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VACCINES AND PATENTS : THE WRONG ANSWER AND THE RIGHT ANSWER

It is impossible to imagine a way out of the current health crisis without a global and collective vaccination effort: not at the level of one country or one continent, but at the global level. It is indeed essential to attack all potential sources of contamination in order to limit the replication of the virus and its mutations which, in the long term, could escape the protection currently provided by the available vaccines.

In the same perspective, it is also important to pursue efforts in the search for effective curative treatments, and therefore drugs, aimed at reducing the effects of the infection. This may involve the discovery of new molecules or the combination of existing molecules, which would be easier to manufacture and distribute, particularly in the least wealthy countries, than the production and distribution of certain vaccines, whose manufacturing and storage conditions make this extremely difficult.

As we have seen on our continent, the production of vaccines or other products needed to fight the pandemic cannot simply be decreed: it must also be prepared. All countries in the European Union, and more widely on the European continent, have experienced major supply difficulties, for example with reagents for PCR tests or the supply of swabs. Since some vaccines have been developed and marketed in Europe, EU countries have experienced difficulties in scaling up vaccination campaigns, mainly due to limited production capacity but also, and still, due to difficulties in sourcing the substances and materials needed for vaccine manufacture, production, packaging and storage. It took almost 10 months to create or adapt production lines and allow a significant increase in production capacity in the European Union.

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The first lesson that can be drawn from recent experience is that the slow start-up of vaccination campaigns in EU Member States was never due to intellectual property rights but to other contingencies that are now prompting the EU to review its industrial strategy with the primary objective of increasing its autonomy in sensitive sectors such as health.

What recent history also teaches us is that the solution of lifting intellectual property rights on patents is certainly ethically indisputable but has practically no impact, in the very short term, on the goal pursued: namely, the affordable supply of vaccines to the least wealthy countries. If it took the richest countries more than 10 months to significantly increase vaccine production by redirecting existing industrial capacity, how many months would it take to create and operate new production units to meet demand, which is immediate? On the one hand, we should not crowd out the companies that have discovered vaccines. **If the objective is to supply doses of vaccine at low cost to the least wealthy countries by abandoning royalties on existing patents, it will also be necessary to set up equitable systems to ensure that the doses produced or sent to needy countries are produced at cost price and strictly reserved for the needs of these poor countries. In these conditions, it will also be necessary to ensure that the industrial producers who will sell these vaccines exempt from patent rights do not take advantage of them to make profits wherever they are located**

Setting up such a control system is not easy, especially since the number of patents involved in the manufacture of vaccines against COVID-19 is in the dozens. Finally, it is important to bear in mind that engaging in such an upheaval of the regime of international agreements on intellectual property (TRIPS agreements) could have an effect contrary to the desired objective. It could discourage innovative companies, especially start-ups, from investing in research into appropriate therapies that would be easier and more affordable to deploy in less wealthy countries.

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In fact, the only answer to such a critical need is to use the most immediate solutions that allow the least wealthy countries to benefit quickly from the doses. The TRIPS agreements already offer opportunities to encourage or oblige (negotiated licensing agreements or compulsory licensing) patent holders to collaborate with producers who have unused or re-directable production capacity. This is one route that has been followed in India, which has a large pharmaceutical industry and manufactures its version of AstraZeneca's vaccine under license. In any case, it is essential that cooperation between rights holders and producers be ensured, because ultimately the quality of the vaccines produced depends on it, and for the moment such cooperation is only possible if there is a license. We must avoid at all costs that counterfeits circulate in parallel circuits or that the marketing of poor quality vaccines that do not meet health safety standards spreads in all those countries where access to vaccines is more complicated financially.

All this confirms that the emergency situation faced by the least wealthy countries in accessing vaccines requires rational responses that are not linked to intellectual property rights but have everything to do with production capacity. Moreover, we must get to the heart of the matter: if the laws of trade are distorted by an ethical political will, will there be compensation? and who will pay? the States? This question of lifting patents is really uncertain in order to respond to a legitimate approach. It therefore assumes that all states that are able to produce vaccines increase their production and avoid putting in place measures to restrict their exports. Europe has long been committed to this approach, but it should not be the only one to do so. Finally, private and public investment in research into effective therapies that could be distributed in countries that do not have adequate storage capacity for certain types of vaccines must also continue to be encouraged.

In the medium term, the efforts undertaken by the European Union to promote local production capacities must therefore be continued. For example, according to the African Centre for Disease Control and Prevention, Africa produces only one percent of the vaccines needed for

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a global population of 1.3 billion people. The European Union has a role to play in helping to increase production. Last February, it announced its intention to help finance a vaccine production unit in Morocco. In Europe as in Africa, the solution lies in autonomy.

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