TWN

Manufacturers and industry associations\(^2\)
- Paola Barbosa, International Federation of Pharmaceutical Manufacturers & Associations (IFPMA)
- Erica Dueger, Sanofi Pasteur
- Sabrina Ivol, Janssen Pharmaceuticals R&D
- Melchior Kuo, IFPMA
- Michael Messenger (ACT-IVD)
- Sam Lee, Sanofi Pasteur
- Teng Li, Sinovac Biotech Ltd
- Chenyao Mao, SINOVAC
- Lauren Parker, AstraZeneca
- Kaori Shinoda, Daiichi Sankyo Co., Ltd
- Beverly Taylor, Seqirus Vaccines
- Ted Tsai, Takeda
- Sogo Yamamoto, Daiichi Sankyo

Other organizations\(^2\)
- Nancy Akite, GISAID Initiative
- Ann Moen, US CDC
- Yifan Zhou, International Pharmaceutical Students Federation

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\(^1\) Participated in relevant technical sessions of the meeting.
\(^2\) Participated in the 12 October 2022 consultation with stakeholders
WHO Staff

**WHO regional offices**

**AFRO**
- Belinda Herring, AF/RGO/WHE/IHM

**AMRO**
- Angel Rodriguez, AM/PAHO
- Carolina Serrano, AM/PAHO

**EMRO**
- Ruba Kawafha, EM/RGO/WHE/IHM

**EURO**
- Michala Hegermann-Lindencrone, EU/RGO/WHE/IHM

**SEARO**
- Manish Kakkar, SE/RGO/WHE

**WPRO**
- Phuong Nam Nguyen, WPR/RGO/WHE

**WHO headquarters**
- Esther Awit, HQ/WPE/EPP/PIP
- Jennifer Barragan, HQ/WPE/EPP/PIP
- Luisa Belloni, HQ/WPE/EPP/PIP
- Isabel Bergeri, HQ/WPE/EPP/GIP
- Sylvie Briand, HQ/WPE/EPP
- Christopher Chadwick, HQ/WPE/EPP/IPR
- Hitesh Chugh, HQ/WPE/EPP/IPR
- Chadi Fayad, HQ/WPE/EPP/IPR
- Julia Fitzner, HQ/WPE/EPP/GIP
- Christian Fuster, HQ/WPE
- Ioana Ghiga, HQ/WPE/EPP/IEP
- Shoshanna Goldin, HQ/WPE/EPP/IPR
- Sarah Hamid, HQ/WPE/EPP/GIP
- Aspen Hammond, HQ/WPE/EPP/GIP
- Sarah Hess, HQ/WPE/EPP/IEP
- Poonam Huria, HQ/WPE/EPP/PIP
- Anne Huvos, HQ/WPE/EPP/IPR
- Sandra Jackson, HQ/WPE/EPP/GIP
- Maja Lievre, HQ/WPE/EPP/GIP
- Alaa Magdy, HQ/MHP/RPQ/REG/RSS
- Bikram Maharjan, HQ/WPE/EPP/GIP

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3 Participated in some or all of the meeting.
• Holly Moore, HQ/LEG.
• Claudia Nannini, HQ/DGO/DGD/LEG
• Tim Nguyen, HQ/WPE/EPP/IEP
• Razieh Ostad, HQ/MHP/RPQ/REG/RSS
• Dmitriy Pereyaslov, HQ/WPE/EPP/GIP
• Magdi Samaan, HQ/WPE/EPP/GIP
• Gina Samaan, HQ/WPE/EPP/PIP
• Siddhivinayak Shriram Hirve, HQ/WPE/EPP/GIP
• Hiiti Sillo, HQ/MHP/RPQ/REG/RSS
• Steve Solomon, HQ/DGO/DGD/LEG/GBI
• Katelijn Vandemaele, HQ/WPE/EPP/GIP
• Wenqing Zhang, HQ/WPE/EPP/GIP
PIP FRAMEWORK ADVISORY GROUP WORKING GROUP (AGWG) ON SEASONAL VIRUS SHARING

REPORT for the PIP AG

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Executive Summary

The timely sharing of seasonal influenza is essential to maintaining the overall strength and the effectiveness of the Global Influenza Surveillance and Response System (GISRS) and its role in pandemic preparedness and response. Since 2017, the WHO Pandemic Influenza Preparedness Framework Advisory Group (PIP-AG) has received a number of reports from the Global Influenza Program (GIP), GISRS, and industry that the sharing of seasonal influenza viruses has become increasingly complex with disruptions to seasonal influenza virus sharing occurring, notably regarding the use of candidate vaccine viruses (CVVs) for vaccine production. Responding to the urgency of this issue, and building on previous work, the PIP-AG established a working group (the AGWG) to explore and provide recommendations on three options that could address the issues related to the timely sharing of seasonal influenza viruses after their October 2021 meeting. The AGWG held 17 meetings which included consultations with industry, civil society organizations (CSOs) and GISRS members. A fourth option was added for consideration by the AGWG based on stakeholder input.

Option 1: Revise the WHO GISRS National Influenza Centre (NIC) Terms of Reference (TORs) A GIP pilot study is underway to revise the NIC TORs, with the following objectives: 1) clarify the use of seasonal influenza viruses and their onward sharing; 2) ensure that global seasonal influence surveillance is maintained and strengthened; and 3) use the revised TORs to address Nagoya Protocol and/or national access and benefit sharing (ABS) requirements. Option 1 includes the revised TORs, an optional Standard Seasonal Influenza Material Transfer Agreement (SIMTA) developed by GISRS in 2020 as a material transfer agreement between a NIC and a GISRS Collaborating Centre and an information package that describes GISRS operations and the expectations of being a NIC, especially with regards to the onward sharing of influenza viruses and the benefits of GISRS membership.

Option 2: Expand the PIP Framework to include seasonal influenza viruses and have the amended PIP Framework recognized as a specialized international ABS instrument (SII) within the meaning of Article 4(4) of the Nagoya Protocol The scope of the PIP Framework would be expanded to include seasonal influenza viruses so that the same legal certainty (e.g., the Standard Material Transfer Agreement [SMTA] 1 and SMTA 2) for the sharing and use of influenza viruses of pandemic potential (IVPP) would apply to seasonal influenza viruses. Seasonal influenza viruses would be shared in a regular, systematic and timely manner for use by GISRS and non-GISRS entities, including for commercial purposes such as vaccine development. Another potential element of this option is to have the expanded PIP Framework recognized as a Special International Instrument (SII) under the Nagoya Protocol, meaning that countries which are parties to the Nagoya Protocol would meet all its obligations through the expanded PIP-Framework.

Option 3: Have GISRS recognized as a SII within the meaning of Article 4(4) of the Nagoya Protocol Having GISRS recognized as a SII would mean that the Nagoya Protocol would not apply to any pathogens shared within GISRS, including both seasonal influenza viruses and IVPPs, for countries that are parties to the Nagoya Protocol.

Option 4: Create a new international framework for seasonal influenza Developing a new international instrument for seasonal influenza viruses was proposed by CSOs during their consultation with the AGWG. This new and separate instrument would address the differences between the global seasonal and pandemic influenza virus systems.

Three key findings from the work of the AGWG emerged:

1) Given the multilateral and international nature of the issues, there are no quick solution(s) to the issues with seasonal influenza virus sharing, notably the use of candidate vaccine viruses for vaccine production
2) No solution will provide 100% guarantee that legal certainty will exist in for every situation
3) The solutions are not mutually exclusive with some able to be implemented in parallel.

Taking certain measures at this time would enable WHO, GISRS, and stakeholders to:
• continue the process of raising awareness of the issues with all WHO Member States in a systematic manner
• sensitize WHO Member States to the importance of ensuring that GISRS retain its coherence, relevance and technical strength, if the world is to be better prepared for responding to an influenza pandemic
• start implementing solutions to mitigate the impact of the disruptions to seasonal influenza virus sharing.

The AGWG recommends that the PIP AG consider the following guidance and recommendations:

Option 1 – Revise NIC TORs: Recommend that the Director-General continue to support this option and WHO:

c. Ensure that the revised TORs, SIMTA and information pack:
   v. Clarify all the uses that may be made by GISRS laboratories with seasonal influenza viruses shared with GISRS, notably the development of reference viruses, CVVs and other viruses or materials that may be shared with industry for development or testing of vaccines or other products (e.g., diagnostics, antivirals) related to influenza prevention and control
   vi. Provide a list of the benefits of being a member of GISRS, including that recognition by WHO as a member of GISRS is in-and-of-itself a benefit that could be sufficient for some countries with respect to their national ABS/NP legislation, rules, or requirements.
   vii. Clarify that acceptance of the revised TORs in full by GISRS countries satisfies all relevant national ABS/NP requirements
   viii. Require confirmation that the national signatory of the revised NIC TORs is duly authorized to do so

d. Where a country indicates that it cannot accept the revised TORs in full, establish a process to, at a minimum, ensure that the NIC continues to share seasonal influenza viruses with GISRS for public health purposes, and continue discussion of the issues that would need to be addressed for the NIC to accept the TORs.

Option 2 – Expand the PIP Framework to include seasonal influenza viruses: recommend that the Director-General take this option forward in discussion with Member States, recognizing that this will be a long-term solution requiring lengthy negotiations among Member States and relevant stakeholders. The AGWG further recommends that the component of Option 2 to have the PIP Framework recognized as an SII be deferred until such time that the process of designating an SII is determined, and the PIP Framework has been amended.

Option 3 – Have GISRS recognized as an SII: recommend that the Director-General not pursue this option at this time given that the current structure of GISRS is inconsistent with the draft criteria for SIIs.

Option 4 – Develop a new international instrument for seasonal influenza viruses: Recommend that the Director-General not pursue this option at this time as Option 2 was considered to represent a more efficient approach.
Introduction
The World Health Organization (WHO) Global Influenza Surveillance and Response System (GISRS) is a network of public health laboratories that is responsible for zoonotic, seasonal and pandemic influenza prevention, control, preparedness and response. The GISRS system is coordinated by WHO through the Global Influenza Programme (GIP) under Terms of Reference (TORs) that are agreed by the countries where GISRS laboratories operate for their work with seasonal influenza viruses and influenza viruses with pandemic potential (IVPPs). The work of GISRS includes developing candidate vaccine viruses (CVVs) that are shared with GISRS and non-GISRS entities for the production of seasonal and pandemic vaccines.

The Pandemic influenza preparedness framework for the sharing of influenza viruses and access to vaccines and other benefits (PIP Framework) was developed to improve pandemic influenza preparedness and response, by strengthening GISRS and promoting the regular, systematic and timely sharing of IVPPs by WHO Member States with GISRS, on the one hand, and to increasing the fair and equitable access by developing countries to vaccines and other pandemic related supplies, on the other hand. This second objective is achieved through implementation of the benefit sharing mechanisms in the PIP Framework.

