

TRIPS-flexibilities in Health Crises and Beyond

At the time we were writing a contribution on [Compulsory Licensing and Access to Medicines](#) for [Podium voor Bio-ethiek](#) no one had yet heard of the novel coronavirus or the COVID-19 pandemic it would soon be causing. Yet, current circumstances shed new light on the pertinence of the article. In it, we argue that TRIPS-flexibilities, such as Compulsory Licensing, are legitimate instruments to lower medicine prices when high prices pose a threat to public health, and that their use is justified in - but also extends beyond - health crises.

Now, more than ever, there seems a willingness among governments to enforce measures upon the pharmaceutical and medical technology industries to safeguard public health, including the Netherlands, where the use of Compulsory Licensing has been under discussion for several months now. The issue is taking on a new urgency with other European Union Member States, such as Germany, where a [modification of their patent law](#) will expedite government use of patented technologies.

PUBLIC PRESSURE IN THE TIME OF COVID-19

How TRIPS-flexibilities will eventually be put to use within the current crisis will become clear if new effective therapies and vaccines are patented and enter the market in a monopoly position. Under current conditions, it is quite likely that price issues will be solved before governments have to resort to further measures. As we argue in our article, the threat of issuing a Compulsory Licence can be effective as bargaining tool, creating a breakthrough in price negotiations, but in these times we have an additional agent - public pressure - that can do just that. For this to be effective, civil society's role in keeping up the pressure through constant monitoring and vigilance is essential. We must re-double our efforts to ensure the public-at-large understands what is at stake and that the status quo will not deliver in a time of crisis, if it ever really has (spoiler alert...it hasn't).

It is not important whether it happens one way or the other, what matters is that, when effective treatments or vaccines for COVID-19 are developed, they become widely available and affordable. Now that the interests at stake are so great, and with the whole world watching, there is confidence and hope that this will happen. It remains, however, important that TRIPS-flexibilities are not only seen in the light of COVID-19, because, apart from a crisis situation, excessively expensive medicines which threaten access for all, are also a legitimate argument for their use.

NOTES

Under current circumstances, other IP-related initiatives which are non-patent centered, but collectively managed are vital. An example is the proposal submitted by Costa Rica for a

COVID-19 Technology Pool managed by the WHO which follows the example of the Medicines Patent Pool

HAI's brochure on using TRIPS-flexibilities to improve access to medicines is available to [download](#).