

## Concerns related to Technology Transfer in the Pandemic Agreement

Here, we provide legal analysis in response to some concerns about the implications of technology transfer arrangements in the Pandemic Agreement.

At the core of the debate is how technology transfer is defined for the purposes of the Pandemic Agreement, set out in a footnote to Article 11. Specifically, at issue is whether or not technology transfer should be understood as occurring on “voluntary and mutually agreed terms.” In short, our view is that the word “voluntary” is redundant, but if included would do more harm than good.

The text of the footnote, as supplied by the Bureau, currently reads (emphasis added):

For the purposes of this Agreement, transfer of technology refers to an *agreed process* where technology is transferred on *mutually agreed terms*. This understanding is without prejudice to and does not affect the measures that Parties may take in accordance with their domestic or national laws and regulations, and compliant with their international obligations.<sup>1</sup>

**Q: Would the Pandemic Agreement, as currently worded, force pandemic-related product manufacturers to transfer technology?**

**A: No.**

First, defining technology transfer as occurring according to an “agreed process” and on “mutually agreed terms” inherently implies that the negotiations are voluntary. Adopting the ordinary meaning given to those terms,<sup>2</sup> technology holders must both agree to the terms and to a process for negotiating them in the first place for a transfer to occur. The ordinary meaning given to those terms would not result in an interpretation that manufacturers are forced to transfer technology.

Second, the footnote must be read together with the substantive obligations under Article 11. Even if the word “voluntary” does not appear in the definition of technology transfer, that does not mean that governments will adopt non-voluntary measures. Private actors are not traditional subjects of international law. As such, all of the substantive obligations in the agreement are directed to States Parties. Nothing in Article 11 states or implies that a State Party can force a private actor to transfer technology absent an agreed process and mutually agreed terms.

Third, States Parties’ agreement to “promote and otherwise facilitate or incentivize” technology transfer and to “promote” technology transfer to established technology transfer hubs is also inherently voluntary. Even in the context of a pandemic emergency, States Parties commit only to “urge” manufacturers to share information relevant to the production of pandemic-related products “on a voluntary basis.”

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<sup>1</sup> Draft text of the Pandemic Agreement reflecting progress up to Friday, February 21, 2025 at 16:50 CET and with Bureau proposed text on outstanding provisions to support the negotiations for INB 13 resumed at the thirteenth meeting of the Intergovernmental Negotiating Body (INB13) (March 26, 2025) <https://www.keionline.org/40638>.

<sup>2</sup> Vienna Convention on the Law of Treaties, art. 31.1, opened for signature May 23, 1969, 1155 U.N.T.S. 331.

Because the agreement does not impose any compulsory obligations on private actors, there's no real necessity to broadly define tech transfer as "voluntary." However, insisting on doing so risks derailing the negotiations, among other risks.

**Q: If the preference is for technology transfer to occur on a voluntary basis, are there any risks of adding the word "voluntary" to the definition in the footnote?**

**A: Yes.**

First, while the preference may be for manufacturers to "voluntarily" transfer technology, it is important that the definition not foreclose actions that sovereign governments might take when their best endeavors to negotiate fail. By insisting on manufacturers only coming to the negotiating table voluntarily, States Parties are limiting their options for facilitating or otherwise incentivizing technology transfer, and for taking non-voluntary measures even where their domestic laws do or would provide for them. Examples of such domestic laws include:

- **United States:** Defense Production Act, 50 U.S.C. §4501.<sup>3</sup>
- **Germany:** Act on the Protection of the Population in Case of an Epidemic Situation of National Significance (Ger.).<sup>4</sup>

Moreover, foreclosing the possibility of non-voluntary measures would defeat two principles that guide the Pandemic Agreement's core objective: respect for the sovereign right of States to implement legislation within their jurisdiction, and equity in pandemic preparedness and response.

Second, voluntary negotiations for the transfer of technology on mutually agreed terms are already available. The challenge during the COVID-19 pandemic was that manufacturers had little incentive to transfer technology. By enshrining technology transfer as "voluntary," the Pandemic Agreement would codify an approach that has failed.

Third, while the agreement will not bind non-state actors (e.g. manufacturers) and the definition of technology transfer is qualified as only applying in the context of the Pandemic Agreement, the agreement sets important norms of expected behavior.

Finally, qualifying technology transfer as "voluntary" in the Pandemic Accord would diverge from recently adopted norms through the UN General Assembly for addressing global health challenges which frame technology transfer as occurring on mutually agreed terms with no reference to that transfer being voluntary.<sup>5</sup>

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<sup>3</sup> James Love, *KEI Comments on Six References to "Mutually Agreed Terms" in the WHO Pandemic Agreement Negotiating Text: A/INB/9/3 Rev.1*, 22 April 2024, Knowledge Ecology International (Apr. 28, 2024), <https://www.keionline.org/39741>.

<sup>4</sup> Guilherme Ferrari Faviero & Ellen 't Hoen, *Will Europe Block the Pandemic Agreement Because of One Word?*, The Brussels Times, <https://www.brusselstimes.com/1507860/will-europe-block-the-pandemic-agreement-because-of-one-word> (last visited Mar 28, 2025).

<sup>5</sup> G.A. Res. 78/280, Global health and foreign policy: addressing global health challenges in the foreign policy space, paras. 7, 31, U.N. Doc. A/RES/78/280 (May 2, 2024).

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