The PIP Framework is governed by an independent Advisory Group (PIP AG) that monitors and provides guidance and recommendations to the Director-General on strengthening the functioning of GISRS, and implementation of the PIP Framework (see PIP Framework section 7.2.1). While the PIP Framework focuses on GISRS and its activities related to pandemic influenza preparedness and response, the PIP AG receives regular briefings on seasonal influenza virus sharing and other seasonal influenza related activities, given their centrality in the overall functioning and strength of GISRS and the linked relationship between seasonal influenza and pandemic preparedness. More specifically, the operation of GISRS’s seasonal influenza work – from receipt of materials and information to development and sharing of CVVs – provides important and relevant information about the overall strength of GISRS, including whether there are any potential issues that could impede or disrupt its functioning and responsibilities for pandemic influenza preparedness and response.

The regular briefings provided by GIP to the PIP AG, as well as the regular interactions between the PIP AG, GISRS representatives and PIP Framework stakeholders, contribute to the PIP AG annual report which is submitted to the Director-General. The annual report covers, among other items, the necessary technical capacities and operational functioning of GISRS, increasing and enhancing surveillance for H5N1 and other IVPPs, and the sharing of influenza viruses and access to vaccines and other benefits (see PIP Framework section 7.2.5 (i), (ii) and (vi)).

Since 2017, GIP, GISRS representatives and industry representatives have informed the PIP AG of delays to seasonal influenza virus sharing due to the implementation of Nagoya Protocol and other national access and benefit sharing (ABS) legislations. The onward sharing seasonal influenza viruses has become increasingly complex, with issues noted in most PIP AG meeting reports. GISRS laboratories from all WHO regions have reported instances where seasonal influenza viruses have not been able to be shared on a timely basis, and that some selected and developed candidate vaccine viruses (CVVs) from viruses shared to GISRS laboratories were unable to be used by industry in the relevant year due to uncertainty with respect to benefit sharing obligations. It was reported that in some cases this lack of certainty affected the development of potential CVVs for vaccine production.

Establishment of the PIP AG Working Group
As the issues with seasonal influenza virus sharing are becoming more frequent, urgent attention was deemed necessary and the PIP AG established a working group (the AGWG) after their October 2021 meeting. The AGWG was tasked to explore three options that could address the issues related to the timely sharing of seasonal
influenza viruses, and to provide recommendations that the PIP AG could consider at their October 2022 meeting. The AGWG noted that previous work on this matter, notably the PIP Framework 2016 review\(^1\) and the follow-on analysis\(^2\) undertaken further to WHA Decision 70(10)\(^3\) remained relevant and valuable as background information for its analysis. The scope of the AGWG deliberations was the sharing of seasonal influenza viruses and did not include the use of genetic sequence data (GSD).

The AGWG was composed of 12 recent and current PIP AG members (Annex 1) and held 17 meetings between January and September 2022. During the AGWG meetings the WHO PIP Secretariat, representatives from the GIP and the WHO Legal Department provided input and clarification on the issues and potential solutions. The AGWG held five consultations: one with industry representatives, one with civil society organization (CSO) and three with GISRS members which comprised representatives from five Collaborating Centers (CCs), three Essential Regulatory Laboratories (ERLs) and 66 representatives from 25 National Influenza Centres (NICs). Stakeholders were provided with an information package that summarized the issues with virus sharing, the options being considered by the AGWG, and guiding questions for the consultation (Annex 2). A fourth option was added for consideration by the AGWG after one of the consultations.

The AGWG deliberations occurred at the same time as the initial discussions of the Member State led Intergovernmental Negotiating Body to draft and negotiate an international instrument on pandemic prevention, preparedness and response, including mechanisms that address fair and equitable access to pandemic response products. The AGWG noted the outcome of this process would impact the implementation of the options under consideration in the longer-term; it also noted the importance of the PIP Framework as a potential model to inform Member States’ discussions of, and approaches to, access and benefit sharing for pathogens.

### The options

A summary of the considerations for each option is shown in Table 1 and in the following section.

#### Option 1: Revise the WHO GISRS National Influenza Centre (NIC) Terms of Reference (TORs)

GIP is currently developing and piloting revised NIC TORs, with the following objectives: 1) clarify the seasonal influenza virus sharing process, especially with regards to the use of viruses and their onward sharing, including the use of CVVs by manufacturers for commercial purposes; 2) ensure that global seasonal influence surveillance is maintained and strengthened; and 3) use the revised TORs to address national ABS requirements.

The revised NIC TORs are to also include (i) a companion ‘Information Package’ that provides a detailed description of the operations of GISRS and the existing benefits of being a GISRS member, and (ii) a Standard Seasonal Influenza Material Transfer Agreement (SIMTA) developed by GISRS in 2020, for use by NICs and CCs for sharing seasonal influenza viruses if a material transfer agreement (MTA) is needed. This information package could assist Ministry of Health discussions with their national ABS competent national authority when reviewing and agreeing to the revised NIC TORs.

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These revisions to the NIC TORs, with the companion information package and SIMTA, would address the issues related to seasonal virus sharing for those countries that agree to them, and this option would likely have the shortest timeframe for implementation. The benefits that result from GISRS membership are to be clearly articulated in the revised TORs and related information.

The revised NIC TORs may not be acceptable to, or sufficient for, all countries due to their national ABS legislation and/or Nagoya Protocol status (referred to as ABS/NP legislation) and some countries may require additional measures. It is anticipated by GISRS that most countries will agree to the revised TORs, however some countries will not agree to the onward sharing of seasonal influenza viruses to non-GISRS entities for vaccine development without measures to ensure additional benefit sharing. In these instances, negotiation on additional measures will be required. The outcome of this negotiation, with respect to onward sharing of seasonal viruses for use as CVVs and commercial development, cannot be predicted.

Moreover, to ensure the required legal certainty for use of seasonal influenza viruses for all purposes (including development of CVVs and sharing these for commercial production of seasonal influenza vaccines), the entity approving the revised TORs would need authority to do so from the national government so that the GISRS laboratory could affirm that the revised TORs are consistent with national ABS/NP requirements.

The revised TORs, in conjunction with additional components to address ABS/NP legislation, are currently being developed and piloted by GIP with several NICs. Due to the timelines of the pilot project, the revisions to the NIC TORs have not been finalized and cannot inform this AGWG report.

There was mixed support for this option during the stakeholder consultations; industry and GISRS members were supportive, whereas CSOs were not. The CSOs indicated that this option would not provide any new or additional benefits for the sharing of seasonal influenza viruses beyond those provided from GISRS membership. GISRS representatives reported that Option 1 was likely to reduce their workload when implemented as they would no longer need to ascertain the Nagoya Protocol status of the country for each CVV selected.

**Option 2: Expand the PIP Framework to include seasonal influenza viruses, and have the amended PIP Framework recognized as a specialized international ABS instrument (SII) within the meaning of Article 4(4) of the Nagoya Protocol**

The PIP Framework covers only IVPPs. Expanding the scope of the PIP Framework to include seasonal influenza viruses could address the issues with sharing seasonal influenza viruses, as the same legal certainty that applies to the sharing and use of IVPPs would also apply to seasonal influenza viruses. That is, the legal framework (the Standard Material Transfer Agreement [SMTA] 1 and SMTA 2) that currently applies to IVPPs could be extended to seasonal influenza viruses, resulting in such viruses being shared in a regular, systematic and timely manner for use by GISRS and non-GISRS entities, including for commercial purposes such as vaccine development. As a standalone solution, Option 2 would provide manufacturers with confidence that there are no legal impediments to the use of influenza CVVs for vaccine development.

Expanding the PIP Framework to include seasonal influenza viruses would result in a coherent public health approach that recognizes the continuum of actions between seasonal and pandemic influenza that are at the core of global and national influenza surveillance, prevention and control.

Adding seasonal influenza viruses to the PIP Framework is a multilateral solution that could be achieved through an amendment of the current PIP Framework text. The expansion of the PIP Framework has been proposed previously and again recently to cover other respiratory viruses. However, any amendments would need to be agreed by the World Health Assembly (WHA) before it could apply to all Member States. Reaching agreement among the WHO 194 Member States on a broader scope for the PIP Framework would require negotiations that could entail identification of new benefits or development of additional mechanisms to address benefit-sharing for
seasonal influenza. Additional benefits that could arise from the sharing of seasonal influenza viruses, would need to be discussed and agreed to by all partners (see Annex 3 for possible revisions to the benefit sharing mechanisms as presented in the stakeholder consultations), as would the use of the Influenza Virus Traceability Mechanism (IVTM-2) for seasonal influenza viruses. It would be possible, however, to reach agreement that the IVTM would apply to a subset only of the shared seasonal influenza viruses such as those which are used as CVVs.

Another potential element of this option is to have the expanded PIP Framework recognized as an SII, so that the Nagoya Protocol would not apply to influenza viruses (both seasonal and IVPPs) for countries that are parties to the Nagoya Protocol. However, countries not party to the Nagoya Protocol may have national ABS laws in place that would mean that having the PIP Framework recognized as an SII would not necessarily be sufficient to provide legal certainty regarding use of the CVV for commercial purposes.

It is likely that the expanded PIP Framework, with the addition of seasonal influenza, would meet the SII criteria that are currently being considered by the Nagoya Protocol Parties, because it would remain an internationally negotiated instrument, limited to a specific set of genetic resources (seasonal and pandemic influenza viruses) and consistent with the objectives of the Convention on Biological Diversity (CBD) and the Nagoya Protocol in terms of prior informed consent and mutually agreed terms. As this element requires that the PIP Framework be amended to include seasonal influenza, and since the process to designate a SII is not yet settled, this part of Option 2 could only be added in the longer term.

This option can potentially address the issues with influenza virus sharing. As, however, time would be required to complete negotiations, this option would not address the need to take urgent action.

During the stakeholder consultations, most groups stated that the PIP Framework should not be altered as it is currently working well and that changes may upset the status quo. Although Option 2 was not specifically mentioned during the consultation with NICs, there was support for the development of a ‘global framework or agreement for seasonal influenza virus sharing’. It was also not clear if CSOs would support Option 2 if Option 4, their preferred option to create a new international instrument for seasonal influenza, was not adopted. The option to have the PIP Framework recognized as an SII was also not supported at this time, mostly because the CBD process for this has not yet been defined, and is a matter that sits outside of the remit of WHO.

**Option 3: Have GISRS recognized as a SII within the meaning of Article 4(4) of the Nagoya Protocol**

Recognizing GISRS as an SII has been suggested as an option to overcome the issues with the sharing of seasonal influenza. Having GISRS recognized as a SII would mean that all pathogens shared within GISRS, including seasonal influenza viruses and IVPPs, would be excluded from the application of the Nagoya Protocol, for countries that are parties to the Nagoya Protocol.

GISRS is a network of laboratories and not an internationally agreed or negotiated instrument. Therefore, GISRS does not meet the first SII criteria currently being considered by the Nagoya Protocol Parties. That GISRS would not meet the criteria of an SII, was the view in all stakeholder consultations, despite some support from GSIRS for this option in principle.

