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Mr Luca Visentini
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Brussels, 29/03/2021

Dear Mr Visentini, *dear Luca!*

Thank you for your letter addressed to President von der Leyen who asked me to reply on her behalf. In your letter, you seek support for the proposal by South Africa and India to the World Trade Organization (WTO) for a waiver from certain provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights (the 'TRIPS Agreement') in relation to prevention, containment or treatment of COVID-19.

The Commission is committed to the objective of universal equitable access to vaccines and treatments against COVID-19. The EU has been leading the global response from the very beginning. Since its launch in April 2020, a global recovery package of EUR 38.5 billion delivered under a common 'Team Europe' approach, including the European Commission, the European Investment Bank and EU Member States, has been supporting partner countries with emergency response to humanitarian needs. As regards the vaccines, 'Team Europe' is one of the leading contributors to the COVAX Facility, the global initiative to ensure equitable and fair access to safe and effective vaccines. On 19 February 2021, the Commission announced that it is doubling its contribution to EUR 1 billion, which brings the total 'Team Europe' pledge to COVAX over EUR 2.2

billion. This should allow the COVAX Facility to achieve its target to deliver 1.3 billion doses for 92 low and middle-income countries by the end of 2021.

The EU has invested close to EUR 3 billion to pre-finance the production of safe and effective vaccines, which will benefit not only the EU but citizens across the world. As announced in the Communication of 19 January 2021, A united front to beat COVID-19¹, the EU is in the process of setting up a vaccine sharing mechanism. Special attention would be given to the Western Balkans, our Eastern and Southern neighbourhood and Africa. This could primarily benefit health workers, as well as humanitarian needs.

We consider that a key challenge at this stage in efforts towards universal equitable access to COVID-19 vaccines is that the current manufacturing capacity for such vaccines is clearly to be increased. As set out in the Communication Towards HERA: making Europe's bio-defence capacities fit to deal with SARS-CoV-2 variants², the Commission is taking action to facilitate the production of COVID-19 vaccines and to allow for a ramping up of production in the shortest possible time, including by identifying and addressing bottlenecks and bringing in new manufacturers. Our objective is to ensure that any available and adequate manufacturing capacity is used for COVID-19 vaccine production.

Public-private partnerships, in our view, are the key to ensure universal equitable access to COVID-19 therapies and vaccines. Given the complexity related to the manufacturing of novel biologic products such as COVID-19 vaccines, the most efficient way to increase the manufacturing capacity in a short timeframe is based on a rapid transfer of technology and know-how from the vaccine developers to those that can produce them. Intellectual property is a key factor in providing a clear legal framework that enables this transfer and collaboration.

Collaboration and licensing on a global level are already happening. We have numerous examples of licensing and manufacturing agreements between different companies in the EU and in other countries. Where possible, this collaboration should be scaled up. Waiving intellectual property rights would disrupt this collaboration and the transfer of know-how, which is key for increasing the manufacturing capacity. The proposed waiver would take away the platform at which this transfer takes place, i.e. the intellectual property framework, at the moment when it is most needed.

Should the voluntary solutions fail or not be available, the TRIPS Agreement already provides the necessary framework to share technology through the granting of compulsory licences, i.e. licences granted by governments without the patent owner's consent. For emergency situations, such as the pandemic, the TRIPS Agreement provides for fast track

¹ See at https://ec.europa.eu/info/sites/info/files/communication-united-front-beat-covid-19_en.pdf

² See at https://ec.europa.eu/info/sites/info/files/communication-hera-incubator-anticipating-threat-covid-19-variants_en.pdf

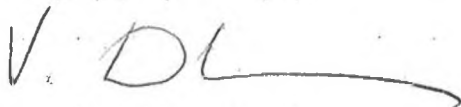
procedures to grant compulsory licences for patents where no prior negotiations with the patent owner are required. Fast track compulsory licences can also be granted for export to countries with no or insufficient manufacturing capacity. At the same time, we note that, unlike voluntary licensing and manufacturing agreements, compulsory licensing as such does not guarantee the transfer of all relevant know how and technologies. Using this last-resort measure could also disincentivize the ongoing production efforts and impede the development of vaccines updated to new variants.

Given all the above, we consider that waiving intellectual property rights, as originally proposed by India and South Africa in the WTO, would not help but rather hinder the efforts to ensure the widest distribution of COVID-19 vaccines. This is not the last pandemic with which we may have to deal. We need to find measures that both respond to the current needs in the EU and worldwide, as well as preserve the incentives to innovate and invest in health-related research.

We consider that the solutions to rapidly scale up the required manufacturing and distribution of vaccines at this stage can only be delivered through close public-private cooperation and intellectual property is a key element of this equation.

The EU is committed to an open and comprehensive dialogue with all WTO Members and the Director General of the WTO, Dr Ngozi Okonjo-Iweala, to explore how the multilateral rules-based trading system can best support universal and equitable access to COVID-19 vaccines and treatments.

Yours sincerely,

A handwritten signature in blue ink, consisting of a stylized 'V' followed by 'DL' and a long horizontal flourish.

Valdis Dombrovskis