



Pandemic Agreement: MSF statement on revised draft of negotiating text

Médecins Sans Frontières/Doctors Without Borders (MSF) acknowledges the progress made by member states negotiating the Pandemic Agreement. The current text shows notable improvements compared to the previous draft, particularly in areas such as stockpiling and allocation. It reinforces the importance of respecting flexibilities within the TRIPS Agreement and includes better language regarding access provisions in public funding agreements for research and development (R&D). We also commend the efforts made to enhance provisions related to technology transfer and licensing of government-owned or funded technologies. Transparency measures across supply chains and in public procurement agreements have also been improved.

However, there are outstanding issues that need to be addressed immediately to ensure a comprehensive agreement that prioritises the needs of people in humanitarian and resource-limited settings.

1. There is a need for explicit language on respecting international humanitarian law (IHL) and protecting patients under [Article 3](#) on “Principles”. It is important that delivery of humanitarian assistance under [Article 13bis.4](#) is not restricted to only “recognized humanitarian organizations” as it can undermine the principles of independence and impartiality under IHL. Further, while considering equitable allocation [[Article 13.4\(g\)](#)], it is imperative to factor in humanitarian needs.
2. The revised text on liability and compensation ([Article 15](#)) contains no clear framework and redlines to clarify limitations and exceptions, especially for humanitarian actors who do not have the financial capacity to bear such additional risks or costs.
3. Compared to the earlier draft, positive provisions on ensuring access to end products by communities participating in biomedical research ([Article 9.3 \(d\) of February 19 text](#)), compliance with an ethical framework, and on access to comparator products ([Article 9.3 \(h\) of February 19 text](#)) for R&D have been deleted and should be reinstated.
4. The language on global equitable access in public R&D funding agreements can be improved by introducing a straightforward obligation to include access provisions at all times, both before and during a pandemic, and by including transparency as a requirement under the funding agreement ([Article 9.6](#)).
5. While the removal of “voluntary and on mutually agreed terms” wording from provisions on transfer of technology and licensing ([Article 11.1](#)) is a positive change, the overall obligation remains weak due to multiple concessions throughout.
6. The retention of text concerning reviewing and updating national laws ([Article 11.5](#)) so as to allow the timely and effective use of flexibilities for access is positive; the provision can be improved by allowing flexibilities beyond those mentioned in the TRIPS Agreement alone.
7. The provisions about including earmarked stockpiles for humanitarian settings [[Article 13.4 \(f\)](#)] and ensuring national stockpiles do not exceed domestic needs ([Article 13bis.6](#)) are positive. The requirement for governments to set aside a portion of supplies from national procurement to meet global needs ([Article 12.9](#)) is also a welcome clause but this can be independent of the access and benefit-sharing mechanism under Article 12. Therefore, Article 12.9 should be moved under Article 13 (Supply chain and logistics) and/or 13bis (National procurement and distribution related provisions) in order to facilitate equitable allocation.