**Option 4: Create a new international framework for seasonal influenza (this option was added as a result of consultations with stakeholders)**

Developing a new international instrument for seasonal influenza viruses was proposed by CSOs during their consultation with the AGWG. It was suggested that this new and separate instrument for seasonal influenza viruses could more easily address the differences between the global seasonal influenza virus system and the global pandemic influenza virus system, including the different stakeholders, and could factor in the annual nature of seasonal influenza vaccination programs, as well as the absence of such programs in many countries. A new
international agreement for the sharing of seasonal influenza viruses would also provide legal certainty regarding
the use and sharing of seasonal influenza viruses (as would also be the case with option 2).

Although the existing PIP Framework could be used as a template, developing a separate agreement for seasonal
influenza would require a lengthy process that would not address the urgency of the issues with seasonal influenza
virus sharing. It would also be a duplicative process to the existing PIP Framework and would separate the
continuum of actions between seasonal and pandemic influenza that are at the core of global and national
influenza surveillance, prevention and control. The AGWG considered that amending the current PIP Framework
to include seasonal influenza viruses would be a more efficient process, and considered that amendments to add
seasonal to the PIP Framework are unlikely to disrupt the existing PIP Framework.

This option was supported by the CSO, but not by GISRS mostly due to the lengthy time required to develop a
new framework. Industry did not specifically comment on this option due to the sequencing of consultations.
Table 1: Summary of the considerations of each option to address the issues with the sharing of seasonal influenza viruses

<table>
<thead>
<tr>
<th>Considerations</th>
<th>Option 1</th>
<th>Option 2</th>
<th>Option 3</th>
<th>Option 4</th>
</tr>
</thead>
<tbody>
<tr>
<td>Description of the option</td>
<td>Revise the NIC TORs (plus SIMTA and Information Pack)</td>
<td>Expand PIP Framework to include seasonal influenza viruses and recognize amended PIP Framework as a SII</td>
<td>Recognize GISRS as an SII</td>
<td>Create a new international framework for seasonal influenza</td>
</tr>
<tr>
<td>Feasibility of the option</td>
<td>• will address the issues for those NICs that approve the revised TORs</td>
<td>• could address issues if current legal framework applied</td>
<td>• current GISRS structure unlikely to meet SII criteria</td>
<td>• likely to address issues</td>
</tr>
<tr>
<td></td>
<td>• will not address the issues for those that do not approve the revised TORs</td>
<td>• PIP Framework likely to meet criteria for SII</td>
<td>• process for recognizing SII not yet settled</td>
<td>• would reflect differences between pandemic and seasonal influenza</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• process for recognizing SII not yet settled</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Potential implications</td>
<td>• each GISRS NIC needs appropriate authority to accept the revised TORs to ensure consistency with national ABS requirements</td>
<td>• extensive negotiations required</td>
<td>• will not address urgency of issue</td>
<td>• similar considerations as for Option 2</td>
</tr>
<tr>
<td></td>
<td>• sufficiency of benefits, or additional benefits not addressed</td>
<td>• process for recognizing SII not yet settled; cannot occur until after amendment</td>
<td></td>
<td>• duplicative process</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>• disrupts continuum of seasonal and pandemic influenza</td>
</tr>
<tr>
<td>Process and timelines for implementation</td>
<td>• revision of TORs in process; potentially the shortest implementation timeline</td>
<td>• lengthy process for both components; will not address urgency of issue</td>
<td>• lengthy process</td>
<td>• lengthy process; will not address urgency of issue</td>
</tr>
<tr>
<td></td>
<td>• may need negotiations on case-by-case basis with certain NICs and negotiation of a SIMTA</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Responsible for ongoing work</td>
<td>• GIP to manage process</td>
<td>• Member State led with PIP Secretariat support</td>
<td>• Member State led with GIP support</td>
<td>• Member State led with PIP secretariat support</td>
</tr>
<tr>
<td>Stakeholder considerations</td>
<td>• GISRS and Industry supportive; CSOs not supportive</td>
<td>• GISRS, Industry and CSOs not supportive</td>
<td>• GISRS somewhat supportive; Industry and CSOs not supportive</td>
<td>• GISRS not supportive; not directly discussed with industry; CSOs supportive</td>
</tr>
</tbody>
</table>


AGWG Findings, Conclusions and Recommendations

AGWG findings

The PIP AG is responsible for monitoring and providing guidance to the Director-General on strengthening the functioning of the WHO GISRS and undertaking necessary assessments to protect public health and to help ensure implementation of the PIP Framework.\(^1\) Given the centrality of seasonal influenza virus sharing in GISRS’s work, the PIP AG has a responsibility to advise the Director-General on matters that may affect the functioning of GISRS. Including those that are related to seasonal influenza virus sharing.

The AGWG acknowledged that this was a difficult process, that none of the options considered provide absolute legal certainty and that some of the options are not mutually exclusive. The AGWG noted that more than one option can be implemented in parallel. Early in the AGWG process, a perspective was shared that any solution should favor non-legally binding approaches. All but Option 1 (which is estimated to take a year) are longer-term solutions that require consultations and negotiations with member states, industry and CSOs and agreement at the WHA level, and therefore would not offer the required urgency to solve the issues.

Option 1 is already underway by GIP and is likely to rectify the seasonal influenza virus sharing issues for those countries that agree to the revised TORs. However, there is likely to be a subset of countries that do not agree with the revised TORs and a modified process is likely to be required for these countries. Option 2, to amend the PIP Framework to include seasonal influenza viruses, is also likely to address the issues with seasonal influenza virus sharing. However, this will require a lengthy negotiation process, and does not address the required urgency to solve the issues. Option 2, however, could be implemented in parallel with Option 1 as an interim solution.

Having the amended PIP Framework recognized as an SII would mean that the Nagoya Protocol would not apply to influenza viruses (both seasonal and IVPPs) which would further strengthen Option 2. However, countries not party to the Nagoya Protocol may have national ABS laws in place that would mean that having the PIP Framework recognized as an SII would not necessarily be sufficient to provide legal certainty regarding use of the CVV for commercial purposes. Option 3, to have GISRS recognized as a SII, was not considered feasible at this time given the current structure of GISRS and was not supported by the AGWG or the stakeholders that were consulted.

Option 4, to develop a new international instrument for seasonal influenza could also solve the issues with seasonal influenza virus sharing but is another long-term solution. Although the separate international instrument for seasonal influenza viruses could use the PIP Framework as a template, the AGWG considered that amending the current PIP Framework to include seasonal influenza viruses (Option 2) would be a more efficient process. The AGWG also considered that amendments to add seasonal to the PIP Framework are unlikely to disrupt the existing PIP Framework.

The AGWG also noted that concurrent processes to develop an international agreement or approach on access and benefit sharing for all pathogens might address the issues with seasonal virus sharing and could impact the long-term implementation of the options considered by the AGWG.

AGWG conclusions

\(^1\) PIP Framework Section 7.2.1
Based on the relevant facts provided to the AGWG and the input gathered from stakeholder consultations, three key findings emerged:

1) Given the multilateral and international nature of the issues, there are no quick solution(s) to the issues with seasonal influenza virus sharing, notably the use of CVVs for vaccine production
2) No solution will provide 100% guarantee that legal certainty will exist in for every situation
3) The solutions are not mutually exclusive with some able to be implemented in parallel.

Notwithstanding these key findings, however, taking certain measures at this time would enable WHO, GISRS, and stakeholders to:

- continue the process of raising awareness of the issues with all WHO Member States in a systematic manner
- sensitize WHO Member States to the importance of ensuring that GISRS retain its coherence, relevance and technical strength, if the world is to be better prepared for responding to an influenza pandemic
- start implementing solutions to mitigate the impact of the disruptions to seasonal influenza virus sharing.

On that understanding, and with a view to addressing and resolving the issues, the AGWG recommends that the PIP AG consider sending the Director General the following guidance and recommendations:

**AGWG recommendations**

**Option 1 – Revise NIC TORs:** recommend that the Director-General continue to support this option and WHO:

a. Ensure that the revised TORs, SIMTA and information pack:

   ix. Clarify all the uses that may be made by GISRS laboratories with seasonal influenza viruses shared with GISRS, notably the development of reference viruses, CVVs and other viruses or materials that may be shared with industry for development or testing of vaccines or other products related to influenza prevention and control (e.g., diagnostics, antivirals)
   x. Provide a list of the benefits of being a member of GISRS, including that recognition by WHO as a member of GISRS is in-and-of-itself a benefit that could be sufficient for some countries with respect to their national ABS/NP legislation, rules, or requirements.
   xi. Clarify that acceptance of the revised TORs in full by GISRS countries satisfies all relevant national ABS/NP requirements
   xii. Require confirmation that the national signatory of the revised NIC TORs is duly authorized to do so

b. Where a country indicates that it cannot accept the revised TORs in full, establish a process to, at a minimum, ensure that the NIC continues to share seasonal influenza viruses with GISRS for public health purposes, pending resolution of issues that need to be addressed for the NIC to accept the TORs.

**Option 2 – Expand the PIP Framework to include seasonal influenza viruses:** recommend that the Director General take this option forward in discussion with Member States, recognizing that this will be a long-term solution requiring lengthy negotiations among Member States and relevant stakeholders. The AGWG further recommends that the component of Option 2 to have the PIP Framework recognized as an SII be deferred until such time that the process of designating an SII is determined, and the PIP Framework has been amended.

**Option 3 – Have GISRS recognized as an SII:** recommend that the Director General not pursue this option at this time given that the current structure of GISRS is inconsistent with the draft criteria for SII.

