

Medicines Law & Policy

Comments by [Medicines Law & Policy](#) on the Proposal for negotiating text of the WHO Pandemic Agreement (A/INB/7/3) published on 30 October 2023 for consideration by the 7th meeting of the Intergovernmental Negotiating Body to draft and negotiate a WHO convention, agreement or other international instrument on pandemic prevention, preparedness and response.

Our comments focus on Article 9, Research and Development (R&D), Article 10 (sustainable production), and Article 11, Transfer of Technology and Know-How.

The WHO Pandemic Agreement should contain new binding duties for Parties. The results of the current negotiations need to lead to changing the status quo, not confirming it, lest we repeat mistakes made during the last pandemic. These duties should also be clearly and concisely expressed.

We therefore generally recommend removing terms, that introduce ambiguity as to whether the provision will lead to actual change. Examples include terms such as ‘as appropriate’ or ‘on mutually agreed terms’ when unilateral action may be required.

We also recommend, throughout the text, tightening operational terms such as ‘promote’, ‘encourage’, ‘support’ with terms that are firmer and require action.

Finally, we recommend that Articles 9, 10 and 11 be re-drafted to better collect together related provisions which currently overlap between them.

We welcome the transparency provisions in Article 9. But Article 9 should also include a provision to ensure that public funding for pandemic-related R&D is granted together with conditionalities for access, IP and technology transfer. Such conditions will ensure a greater sharing of the products and know-how that are the results of the financing. A similar obligation is currently reflected in Art. 10.1(d) and Art. 11.3(b).

Article 11.2 (c) requires the use of TRIPS flexibilities, which is important in case voluntary measures are unavailable. However, the TRIPS Articles mentioned represent an incomplete listing of the flexibilities of the TRIPS Agreement. For example, Articles 39, 44.2, and 73 (b) iii contain TRIPS flexibilities that could be helpful, if not essential, in efforts to access pandemic technology and know-how and should be included.

Article 11.3 (c) presently only requires Parties to ‘encourage’ the sharing of production-related know-how or trade secrets during a pandemic. Again, there are many examples in the draft instrument where softer terms should be replaced with concrete requirements, but this is a particularly crucial one. This provision should instead require Parties to urgently ‘compel’ such sharing wherever it is necessary to expand worldwide production. If it did so, as we explain in our [briefing note](#), this provision would fill a crucial gap in the powers provided by the WTO TRIPS Agreement.

Further, Article 11.1 should establish a Health Technology Access Pool to replace Covid-19 Technology Access Pool (C-TAP) to work alongside existing pooling mechanisms.

Amsterdam, 9 November 2023