

DNDi comment on Article 9 Negotiating Text

1. Member States should reinstate conditions on public funding of R&D

- **It is very concerning that a specific obligation to attach access conditions to public funding has not been reinstated in the Negotiating Text.**

A specific obligation was present in the zero draft, and its inclusion in INB7 as a starting point for negotiations has support from a wide range of Member States during the informal meetings.

Member States have agreed that operationalizing equity is central to WHO CA+. Attaching conditions on public funding is a concrete mechanism to do so, where Member States can use their leverage to operationalize equity at all stages of product development. Failure to ensure the opportunity for Member States to start to even start to negotiate these provisions removes one of the few specific equity obligations originally contained in the draft and undermines the stated commitment to equity.

Attaching conditions is not a novel concept, but it is not yet universally applied. COVID-19 demonstrated that if Member States wait until a treatment is developed then they have limited leverage and options to ensure equitable access. Conditions applied at an earlier stage provide Member States with the ability to address barriers to development and equitable access and provide clarity to all R&D stakeholders on what is expected in return for public investment.

The inclusion is also necessary to operationalize provisions in other articles¹ which may seek to ensure recipients of public funds do certain activities. To be practically implemented these provisions require the funder to include an obligation in conditions on public funding.

- **Publication of contract terms (9.4) does not ensure funders attach pro-access conditions to funding**

The Negotiating Text, based on the Bureau draft, combines and conflates two original provisions in the zero draft - one to include conditions on public funding and another on publication of contract terms, into one obligation to publish terms.

An obligation to only publish contract terms, which DNDi supports as a separate obligation, does not ensure that public funders attach pro-access conditions to their funding in the first

¹ E.g. 11.3b and 10.3a: requiring or encouraging those that receive public funding to waive or manage the payment of royalties

place, nor ensure that recipients of funding enact pro-access activities. Both obligations are needed.

These two provisions should be separated and at a minimum the obligation to include conditions on public funding specifically reinstated, as supported by many Member States, by adding a new provision 9.5 to attach conditions. This is in addition to the provision on publication of contract terms which should remain as 9.4.

2. Add specific provisions for early-stage research collaboration

The text focuses very heavily on later stages of R&D rather than all stages needed for preparation and response. Despite Member State proposals to widen the focus to include early-stage collaboration there are no provisions relating to early-stage R&D activities, including discovery research, where investments and collaboration are needed. **Specific provisions should be added in Art 9.**

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