**Option 4 – Develop a new international instrument for seasonal influenza viruses:** Recommend that the Director General not pursue this option at this time as Option 2 was considered to represent a more efficient approach.
### Annexes

#### List of Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>ABS</td>
<td>Access and benefit sharing</td>
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<tr>
<td>ABS/NP</td>
<td>Access and benefit sharing / Nagoya Protocol</td>
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<tr>
<td>AGWG</td>
<td>PIP Advisory Group Working Group</td>
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<tr>
<td>CBD</td>
<td>Convention on Biological Diversity</td>
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<tr>
<td>CSO</td>
<td>Civil society organizations</td>
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<tr>
<td>CVV</td>
<td>Candidate vaccine virus</td>
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<tr>
<td>GIP</td>
<td>WHO Global Influenza Programme</td>
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<tr>
<td>GISRS</td>
<td>Global Influenza Surveillance and Response System</td>
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<td>GSD</td>
<td>Genetic sequence data</td>
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<td>IVPP</td>
<td>Influenza virus with human pandemic potential</td>
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<td>IVTM</td>
<td>Influenza Virus Traceability Mechanism</td>
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<tr>
<td>MTA</td>
<td>Material transfer agreement</td>
</tr>
<tr>
<td>NIC</td>
<td>National Influenza Centre</td>
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<tr>
<td>PIP AG</td>
<td>PIP Framework Advisory Group</td>
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<tr>
<td>PIP</td>
<td>Pandemic influenza preparedness</td>
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<td>SII</td>
<td>Specialized International Access and Benefit-sharing Instrument</td>
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<td>SIMTA</td>
<td>Standard Seasonal Influenza Material Transfer Agreement</td>
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<tr>
<td>SMTA</td>
<td>Standard Material Transfer Agreement</td>
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<tr>
<td>TORs</td>
<td>Terms of reference</td>
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<tr>
<td>WHA</td>
<td>World Health Assembly</td>
</tr>
<tr>
<td>WHO</td>
<td>World Health Organization</td>
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<tr>
<td>WHO CC</td>
<td>WHO Collaborating Centre</td>
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<tr>
<td>WHO ERL</td>
<td>WHO Essential Regulatory Laboratory</td>
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Annex 1: Background information

WHO global influenza surveillance and response system (GISRS)
The WHO Global Influenza Surveillance and Response System (GISRS) is a global system for seasonal influenza prevention and control and pandemic influenza preparedness and response. Regular, timely and systematic sharing of influenza viruses (seasonal, zoonotic and those with pandemic potential) into, within and out of GISRS is critical to the seasonal influenza and pandemic influenza functions of GISRS, enabling GISRS to conduct timely risk assessment and to develop the materials required for the timely roll-out of public health interventions such as seasonal vaccine. GISRS generates epidemiological data and risk assessments to inform the WHO recommendations on vaccine composition for both seasonal and pandemic influenza vaccines and delivers these candidate vaccine viruses (CVVs) to pharmaceutical manufacturers to make the recommended vaccines. Central to all GISRS functions is the sharing of seasonal viruses.

The GISRS system comprises institutions in 124 WHO Member States including National Influenza Centers (NICs), seven WHO Collaborating Centers (CCs), four Essential Regulatory Laboratories and 13 WHO H5 Reference Laboratories. The work by GISRS, over the past 70 years in ensuring the uninterrupted sustainability of seasonal virus surveillance, including the continued sharing of select CVV for vaccine development for global health good is successfully documented.

NICs are national institutions authorized and designated by their national health ministry and subsequently recognized by WHO for the purpose of participating in the work of GISRS under the applicable WHO terms of reference (TORs). The procedure for recognizing a national institution as a NIC is governed by a set of regulations approved by the WHO Executive Board. The recognition of NICs is further governed by other applicable Secretariat texts. The process for recognizing a national laboratory as a NIC begins with a request to WHO from the Ministry of Health of the country where the NIC operates. The NIC TORs are the same for every NIC and while they are not legally enforceable through domestic legal/judicial processes, they are the basis on which a NIC is recognized. Thus, failure to follow the TORS could result in the termination of an institution being designated a NIC by WHO.

PIP Framework
The Pandemic influenza preparedness framework for the sharing of influenza viruses and access to vaccines and other benefits (PIP Framework) was developed to improve pandemic influenza preparedness and response and strengthen protection against pandemic influenza by improving and strengthening GISRS. The objective of the PIP Framework is a fair, transparent, equitable, efficient, effective system for, on an equal footing: (i) the sharing of H5N1 and other influenza viruses with human pandemic potential; and (ii) access to vaccines and sharing of other benefits. The PIP Framework is an international negotiated instrument adopted by the 194 Member States of the World Health Assembly (WHA64.5).

The PIP Framework covers only influenza viruses with pandemic potential (IVPPs), and under the PIP Framework, Member States agree to share IVPPs in a regular, systematic and timely manner, so that they may be used by GISRS for risk assessment, vaccine virus selection and development, as appropriate and other public health related actions, as well as by non-GISRS entities for other purposes, including

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commercial purposes such as vaccine development. In return, those that use the shared viruses provide benefits to WHO for use in influenza pandemic preparedness and response activities. These benefits include the partner contribution which is used to fund PIP high level implementation plans to strengthen pandemic preparedness and response at the country level and agreements with entities that receive the shared viruses to provide benefits to WHO, such as agreement to provide a proportion of their pandemic vaccines to WHO at the beginning of the next influenza pandemic for equitable distribution.

There is legal certainty regarding access and benefit sharing (ABS) for IVPPs through two legally binding agreements within the PIP Framework:

(1) Standard Material Transfer Agreement 1 (SMTA1) establishes the rights and obligations of GISRS laboratories and includes agreement for the onward transfer and use of PIP Biological materials to all GISRS members; consents for the onward transfer and use of the PIP Biological materials to non-GISRS entities on the condition that the prospective recipient has concluded a SMTA2; and agrees to inform the WHO of these shipments by recording them in the Influenza Virus Tracking Mechanism (IVTM-2).

(2) SMTA2 are a legally binding contract between WHO and an influenza product manufacturer, research institution, or other entity that receives PIP biological materials (e.g., IVPPs) from a GISRS laboratory and in exchange, the entity commits to provide benefits to WHO that can be used to prepare for (e.g., training, technology license) or respond to (e.g., vaccines, antivirals, diagnostic kits) pandemic influenza.

The IVTM-2 is used to track IVPPs contributed by WHO Member States to GISRS. The IVTM allows the users to trace all geographic transfers and modifications of these influenza viruses. The inclusion of seasonal influenza viruses in the PIP Framework was discussed during its negotiations but was not retained. In the 2016 review of the PIP Framework, the PIP Review Group considered whether the scope of the PIP Framework could be expanded to include seasonal influenza. They highlighted that given the continuum of actions between seasonal and pandemic influenza, the exclusion of seasonal influenza was a systemic weakness due to the potential implications of the Nagoya Protocol, and the growing number of countries implementing ABS national laws, rules or regulations. The findings and recommendations of the PIP Review Group with regards to expanding the PIP Framework to seasonal influenza included:³

Finding 11: The Review Group received wide-ranging views from key informants, including Member States, industry and civil society, on this complex and challenging issue, with strong views both for and against including seasonal influenza under the PIP Framework. The implications of including seasonal influenza need to be studied further.

Recommendation 3. The Director-General should undertake a study to determine the implications and desirability of including seasonal influenza viruses in the PIP Framework.

Recommendation 4. The PIP Framework is a foundational model of reciprocity for global public health that could be applied to other pathogens; however, the current scope of the PIP Framework should remain focused on pandemic influenza at this time.

In 2018, the Secretariat completed an analysis in response WHA70(10) which requested the Director-General to, inter alia, conduct a thorough and deliberative analysis of the issues raised by the 2016 PIP Framework Review Group’s recommendations on seasonal influenza and genetic sequence data (GSD),

including the implications of pursuing or not pursuing possible approaches. This analysis presented potential implications of possible approaches to seasonal influenza and GSD under the PIP Framework, but did not endorse a particular approach.

The PIP Framework has been amended previously. Annex 2 of the PIP Framework was amended to clarify that indirect use of PIP Biological Materials will require the conclusion of a SMTA 2. This amendment was adopted by WHA72 in May 2019 and was updated without any other part of the PIP Framework being affected.

**Role of the PIP Advisory Group**

The governance mechanism of the PIP Framework includes the WHA, the Director-General and an independent Advisory Group (PIP AG). The objectives of the PIP AG are to monitor and provide guidance to strengthen the functioning of the WHO GISRS and undertake necessary assessment of the trust-based system needed to protect public health and to help ensure implementation of the PIP Framework. The PIP AG provides their recommendations to the Director-General, who then determines whether to move forward on these with Member States through the WHA.

Whilst the PIP Framework specifically addresses pandemic influenza only, it is acknowledged that seasonal and pandemic influenza viruses exist as a continuum. All the operations of GISRS related to seasonal influenza surveillance and response provide the foundations on which pandemic preparedness and response are built. Therefore, seasonal influenza virus sharing falls within the mandate of the PIP AG. According to the PIP Framework:

- The objectives of the PIP Framework include to “strengthen the protection against the pandemic influenza by improving and strengthening the WHO global influenza surveillance and response system (“WHO GISRS”)”.
- Section 7.2.1 that establishes the AG states “The Director-General will maintain the Advisory Group, referenced in section 7.1.2 above, to monitor and provide guidance to strengthen the functioning of the WHO GISRS and undertake necessary assessment of the trust-based system needed to protect public health and to help ensure implementation of this Framework”
- Annex 3, Section 2.3 provides the TORs for the PIP AG which includes “to provide guidance to strengthen the functioning of the Framework to the Director-General.”

Seasonal influenza and the PIP Framework was also raised by the PIP Review Group in their 2016 report where they explained that “seasonal and pandemic influenza viruses exist as a continuum” and stressed that “robust seasonal vaccine production is vital for pandemic vaccine production”. The Review Group had also noted that the distinction between seasonal and pandemic viruses can be challenging and recommended that “the Director-General should undertake a study to determine the implications and desirability of including seasonal influenza in the PIP Framework.”

As the PIP AG is responsible for monitoring and providing guidance to strengthen the functioning of the WHO GISRS, it receives regular briefings on influenza virus sharing activities for both seasonal influenza

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viruses and IVPPs. In most PIP AG meetings since 2017 the AG has been briefed on the sharing of seasonal influenza viruses which has included issues with sharing seasonal influenza viruses.

**Convention on Biological Diversity (CBD) and the Nagoya Protocol**

The CBD is a legally binding multilateral treaty wherein Article 1 states that "the objectives of the Convention are the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding." Genetic resources in the CBD include pathogens.

The *Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (ABS) to the Convention on Biological Diversity* is a supplementary agreement to the CBD that operationalizes the benefit sharing objective of the CBD by establishing a framework for the fair and equitable sharing of benefits arising from the use of genetic resources at the national level. The principles of the Nagoya Protocol are based on potential users of genetic resources obtaining the prior informed consent of the country in which the genetic resource is located before accessing the resource and negotiating and agreeing on the terms and conditions of access and use of this resource through the establishment of mutually agreed terms. These are determined through national development of regulations and processes.

There are provisions in the Nagoya Protocol for other international instruments to be recognized as ABS mechanisms. The Nagoya Protocol states that: "If there is another instrument that covers specific genetic resources... ...and that instrument is consistent with, and does not run counter to the objectives of the CBD and the Nagoya Protocol (that is, it covers both access and benefit sharing for those genetic resources) ...then that instrument shall apply to those specific genetic resources for the Party(ies) to that specialized instrument in respect of those specific genetic resources." Once an alternate instrument is recognized as a SII, the Nagoya Protocol will not apply to the specific genetic resources covered by that SII.

