Mpox, opacity and the need for access obligations in pandemic prevention, preparedness and response

Within just a few years of the emergence of COVID-19, mpox caused two international health emergencies. Once again, the Global South was left without ready access to adequate amounts of vaccine, the supply of which was needlessly restricted by the reliance on a limited number of suppliers and the high, non-transparent price of the MVA-BN mpox/smallpox vaccine. The experiences again reinforced that opaque agreements can undermine the public interest and that countries need to implement stronger systems to support international collaboration during emergencies, and deliver equitable access to countermeasures.

Despite the MVA-BN vaccine being underpinned by German public science and over $2.3 billion in U.S. government funding and large public procurements, MVA-BN's manufacturer, Bavarian Nordic has controlled supplies, never publicly justified its high pricing, and, despite claims to the contrary, has not engaged on effective technology transfer to African manufacturers.

Critically, where public funding underpins research and development, as is the case with MVA-BN, it is essential that this support is tied to clear conditions ensuring fair pricing, cost transparency, including on distribution mark-ups, and equitable global access. These principles should be systematically embedded in national and regional budgetary frameworks guiding R&D investments. Without such safeguards, public funding risks reinforcing existing inequities and failing to deliver on its intended public interest objectives.

Contradictory Positions

For its part, the European Union (EU), both through the European Commission and Member States, has long been committed to global health as a shared international endeavor. Early and consistent supporters of initiatives such as Gavi, the Vaccine Alliance and the Global Fund to Fight AIDS, Tuberculosis and Malaria, the EU has publicly and repeatedly acknowledged the need to secure and enhance universal access to health technologies. This includes, when necessary, the use of TRIPS flexibilities.

Recently, however, we've seen an increasing number of instances where the legislative steps and political actions of the EU are contradictory to previously stated goals and commitments. From the lack of meaningful implementation of the WHA resolution 72.8 to restrictive framing of compulsory licensing in the context of emergencies, the EU would seemingly reject the tenets of transparency and good governance in the manufacture and procurement of health goods as part of international consensus.

The decision by the European Commission to engage in the procurement (and potential donation) of mpox vaccine doses without disclosing prices and other relevant information constitute a step in the wrong direction. The fact that this comes right after the European Court of Auditors censured the European Commission's negotiation and management of COVID vaccine contracts makes it all the more surprising.

Lack of Transparency cannot become Business as Usual

Following concerns raised regarding the lack of transparency in the procurement of mpox vaccines in relation to potential donation from EU countries to third countries, a formal communication (endorsed by over 20 organisations from all over the world) called for the disclosure of the terms of the agreement. The request emphasized that opacity in contractual

arrangements risks obscuring pricing structures and conditions that may affect equitable access, while undermining accountability and public trust. However, the letter did not result in any disclosure of the contract.

Subsequently, access to the framework contract was obtained through a freedom of information request. The disclosed document confirms the scale of the agreement—covering the potential supply of up to eight million doses—and highlights the extent to which key elements, including pricing, several terms related to donations, and other terms presumably deemed commercially sensitive, remain redacted. This limited disclosure reinforces concerns that current practices fall short of transparency standards necessary to ensure fair pricing, informed public oversight, and alignment with broader global health commitments.

In addition to the redactions, the agreement includes provisions that undermine transparency and fall short of supporting broad access. In order to donate doses, parties to the agreement in most cases must first obtain Bavarian Nordic's consent (framework article I.4.5). Additionally, terms regarding donations to third countries appear to be restricted to only certain countries, for example, by excluding upper-middle-income countries from the framework's definition of "LIC/LMIC" countries, suggesting donation to these countries may be prevented. The EU should clarify restrictions regarding donations, as these terms could undermine the ability to donate doses based on health need during outbreaks.

The confidentiality provisions of the Donation Agreement (article 13) establish a broad and restrictive framework that limits the disclosure of key contractual information. By defining confidential information expansively, the agreement effectively shields critical elements, such as pricing and supply conditions, from public scrutiny. In practice, this restricts public oversight of publicly funded agreements, hinders independent assessment of pricing and terms to ensure that public purchasers are not overpaying at different stages of the distribution, and undermines accountability in the procurement of essential health products.

Obligations and Equity

Following recent health crises including ebola and mpox outbreaks, and the COVID-19 pandemic, governments around the world recognize the need to help ensure equitable access to medical products. Many are examining how access considerations should accompany public support. World Health Organization member states are actively negotiating to develop a system to ensure sharing of pathogen information results in reciprocal access to medical countermeasures and other benefits. Without strong commitments and public accountability, measures intended to support access could fall short.

As negotiations in the WHO Intergovernmental Working Group (IGWG) on the proposal for a Pathogen Access and Benefit Sharing (PABS) Annex text to the Pandemic Agreement advance, it is increasingly clear that without explicit enforceable obligations on pricing, technology transfer, and supply diversification, existing inequities will persist or worsen. Aligning EU practices with these emerging global norms will be essential to ensure that innovations, including those that are publicly funded, are accompanied by timely, affordable, and equitable access to medical countermeasures worldwide.

It is high time for the EU to lead by example on transparency in prices and procurement of health technologies and, by extension, on equity and solidarity.