Although the criteria for recognizing a SII have not been determined by the CBD, at the next CBD and Nagoya Protocol governing bodies meeting (tentatively scheduled for December 2022), parties are to consider a recommendation from the Subsidiary Body on Implementation on the following indicative criteria for an SII:

1. The instrument is intergovernmentally or internationally agreed
2. The instrument is specialized, in that it applies to a specific set of genetic resources
3. The instrument is consistent with, mutually supportive of and does not run counter to the objectives of the CBD and Nagoya Protocol

The implementation of the Nagoya Protocol in some countries have resulted in national ABS laws. These ABS laws and regulations have had implications for their sharing of influenza viruses to GISRS,

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including the sharing of CVVs which are required to develop influenza vaccines. In some cases, the timely and effective sharing of seasonal influenza viruses has been disrupted due to the lack of clarity as to whether the seasonal influenza viruses shared from a NIC to the CC as part of the GISRS mechanisms can then be forwarded to non-GISRS entities, particularly for commercial use. Some countries require an additional material transfer agreement or additional benefits for this to occur per their ABS legislation. Determining these requirements for each CVV selected can stop the onward sharing from CCs to non-GISRS entities can potentially halt seasonal influenza vaccine production.
### Annex 2: Members of the PIP Framework Advisory Group Working Group (AGWG)

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<th>Name</th>
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<tr>
<td>Professor John M Watson (ex AG member – Chair of AGWG)</td>
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<tr>
<td>Dr Kedar Prasad Baral</td>
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<td>Dr Sulaiman Al Busaidi</td>
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<td>Dr Elizabeth Ferdinand</td>
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<td>Dr Kerri-Ann Jones (ex AG member)</td>
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<td>Dr Heidi Meyer (AG V-Chair)</td>
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<td>Professor Soe Lwin Nyein</td>
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<td>Professor Lokman Hakim Bin Sulaiman</td>
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<td>Dr Enrique Tayag (AG Chair)</td>
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<td>Dr Liana Torosyan</td>
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<td>Dr Mbayame Ndiaye Niang</td>
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<td>Dr Mohammad M. Gouya</td>
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Annex 3: Consultation package and guiding questions for Stakeholder Consultations

Introduction
In connection with its responsibilities for monitoring and providing guidance to strengthen the WHO GISRS, the PIP Advisory Group established a Working Group (the AGWG) to consider and develop potential solutions to address the impact of disruptions to seasonal influenza virus sharing. Three potential approaches were discussed by the AG and will be reviewed and considered.

- Option 1: Revise NIC TORs and use Seasonal Influenza Standard Material Transfer Agreement (SIMTA), as needed
- Option 2: Expand the Pandemic Influenza Preparedness Framework (PIP Framework) to include seasonal influenza viruses and recommend that all WHO Member States recognize the Framework as a specialized international access and benefits sharing (ABS) instrument (SII) consistent with the meaning of Article 4(4) of the Nagoya Protocol
- Option 3: Recognize GISRS as a specialized international ABS instrument (SII) consistent with the meaning of Article 4(4) of the Nagoya Protocol

To this end, the AGWG wishes to consult relevant stakeholders to hear their opinions and receive input on these options or others. Consultations are planned with three stakeholder groups: Civil Society, Industry and Technical partners.

During each consultation, the AGWG would wish to hear participants’ views on the following:

- How would you prioritize options to address disruptions to seasonal influenza virus sharing?
- What option(s) would be most effective to improve seasonal influenza virus sharing and vaccine production processes?
  - For example, which option(s) ensures that manufacturers can use GISRS seasonal influenza viruses for vaccine production as soon as they are received from GISRS?
  - How would the option(s) address the issue of benefit sharing arising from the use of seasonal influenza viruses?
- What are the advantages and disadvantages of having a country-by-country solution (e.g., revising NIC TORs and use of SIMTAs) versus a unified (multilateral) solution (e.g. expanding the PIP Framework to include seasonal influenza viruses)?
- Is tracking of seasonal influenza viruses shared with GISRS necessary? If so, how can this be addressed?
- What additional measures could be considered to facilitate and encourage continued participation by Member States in GISRS and by manufacturers in the PIP Framework?
- Do you have concerns related to a specific option(s)?

Further information and details about the issues are set out in the Working Background Paper

Background
The sharing of seasonal influenza viruses is becoming increasingly complex, time consuming, and potentially damaging to the selection of appropriate CVVs. This is due in part to the growing presence
and importance of the implementation of national access and benefit sharing laws, rules, or regulations, including those implementing the Nagoya Protocol.

GISRS laboratories from all WHO regions have reported instances where seasonal influenza viruses have not been able to be shared on a timely basis, or CVVs developed with seasonal viruses have not been able to be used by industry with full legal certainty with respect to benefit sharing obligations. In some cases, this lack of certainty has affected the selection of CVVs for vaccine production.

Examples\(^\text{10}\):

- Example 1 (September 2018): a candidate virus vaccine (CVV) for 2019 Southern Hemisphere vaccine required national authorization and registration under Nagoya Protocol legislation. Uncertainty regarding the process and terms of use of CVV led to a 3-week delay in the use of the CVV. There is no information at this time of how this affected vaccine production, however it is an important consideration.
- Example 2 (October 2018): During the same virus selection period, additional CVVs became available from a country that was also a Nagoya Protocol party. Uncertainty about the national registration process related to the national ABS requirements, prevented the use of these CVVs. Under the access and benefit sharing (ABS) legislation in this country, one CVV required a material transfer agreement between the national influenza centre and WHO CC which took more than 6 months to negotiate. This meant that an important CVV was not able to be used in seasonal influenza vaccine production.
- Example 3 (April 2019): A CVV for the Northern Hemisphere vaccine required a material transfer agreement for the WHO CC to transfer the virus to non-GISRS laboratories; this material transfer agreement took 4 months to negotiate and during this time manufacturers hesitated to use the CVV for vaccine production.
- Example 4 (February 2021): WHO asked by a manufacturer to confirm with the country that sent a virus which was selected to become a CVV, that it could be used for commercial purposes. The Ministry of Environment authorized use of virus for vaccine development (by email) but never provided any response on whether additional benefits would be sought from the manufacturer making commercial use of it. This issue has not been resolved and an alternative CVV was used for vaccine production.

These cases indicate how the sharing of viruses and the selection of the CVVs for seasonal vaccine production are being affected by the access and benefit procedures and regulations, including the Nagoya Protocol.

**Three possible options to address these concerns, are currently under consideration**

**Option 1: Revise NIC TORs, and use SIMTA when needed**

- This is a country-by-country approach based on putting agreements in place at the national level that would be consistent with timely sharing and full use (including commercial use when relevant) of seasonal influenza viruses. The approach entails the following:

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\(^{10}\) Pandemic Influenza Preparedness Framework for the sharing of influenza viruses and access to vaccines and other benefits, Decision WHA72(12), paragraph 1(a), Report on influenza virus sharing, Report by the Director-General, February 2020, available at wha72-12-op1a-report-edited_en1a2d0386-152a-4b00-b801-9ec5d71e8930.pdf (who.int)
1. Revising the *GISRS National Influenza Centre (NIC) Terms of Reference (TORs)*: These TORS establish the requirements that WHO sets for recognizing a national laboratory as a member of GISRS, and they are the basis on which a MOH agrees to authorize and participate in the work of GISRS. This option will consist in making the TORs very clear on GISRS’s role in providing CVVs generated from shared viruses to industry for vaccine production.

2. Developing and using a *Seasonal Influenza Material Transfer Agreement (SIMTA)* when needed: developed for exceptional, ‘ad hoc’ use for the transfer of seasonal influenza viruses within and outside of GISRS, the SIMTA would be used only when necessary, e.g. national authority/national legislation/domestic legal or regulatory measures requires signature of a material transfer agreement. SIMTA is a bilateral agreement generally signed between two GISRS labs (CC and NIC) and is usually valid for 10 years and covers all seasonal influenza virus sharing during that term. It refers back to the TORs and describes the benefits available to members of GISRS.

3. If necessary, WHO can provide a background and information document to an MOH if the MOH is required to seek approval from the national ABS competent national authority to fulfill its obligations as a member of GISRS.

   - This option does not envision any additional benefits beyond those provided through GISRS membership. No additional benefits would be provided by non-GISRS recipients of seasonal CVVs and therefore may not be consistent with some national ABS laws/regulations.

**Option 2: Expand the Pandemic Influenza Preparedness Framework (PIP Framework) to include seasonal influenza viruses and recommend that all WHO Member States recognize the Framework as a specialized international ABS instrument (SII)**

   - It is proposed that the WHA amend the PIP Framework to include seasonal influenza viruses and recommend that the revised PIP Framework is recognized as an SII either at the national level or the international level. These proposals would require agreement by Member States to endorse, and negotiations and agreement with industry partners.
   - If the scope of the PIP Framework is expanded to include seasonal influenza viruses, the same legal certainty that applies to the sharing and use of influenza viruses of pandemic potential (IVPPs) would also apply to seasonal influenza viruses.
   - The PIP Framework itself is not legally binding but some of its components are, including the SMTA-1 and SMTA-2.
     1. through the SMTA-1, NICs give their consent to the onward transfer and use of materials to entities outside the WHO GISRS (Prior Informed Consent), and
     2. through the SMTA-2, non-GISRS recipients commit to provide some benefits to WHO in exchange of the materials received from CCs (Mutually Agreed Terms).
   - By amending the Framework to include seasonal influenza viruses, WHO Member States would agree to share seasonal viruses in the same timely manner as IVPP, to be used by GISRS and non-GISRS entities for all public health purposes, including vaccine development. The GISRS seasonal influenza Terms of Reference (TORs) would be amended to be consistent with the PIP Framework and SMTA-1 terms.
   - The PIP Framework is already recognized as an SII for IVPP in some jurisdictions – for instance, the European Union. The resolution adopting the amendment to the PIP Framework could urge WHO Member States to recognize PIP as an SII for purposes of their ABS/NP processes.
   - It is suggested that if seasonal influenza viruses are added to the PIP Framework, they would not be tracked in the same manner as the IVPPs as the volume of viruses could be difficult to manage and
track without significantly expanding GISRS resources. An alternative, more limited scope for the tracking could be considered – that is, tracking seasonal CVVs only - with a viewing to assisting in securing benefit sharing for use of these materials.

**Benefit sharing considerations of including seasonal influenza in the PIP Framework**

The PIP Framework has two benefit sharing mechanisms: SMTA-2 and PC. Approaches to address benefit-sharing for seasonal influenza under the Framework could be structured as follows:

<table>
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<th>SMTA-2</th>
<th>PC</th>
<th>Considerations</th>
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| #1     | Non-GISRS recipients of seasonal viruses or materials would not be required to sign an SMTA-2 | PC level would be adjusted to reflect the value of legal certainty for timely access to and commercial use of seasonal CVVs | - Does not increase the supply of future pandemic vaccine for WHO  
- New PC level would need to be negotiated and agreed upon with industry  
- Increased PC contributions would contribute to pandemic preparedness and response capacities |
| #2     | Non-GISRS recipients of seasonal CVVs (not all recipients of seasonal viruses) would be required to sign an SMTA-2 with WHO | PC amount would not be increased11 | - The commitment under the SMTA-2 would be to donate a % of future pandemic vaccine production to WHO in real time. With more SMTA-2’s signed, the total of WHO’s secured access to pandemic vaccine would be larger  
- Number of manufacturers contributing to the PC would increase (all manufacturers that use GISRS and have a licensed influenza product) leading to individual manufacturers paying less than what they are paying today |
| #3     | Non-GISRS recipients of seasonal viruses or materials would not be required to sign an SMTA-2 | PC amount would not be increased | - MSs would need to agree that the current benefits under PIP are deemed to be sufficient to also cover seasonal influenza |

**Option 3: Recognize GISRS as a specialized international ABS instrument (SII) within the meaning of Article 4(4) of the Nagoya Protocol**

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11 The only adjustment to the PC would be to update the amount based on an inflationary factor, as mandated by the PIPF Section 6.14.3 Footnote 1 and consistent with the AG recommendation. This will be done regardless of the expansion of PIP to seasonal influenza.
• By recognizing GISRS as an SII, the Nagoya Protocol would not apply to the genetic resources covered under GISRS as long as the manner in which they are handled is consistent with and does not run counter to the objectives and principles of the Nagoya Protocol (notably prior informed consent and mutually agreed terms). This is a unified solution however there is currently no clear process or defined criteria for recognition of an SII and in most cases, non-health ministries are the competent national authority for the Convention on Biological Diversity.

• The benefits provided by GISRS would need to be clearly defined and accepted as relevant for purposes of the Nagoya Protocol.
Annex 4: Summary of the AGWG consultations
The following consultations were held by the AGWG:

- 3 May 2022 – Consultation with 14 industry representatives from 10 organizations
- 20 May 2022 – Consultation with 3 representatives from Third World Network, representing Civil Society organizations
- 27 June 2022 – Consultation 1 with 14 GISRS representatives from 5 Collaborating Centers, 3 Essential Regulatory Laboratories and GIP
- 6 September 2022 – Consultation 2 with 8 GISRS representatives from 4 Collaborating Centers and GIP
- 6 September 2022 – Consultation with 66 representatives from 25 national influenza centers
PIP Advisory Group Informal Working Group on Virus Sharing (AGWG)

Consultation with Industry – 3 May 2022

Summary Meeting Notes

This consultation between the AGWG and industry representatives is part of the AGWG’s work to develop a report for the AG on potential approaches to address disruptions to GISRS seasonal influenza processes. The list of participants is in Appendix 1.

AGWG Chair opening & presentation

The Chair of the AGWG presented a short set of slides that briefly summarized the establishment of the AGWG and its scope of work, the three options being considered by the AGWG, and the guiding questions for the consultation.

Industry presentation by IFPMA representative

The IFPMA Representative presented some slides and made the following comments and observations:

- Industry questioned whether the PIP AG and the AGWG have the mandate and technical expertise to review and provide recommendations on matters related to seasonal influenza; industry referred to the PIP-F (purple book) as only addressing pandemic influenza.
- Option 1 has been extensively discussed between GISRS and industry. As it is a country-by-country approach, it is considered the most realistic approach by industry even if it will be challenging. A country-by-country outcome is preferred to a multilateral outcome.
- Options 2 is unacceptable and highly problematic to industry. Industry opposes placing seasonal influenza virus under the PIP Framework and stated that the PIP Framework should remain focused on pandemic influenza and not include seasonal influenza viruses. The addition of seasonal influenza viruses would constitute a fundamental change to the objective and spirit of the PIP Framework. This is because the objective of the PIP Framework is to prepare for an influenza pandemic; the seasonal influenza system has a different set of activities with different actors. Instead of adding seasonal influenza to the PIP Framework, a mechanism that focuses on the unique features of seasonal influenza is required.
- In addition, industry indicated it does not support the benefit approaches suggested in the Stakeholder package for Option 2.
  - Approach 1 which suggests “adjusting the PC to reflect the value of legal certainty for timely access to and commercial use of seasonal CVVs” is not acceptable as it suggests that increasing the PC will constitute a guarantee of access to seasonal virus to manufacturers. It was stated by industry that the current PC is based on seasonal influenza vaccine production.
  - Approach 2, which suggests that non-GISRS recipients of seasonal CVVs be required to sign a SMTA2 with WHO, is not acceptable as it suggests that manufacturers that only make seasonal vaccine and do not request PIP biological material will be required to sign a SMTA2 and produce pandemic vaccine. These suggestions could be inequitable to industry.
- Options 2 and 3, which both rely on having an instrument declared as a specialized international access and benefit sharing instrument consistent with the Nagoya Protocol (SII), are not realistic because of the process required to recognize a SII is not a WHO process but relies on other international bodies to designate a SII. Designating an SII would also be a
very slow process. In addition, a country can refuse to recognize an SII that has been designated by an international process. It is also unclear if the SII process will provide the required legal certainty.

**AGWG & Industry discussion on the issues of seasonal influenza virus sharing**

- The main challenge for sharing seasonal influenza viruses for vaccine production is not knowing the legal requirements at the national level for sharing the CVVs with industry. An example of a manufacturer having to switch to a different CVV in the middle of production due to not having legal certainty to use a CVV was described by industry to illustrate this issue.

- The AGWG raised the question of the benefits to be identified (given the need to follow general principles regarding ABS) under Option 1, the revision of the NIC TORs. Industry suggested that these benefits include membership in GISRS, which needs to be highlighted and more clearly spelled out in the TORs. Industry stated that many viruses are in countries that do not have ABS legislation and that most of the challenges are in developing countries and reiterated that a country-by-country approach would be adequate. Industry feels the question is not one of benefits but of the legal complexities.

- The AGWG made the observation that some countries do not have seasonal influenza programs and that they could argue that they do not benefit from GISRS. Industry expressed that the global nature of the GISRS system, particularly regarding a pandemic and the global need for vaccines, demonstrates that all countries benefit from the system. In addition, it was pointed out that the seasonal influenza vaccine system is well-established and organized, and that countries can decide if they want to implement the existing approach.

- Industry reiterated the importance of legal clarity and legal certainty and stated that it is not clear how the options would achieve the required legal certainty. Industry also raised concerns that identifying additional benefits would have an impact beyond influenza and that discussions on potential additional benefits are premature in their view.

- Specifically, Industry asked how the two proposed approaches of Option 2 (increasing PC and/or signing an SMTA with seasonal vaccine manufacturers) would work to guarantee access and use of CVVs by industry. They asked how an increase in the PC level would work – would manufacturers be required to pay to access the strain? Would a manufacturer that only produces seasonal influenza vaccines be required to sign an SMTA to access the strain?

- Industry also highlighted the challenges of working with a multilateral approach versus the reality of national legislation; they also highlighted that the vast majority of strains are not used for manufacturing.

**Discussions on the AGWG process**

- The AGWG clarified that it is currently in the information collection phase for all potential solutions to this issue and that no recommendations have been proposed as yet. The AGWG also clarified that the approaches to benefits for Option 2 in the Stakeholder Package are suggestions only on what may be included in the revised PIP Framework if a recommendation for Option 2 is to be progressed.

- It was clarified that the PIP AG, and therefore the AGWG, does have the mandate to provide recommendations that concern seasonal influenza virus sharing on the following basis:
  - According to the PIP Framework:
The objectives of the PIP Framework include to “strengthen the protection against the pandemic influenza by improving and strengthening the WHO global influenza surveillance and response system (“WHO GISRS”).

Section 7.2.1 that establishes the AG states “The Director-General will maintain the Advisory Group, referenced in section 7.1.2 above, to monitor and provide guidance to strengthen the functioning of the WHO GISRS and undertake necessary assessment of the trust-based system needed to protect public health and to help ensure implementation of this Framework”

Annex 3, Section 2.3 provides the TORs for the PIP AG which includes “to provide guidance to strengthen the functioning of the Framework to the Director-General.”

The process to obtain input from Member States on these Options was also discussed. The AGWG explained that will provide a report with recommendations to the PIP AG, that in turn will decide what to recommend to the Director-General, as per the PIP Framework. It will then be up to the Director-General to decide on how to move forward with Member States. The WHO Secretariat has no authority to change the PIP Framework without Member States approval.

The AGWG has planned consultations with representatives of GISRS, as well as with civil society organizations. Further consultation with industry is likely to be required.

Industry is keen to continue discussions about these options, and of any new options. They have not proposed alternate options for addressing the issues with seasonal influenza virus sharing.

Clarifications provided by the Secretariat to the AGWG after the meeting

1. Option 1 is not a country-by-country approach. The NIC TORs revision is aiming to conclude with one standard set of TORs for all NICs to agree to.

2. Approach 2 under Option 2 suggests that manufacturers that receive seasonal CVVs from GISRS would be required to sign an SMTA2 with WHO, committing to donate a % of their future pandemic vaccine production to WHO. As for the existing SMTA2s, manufacturers will be required to donate vaccines to WHO, only if they will produce pandemic vaccines. The assumption under all these agreements is that the commitment is triggered if there is pandemic vaccine production.

3. The CBD Secretariat have informally advised WHO that the CBD would likely not be determining SIIs, but that other authoritative bodies (such as the WHA) could do so – this is what is proposed in a resolution that the CBD/Nagoya COP/MOP will be considering at its next meeting in December 2022.

4. The WHO GISRS is the global system for influenza prevention, control, preparedness and response; all the operations of GISRS related to seasonal influenza surveillance and response are the foundations on which pandemic preparedness and response are built; on this basis, disruptions to GISRS fall within the ambit of the PIP AG’s mandate.

   a. An AGWG member reminded the consultation that the matter of seasonal influenza and the PIP Framework was raised by the PIP Review Group in their 2016 report where they explained that “seasonal and pandemic influenza viruses exist as a continuum” and stressed that “robust seasonal vaccine production is vital for pandemic vaccine production”. The Review Group had also noted that the distinction between seasonal and pandemic viruses can be challenging and recommended that “the Director-General should undertake a study to determine
the implications and desirability of including seasonal influenza in the PIP Framework.” In most PIP AG meetings since 2017 the AG has been briefed on the sharing of seasonal influenza viruses because of the recognition that the effectiveness of pandemic influenza preparedness is linked to ongoing seasonal influenza activities. The issues with sharing seasonal influenza viruses have been discussed and noted in most PIP AG meeting reports since 2017

Appendix 1: Participants

Industry
Phyllis Arthur, BIO
Paula Barbosa, IFPMA
Rajinder Kumar Suri, DCVMN
Erica Dueger, Sanofi
Beverly Taylor, Seqirus Vaccines
Debora Botequio Moretti, Instituto Butantan
Sam Lee, Sanofi
Milan Ganguly, Serum Institute of India Pvt Ltd
Sogo Yamamoto, Daiichi-Sankyo
Younchul Shin, GC Biopharma
Joel Straus, BIO
Theodore Fang Tsai, Takeda Vaccines
Lyn Morgan, Sanofi
Felipe Carvilhe, Instituto Butantan

AGWG
John Watson, Chair
Kerri-Ann Jones
Heidi Meyer
Elizabeth Ferdinand
Kedar Baral
Lokman Hakim
Soe Lwin Nyein
Eric Tayag
Dr Mbayame Niang

WHO Secretariat (Observers)
Wenqing Zhang
Chris Chadwick
Claudia Nannini
Holly Moore
Luisa Belloni
Anne Huvos
Michelle McPherson
PIP Advisory Group Informal Working Group on Virus Sharing
(AGWG)
Consultation with CSOs – 20 May 2022
Summary Meeting Notes

This consultation between the AGWG and CSOs representatives is part of the AGWG’s work to develop a report for the AG on potential approaches to address disruptions to GISRS seasonal influenza processes. The list of participants is in Appendix 1.

AGWG Chair opening & presentation

The Chair of the AGWG presented a short set of slides that briefly summarized the establishment of the AGWG and its scope of work, the three options being considered by the AGWG, and the guiding questions for the consultation.

CSO presentation by TWN representative

The TWN representative, in her verbal statement and in a written statement shared after the consultation, presented the following views:

- It was unfortunate that no other CSOs participated in the stakeholder session.
- Option 1 is not recommended as it is an ad hoc approach that will not resolve the problem as it does not address individual countries ABS laws. It also does not address benefits from non-GISRS entities.
- Option 2 is also not recommended. As the PIP Framework is currently working, it should not be changed. The primary concern was that this would require amending each section of the Framework, from the beginning till the end which could potentially unravel a Framework that currently works reasonably well. Finally, the benefit sharing for seasonal influenza, which is a highly profitable sector, would need to be significantly higher. The 3 suggested approaches to address benefit-sharing presented in the document shared by the Secretariat, should also include a 4th approach which is that the sharing of seasonal influenza viruses could be subject to both PC and SMTAs (among GISRS and with non-GISRS entities).
- Option 3 is also not recommended due to the concern that GSIRS does not fit the criteria of a SII, being a voluntary laboratory network and a surveillance and response system, and therefore cannot be considered an international instrument that meets the criteria of an SII under the NP.
- Instead, the preferred option is to develop a similar Framework for seasonal influenza only. This would build on the positive experience of PIP Framework, entail a modification of the Framework text to reflect seasonal influenza, and negotiation on fair and equitable benefit-sharing including on the matter of SMTAs and monetary benefit sharing. The PIP AG could provide the governance for the new Framework. TWN indicated that the renegotiation of the PIP Framework under Option 2 would take the same amount of time as creating new framework.
- Further, consideration should be given to the important issue of genetic sequence information, including the benefit arising from its use, in view of new technologies such as mRNA that are used to develop vaccines.
- The broader discussions on ABS in context of health emergencies, and for other pathogens also needs to be considered within this discussion, and whether the ABS issues can be
considered more holistically along with other pathogens. The separate framework for seasonal influenza could be coupled with the development of similar agreements for other pathogens.

**Discussion between CSOs and the AGWG**

- The AGWG Chair clarified that the Secretariat invited all CSOs that usually attend the PIP AG meetings and was expecting two other participants to the session.
- The Chair queried how expanding the PIP Framework to include seasonal influenza would damage the current PIP Framework. Previous amendments have been made to specific sections without unraveling the whole Framework. The Chair also highlighted the benefits of participating in the GISRS system, and that the benefits used within the PIP Framework to strengthen pandemic preparedness also strengthens GSIRS and seasonal influenza systems. The Chair stated that it is broadly recognized that a strong seasonal system is a prerequisite for pandemic influenza response.
- TWN responded that, in its view, the following would happen if the PIP Framework were expanded:
  - The objectives, scope and list of definitions would need to be changed, as would the content on genetic sequencing. Every sentence would need to be revised. Any agreement on seasonal influenza would require renegotiation of the total PC amount and additional benefit sharing for including seasonal influenza.
  - The SMTA2 which is linked to the definition of PIP biological material would also have to change for seasonal influenza and include added benefits for seasonal virus sharing.
  - The argument that the PIP Framework currently accounts for seasonal influenza because the formula to determine the level of the PC uses the running costs of GSIRS, is incorrect and the current PC does not account for the sharing of, or benefits from, seasonal influenza.
  - TWN questioned what non-GISRS entities are contributing and what benefits they are providing to the GISRS system for seasonal influenza virus sharing. TWN argued that if a country was sharing viruses, then they should get benefits.
  - That the PC and the type of benefits for sharing seasonal influenza will need to be negotiated with Member States and included in a new system for seasonal influenza.
  - That the benefits should be multi-lateral not bilateral, i.e., be the same system as for the current PIP Framework through the SMTA2 and the PC.
  - Rather than amending the existing PIP Framework, it should be used as a template to draft and negotiate a similar agreement for seasonal influenza.
  - Agreed that tracking all shipments of seasonal influenza may be difficult but stressed that transparency is crucial. If tracking was limited to a subset, then the process would need to be transparent.
Participants

Civil Society Organizations
Nithin Ramakrishnan (Third World Network)
Sangeeta Shashikant (Third World Network)
Gopa Kumar (Third World Network)

AGWG
John Watson
Elizabeth Ferdinand
Kedar Baral
Soe Lwin Nyein
Mbayame Niang

WHO Secretariat
Wenqing Zhang
Chris Chadwick
Luisa Belloni
Anne Huvos
Michelle McPherson
PIP AGWG – Consultations with GISRS

Consultation 1: 28 June 2022

Documents provided

- Agenda for consultation
- AGWG Consultation Package and Guiding Questions for Stakeholder Consultations
- List of registrations to the consultation
- AGWG presentation

AGWG Chair opening & presentation

The Chair of the AGWG presented a short set of slides that briefly summarized the establishment of the AGWG and its scope of work, the five options being considered by the AGWG, and the guiding questions for the consultation. Note that the two additional options were added to the slide set were not presented at the previous consultations.

Discussion between GISRS and the AGWG

There was no formal presentation by GISRS, rather the GISRS representatives provided their views during the discussion session.

GISRS did question why the PIP AG was providing recommendations on issues with seasonal influenza as the PIP Framework refers to pandemic influenza only. The PIP Secretariat responded that the objectives of the PIP Framework include the strengthening of GISRS, and that issues that potentially affect the stability of GISRS can affect any potential pandemic influenza response. The AGWG clarified that the PIP AG has been routinely receiving updates on seasonal influenza virus sharing, and that the PIP AG review in 2016 stated that “seasonal and pandemic influenza viruses exist as a continuum” and stressed that “robust seasonal vaccine production is vital for pandemic vaccine production”.

The GISRS representatives mentioned that the sharing of influenza viruses was not a huge concern for them and that they preferentially select CVVs from countries where there is unlikely to be an issue (e.g., non-Nagoya Protocol countries). For each CVV selected, the WHO CC’s already liaise with the relevant national bodies to determine whether the CVV can be shared for commercial purposes.

There was mostly consensus between the GISRS representatives on the five issues presented in the stakeholder consultation package, as follows:

- Option 1 is the preferred option
  - The option will clarify up front which countries approve the sharing of seasonal influenza viruses for commercial purposes, and which do not. Knowing this will assist in selection of CVVs and reduce the workload of CC’s as they will not have to

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1 The objectives of the PIP Framework include “strengthen the protection against the pandemic influenza by improving and strengthening the WHO global influenza surveillance and response system (“WHO GISRS”). Section 7.2.1 that establishes the AG states “The Director-General will maintain the Advisory Group, referenced in section 7.1.2 above, to monitor and provide guidance to strengthen the functioning of the WHO GISRS and undertake necessary assessment of the trust-based system needed to protect public health and to help ensure implementation of this Framework.”
check the status for each virus, rather they would know in advance whether they can share the virus for commercial purposes.

- Using SIMTA’s was not supported, as these were not seen as meeting the needs of an MTA and because they require legal processes.
- There may be some NICs that do not support the changes to the TORs which may result in them leaving GISRS; however, this may not affect the overall operation of GISRS.
- If this option can provide the legal certainty to manufacturers that they can use the virus for commercial purposes, then this would solve the issue.
- The benefits of GISRS needs to be explained better to NICs, including the benefit sharing components of the PIP Framework.

- Option 2 is not supported, as putting all influenza viruses under the PIP Framework could undermine the current sharing of influenza viruses. Most sharing is done voluntarily, particularly that from the animal sector. Tracking all seasonal viruses is not supported; reducing this to CVVs was preferred.

- Option 3 was supported by most, although there was some concern as to the lengthy process required and whether GISRS would fit the criteria for a SII. This was seen as a long-term solution.

- Option 4 was not supported, mostly due to the lengthy time required to develop a new framework.

- Option 5 was supported but was seen as a long-term solution that is unable to be influenced by the PIP AG.

GISRS shared that many NICs were unaware of the Nagoya Protocol, its implications for virus sharing within GISRS and who the relevant authorities are in their country. Education is needed at the country level to determine the legal framework for virus sharing in each country.

The benefits of the AGWG consulting with NICs was discussed; many NICs would be unable to comment on options other than Option 1 as they are not the authorities dealing with the Nagoya Protocol.

Use and sharing of genetic sequences was also discussed, and whether the options being considered would address sequences as well. Sharing of specimens is not needed when sequences are used, and therefore the options may not be as useful for sequences.

Participants

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<th>Name</th>
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<tr>
<td>Rebecca Kondor</td>
<td>CDC, Atlanta (WHO CC, US)</td>
</tr>
<tr>
<td>Richard Webby</td>
<td>St Jude Children Research Hospital (WHO CC, US)</td>
</tr>
<tr>
<td>Zhiping Ye</td>
<td>Food and Drug Administration (FDA) (WHO ERL, US)</td>
</tr>
<tr>
<td>Dayan Wang</td>
<td>Chinese National Influenza Center (CNIC) (WHO CC, China)</td>
</tr>
<tr>
<td>Othmar Engelhardt</td>
<td>National Institute for Biological Standards and Control (NIBSC)</td>
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<tr>
<td>Rod Daniels</td>
<td>Francis Crick Institute (WHO CC, UK)</td>
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<tr>
<td>Nicola Lewis</td>
<td>Francis Crick Institute (WHO CC, UK)</td>
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<tr>
<td>Catherine Hodge</td>
<td>Department of Health?? Australia</td>
</tr>
<tr>
<td>Antony Kerslake</td>
<td>International Strategies Branch, Dept Health Australia</td>
</tr>
<tr>
<td>Pearl Bamford</td>
<td>Therapeutic Goods Administration (WHO ERL, Australia)</td>
</tr>
</tbody>
</table>
Shinji Watanabe  WHO CC Tokyo Japan
Ian Barr  Victorian Infectious Diseases Reference Laboratory (WHO CC, Australia)
Dmitriy Pereyaslov  WHO, GIP
Joshua Mott  WHO, GIP

AGWG
John Watson
Kerri-Ann Jones
Heidi Meyer
Lokman Hakim
Eric Tayag
Soe Lwin Nyein
Elizabeth Ferdinand

WHO Secretariat
Wenqing Zhang
Chris Chadwick
Luisa Belloni
Anne Huvos
Michelle McPherson
Consultation 2 – 6 September 2022

Documents provided

- Agenda for consultation
- List of questions/clarifications from the AGWG

AGWG Chair opening & presentation

The Chair of the AGWG introduced the meeting as the second consultation for those GISRS representatives unable to attend the first consultation, and to follow-up on some issues raised in the first consultation.

Summary by John McCauley

a) What are the points that the AGWG has not understood about the issues related to the sharing and use of seasonal influenza viruses with GISRS and non-GISRS entities?

- Has concerns that implications of the Nagoya Protocol (NP) on virus sharing are broader than what is being considered by the AGWG.
- Summarized that there are 137 parties to the NP with several groups of categories: (1) countries that had ratified the NP and have ABS legislation, e.g., UK, France and Germany; (2) countries that have ratified the NP but do not have ABS legislation, e.g., Ireland and Italy; (3) countries that have not ratified the NP; and (4) countries that have not recognized the CBD, NP or ABS legislation, e.g., US and Canada.
- The key term within the NP is ‘utilization’ which is defined as research and development (R&D); and to conduct R&D on genetic materials such as influenza viruses, prior informed consent (PIC) and mutually agreed terms (MAT) are required. It is unclear from the NP what PIC and MAT need to cover; rather this is determined by national legislation.
- In 2020 the EU developed a guidance on their ABS legislation, and the 2022 UK guidance is aligned to this, which can be interpreted as any work conducted on an influenza virus in a CC would be considered R&D and therefore requires PIC and MAT. If a CC receives a virus from a NP country, then they require PIC and MAT with this country before they can do any work on the virus. Many countries that are signatories to the NP have not provided PIC for the work completed by a CC on their viruses.
- Therefore, the issue of PIC and MAT may be broader than only being required after the characterization work by a CC, i.e., for the work done on a CVV and the onward transfer of virus to non-GSIRS entities.
- This is different in other countries, where the R&D does not include the characterization work done by the CC and therefore it does not require PIC and MAT. This initial step is seen as public health action and not R&D.

Discussion between GISRS and the AGWG

b) The first discussions with CCs indicated that they do not consider that there are problems with seasonal virus sharing due to Nagoya because they have found a work-around (i.e., select CVV’s based on the Nagoya status of the country that shared the virus). How long can this last? Would getting around problems jeopardize pursuing the best candidate viruses in the long term?

- It was agreed that this approach is not sustainable in the long term. It is already difficult to keep track of the NP status of countries and to know which viruses can be shared based on NP.
- Different circulation patterns may mean that potential CVVs in one area that may not be selected based on their NP status, which may lead to reduced diversity in the CVVs selected.
• It might be possible to determine the period for when this may become unsustainable by modeling the number of NP countries against CVV selection.

c) If a NIC does not accept the revision of the TORs, the consequence can be that the NIC loses its designation. CCs/ERLs indicated that this is acceptable given the size of GISRS. How long can this last? How many labs can they afford to lose before: a) GISRS no longer has sufficient surveillance data to be able to carry out its global surveillance responsibilities; and b) the breadth of virus choices is too limited for the strain selection process?

• It was agreed that some NICs may not approve the revised TORs, although when separated into the two components of: (1) sharing for characterization; and (2) sharing for vaccine development, it was thought that most NICs would agree to 1, with more not agreeing to 2.

• It was confirmed that being a part of GISRS requires the characterization component and that this is accepted by NICs. Therefore, there would be little to no effect on the monitoring and surveillance component of GISRS as only a small number of NICs are likely to withdraw based on the revised TORs.

• However, there may be a higher number of NICs that do not agree to the revised TORs for the second component, which may impact CVV selection for vaccine development. The impact may depend on the countries that do not agree, especially if it were a large country that is likely to have potential CVVs.

d) Given the global currents, it seems that all pathogen and GSD sharing will, in the not-too-distant future, come under some ABS regulation – or the lack of the same will throw wrenches in the working of systems such as GISRS. Proactively or preventively adopting measures to address this seems to be the prudent way to proceed. Why is there reticence to have an ABS solution that comes under PIP?

• The addition of seasonal influenza viruses to the PIP Framework is not a minor modification and would require a substantial effort. There is also no guarantee that adding seasonal influenza viruses to the PIP Framework would resolve the issues with sharing seasonal influenza viruses.

• That all countries would need pandemic influenza vaccines, but not seasonal influenza vaccines, is another reason for keeping them separated, as is the large bureaucracy between seasonal and pandemic influenza.

e) Given that CCs prefer handling this topic in a decentralized way (revision of NIC TORs) wouldn’t this increase their workload? And how would they handle/proceed with countries that might require additional negotiations on benefits? Would they handle negotiations or hand that over to WHO?

• It was thought that any negotiations with regards to the NIC TORs would be done by WHO, although as the CCs have relationships with NICs, they could assist.

• It was also suggested that Option 1 would result in less work for the CC’s that would Option 2.

Participants

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<th>Name</th>
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<tbody>
<tr>
<td>John McCauley</td>
<td>Francis Crick Institute (WHO CC, UK)</td>
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<tr>
<td>Nicola Lewis</td>
<td>Francis Crick Institute (WHO CC, UK)</td>
</tr>
<tr>
<td>Shinji Watanabe</td>
<td>WHO CC Tokyo Japan</td>
</tr>
<tr>
<td>Hideki Hasegawa</td>
<td>WHO CC Tokyo Japan</td>
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</tbody>
</table>
Richard Webby St Jude Children Research Hospital (WHO CC, US)
Rebecca Kondor CDC, Atlanta (WHO CC, US)
Kanta Subbarao Victorian Infectious Diseases Reference Laboratory (WHO CC, Australia)
Ian Barr Victorian Infectious Diseases Reference Laboratory (WHO CC, Australia)

AGWG
John Watson
Lokman Hakim
Soe Lwin Nyein
Elizabeth Ferdinand
Kedar Baral
Liana Torosyan

WHO Secretariat
Wenqing Zhang
Chris Chadwick
Sandra Jackson
Luisa Belloni
Anne Huvos
Michelle McPherson
PIP AGWG – 6 September 2022 – Consultation with NICS

Documents provided

- Agenda for consultation
- AGWG presentation
- Potential questions for discussion during the Consultation

AGWG Chair opening & presentation

The Chair of the AGWG presented a short set of slides that briefly summarized the establishment of the AGWG and its scope of work, the four options being considered by the AGWG, and the guiding questions for the consultation:

1. Have you had problems sharing seasonal influenza viruses with WHO Collaborating Centres (CC) of GISRS due to the implementation of Nagoya Protocol or other national Access and Benefit Sharing (ABS) legislations enacted in your country?
2. If now one of your viruses shared with WHO CC is developed into a Candidate Vaccine Virus (CVV), do you foresee/are you aware of any problem preventing from using the CVV for vaccine production? Please explain.
   - If there is a problem, in your opinion would revising the NIC Terms of References (TORs) - which will specify the potential use of the shared virus for the development of CVV and for the vaccine production - be able to address these issues? If not, what could be the solution?
3. Are you familiar with the objectives of the Nagoya Protocol and Access and Benefit Sharing? If not, would an information package from WHO which contains documents to support your communication with the national Nagoya protocol focal point be helpful? What else do you think would be helpful?

Responses to the poll

A short poll of five questions was presented for the participants to answer.
Q1: Which WHO region is your NIC located in? Q2: Does your NIC receive influenza viruses from other countries?
- There was representation of NICs from all WHO regions, most of whom receive influenza viruses from within their own country only (there were two that responded they were a sub-regional NIC).
Q3: Are you aware of any national access and benefit legislation for genetic materials in your country?
- About a third of the NICs responded they were aware of any national access and benefit legislation for genetic materials in your country, with remainder not being aware or unsure.
Q4: Are you familiar with the Nagoya Protocol?
- More than a third (44%) responded that they were familiar with the Nagoya Protocol, 32% were not and 27% were unsure.
Q5: Does your country have a seasonal influenza vaccine program?
- 77% of NICS that responded had a seasonal influenza program.

Discussion between NICs and the AGWG

- Many NICs indicated they did not have any problems with sharing seasonal influenza viruses with WHO CCs, however, whether this extended to problems with the onwards sharing of viruses for vaccine development was not specified, even after prompting.
One NIC reported difficulty in identifying the focal point of Nagoya Protocol and getting permission to use a potential CVV

Option 1

- There was support from NICs for specifying in the revised NIC TORs that seasonal influenza viruses shared with CC’s may then be used as CVVs and for vaccine development
  - ‘Before sharing any sample, the purpose of this sharing should be clear’
  - This revision is likely to require a higher level of approval within the government, as well as consultation across different government departments.
  - Clear explanation of the benefits of sharing within GISRS, especially for the onward sharing for vaccine development, is required; it was suggested that countries will sign according to their requirements for benefits.
  - The revision to the TORs needs to be tested prior to implementation within GIRSRs; the pilot project was described by GIP.
- There was support from NICs for a standardized MTA template (e.g., the SIMTA), with the inclusion of the onward sharing of seasonal influenza viruses to non-GISRS entities for vaccines/diagnosis/treatment.
  - An MTA is legally binding
  - A higher level of authority would be required for the SIMTA if it included the onward transfer of seasonal influenza viruses to non-GISRS entities for vaccines/diagnosis/treatment
  - One NIC described their use of an MTA between the NIC and CC to overcome the issues of seasonal influenza virus sharing; and that having a standardized MTA would be useful from a legal perspective.
- There was support from NICs for the information package, especially to assist with communicating with those outside of health that are involved in ABS legislation:
  - ‘An information package is crucial’
  - This would assist with discussions between health and the other government departments (e.g., Environment, Agriculture) responsible for ABS
  - Example success stories about how Nagoya Protocol and ABS issues have been successfully managed for CVVs, and a guidance on how to approach ABS issues, would be useful inclusions
  - This information will also be helpful in creating awareness of Nagoya Protocol and ABS to countries that have not implemented either.
  - Whilst useful for within countries, it is unclear how manufacturers can also obtain access to this information (NP and ABS).
- To ensure the best possible vaccine, there needs to be confidence that the best possible strains are used for the vaccine. This selection should not be influenced by NP or ABS status, and the process of selecting a vaccine strain should not be transactional.

Other options

- There were several suggestions from NICs about having a global framework or agreement for seasonal influenza virus sharing:
  - A higher-level agreement above the Ministries would benefit global health
  - WHO should establish a global sample sharing agreement that includes countries that participate in GISRS
  - A One Health framework that benefits global health
- A global agreement about the sharing of all influenzas, not just CVVs for pandemic influenza
- It was also suggested that pandemic viruses could be added to the SIMTA

### Participants

<table>
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<tr>
<th>National Influenza Centres</th>
<th>WHO Regional Offices</th>
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<tr>
<td>Austria</td>
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<td>India</td>
<td>Mbayame Ndiaye</td>
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<td>Iran (Islamic Republic of)</td>
<td>WHO Secretariat</td>
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<td>Lebanon</td>
<td>Wenqing Zhang</td>
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