Capsulas

The future of medicinal products in Europe, first reflections

The Commission publishes its proposal and the process of reforming European pharmaceutical legislation begins

Introduction and objectives

On April 26th the Commission published its proposal for a revision of the European pharmaceutical legislation. The initiative includes a new Directive and a new Regulation, which revise and replace the current legislation (Directive 2001/83/EC and Regulation 726/2004). This is undoubtedly the most far-reaching reform of European pharmaceutical legislation in the last 20 years.

The Commission has presented its proposal, stating that it pursues four main objectives:

1. ensure that all patients have access to safe, effective and affordable medicinal products,
2. to provide an attractive and favourable framework for the development of new medicinal products,
3. addressing antimicrobial resistance, and
4. improving the environmental sustainability of medicinal products.

In order to achieve these objectives, some of the main measures proposed are as follows:

(i) substantial modification of the regulatory protection system. It is envisaged to move from a model with essentially fixed protection periods to a model in which the protection finally obtained will depend on several variables,

(ii) simplification of various regulatory procedures,

(iii) creation of an innovation-friendly regulatory environment for the development of new medicinal products and the repurposing of existing medicines,

(iv) introduction of new mechanisms for the monitoring of product shortages by national authorities and the EMA, and

(v) encouraging research into new antimicrobials capable of treating resistant micro-organisms by introducing an incentive in the form of a transferable voucher.

Below, we share some initial reflections on the proposal.

Procedural and timing issues

In the European Union, the legislative process is long and complex; getting 27 Member States to reach a fully binding agreement is difficult.

What was the timing of the last substantial reform of European pharmaceutical legislation, which was adopted in March 2004?

On that occasion, the time needed to adopt the new legislation was just over two years. The Commission presented its proposal in November 2001 and the final text was adopted in March 2004. It should be noted that the European Parliament's first report was not published until October 2002, and the European Council

did not adopt its common position until September 2003. In the European Parliament, the second reading took place in December 2003.

Currently, the co-decision procedure in which the European Parliament and the Council are actively involved is somewhat more streamlined. After the publication of the Commission's proposal, a simultaneous procedure begins in the European Parliament and the Council, and when each has reviewed the proposed amendments and agreed on a text, the so-called trilogues begin: negotiations between the Parliament, the Council and the Commission to agree on a common text which then has to be ratified separately. This process, on the other hand, will be affected by the European Parliament elections in May 2024.

As regards the deadline for transposing the new rules into national law, the proposal provides for the transposition of the Directive and the entry into force of the Regulation within 18 months of its adoption.

On this basis, it is reasonable to assume that the new rules will not be effectively implemented before mid to late 2026.

What is new in the regulatory protection period?

The Commission's proposal in this area envisages linking the period of regulatory protection to a combination of obligations and incentives for marketing authorisation holders ("MAHs").

It is proposed to move away from the "one-size-fits-all" system of regulatory protection (known as 8+2+1) and to reduce the period of data protection from 8 to 6 years as a starting point.

However, the MAH may increase this period of data protection in certain cases. These include that the medicinal product (i) addresses an unmet medical need; (ii) obtains authorisation for a new therapeutic indication by demonstrating significant clinical benefit over existing therapies; or (iii) is marketed in all Member States within up to 2 years of obtaining the marketing authorisation; or (iv) comparative clinical trials are conducted. Where any of these circumstances apply, the period of data protection may be increased from the baseline of 6 years to 10 years.

On the other hand, the two-year period of market exclusivity is maintained, so that the total period of protection will be between 8 and 12 years.

This is likely to be one of the most hotly debated issues in the new legislation. In 2001, the Commission proposed an initial protection period of 10 years; and the European Parliament in its first reading debated more than 20 amendments on this matter. The current proposal is likely to raise several issues related to the need to have a clearer regime , to ensure a reasonable degree of legal certainty and reduce litigation in this area.

Orphan drugs

The revision does not include significant changes to the criteria for orphan designation.

Regulatory protection is proposed to be reduced from the current 10 years to 9 years as a general rule. However, companies will be able to obtain additional periods of protection up to a total of 13 years in case the product addresses a highly unmet medical need, is marketed in all Member States, or new indications are developed for an already authorised orphan medicinal product.

A medicinal product shall be considered to meet a high unmet medical need when at least one

of its indications is linked to an orphan disease for which (i) there is no satisfactory method of diagnosis, prevention or treatment; or (ii) even where such a method exists, the applicant has demonstrated that the product represents an exceptional therapeutic advance.

Finally, a reduction of regulatory protection to 5 years - with no possibility of extension - is foreseen when the application for authorisation is based on bibliographic data, as the innovation generated by the medicinal product is considered less significant.

Incentives for antimicrobial development and creation of vouchers

To combat antimicrobial resistance (AMR), the Commission proposes the creation of vouchers, which will give the right to extend for 1 year the regulatory data protection of any medicinal product that has been authorised via a centralised procedure. These vouchers will be transferable.

The MAH, on the other hand, must communicate its intention to exercise this right to extension during the first 4 years of regulatory data protection. This is intended to allow companies interested in marketing generic versions of the product to anticipate the expiry date of the regulatory protection of the reference medicinal product. This measure will apply until 15 years have elapsed since the entry into force of the rule or 10 vouchers have been granted in the Union. In the previous version of the proposal, which was not published, the Commission could propose to extend the number of vouchers to be granted or the years of validity of the measure based on the experience gained. Although this power has been removed from the text finally published, it is still reflected in the recitals of the proposal for a Regulation.

Priority antimicrobial status will be given if a medicinal product meets two of the following three requirements: (i) it represents a new class of antimicrobials; (ii) its mechanism of action is clearly different from any other antimicrobial authorised in the European Union; and (iii) it contains an active substance not previously authorised in a medicinal product in the Union intended to treat a multiresistant infection or a serious life-threatening infection.

Regulatory sandbox

Another measure proposed by the Commission is the creation of a so-called “regulatory sandbox”. This is an exception designed to provide a controlled environment for testing innovative solutions for the development of medicinal products when (i) it is not possible to develop them in accordance with the requirements applicable to medicinal products due to scientific or regulatory problems; and (ii) when these characteristics or methods contribute positively to the quality, safety or efficacy of the medicinal product or to patients’ access to treatment.

This is a framework that allows controlled testing of new medicinal products without forgoing the necessary regulatory safeguards or undermining legal certainty. This measure will facilitate the early stages of development of new products, especially in the context of digitalisation and disruptive technology.

Once the medicinal product has been developed based on this exception, it may be marketed only when it has been authorised in accordance with the procedures laid down in European regulations for the authorisation of medicinal products for human use.

Supply obligations

Another major block of this reform concerns measures addressed to national authorities and MAHs on supply. The aim is to keep the market sufficiently supplied and to have some instruments available to address shortages.

The proposal builds on the powers of the EMA and especially the Executive Steering Group on Shortages and Safety of Medicinal Products ("MSSG").

The proposal foresees the creation of a list of critical medicines, for which coordinated action at European level will take place: the MSSG will be able to make recommendations to the MAHs, Member States, the Commission and others. It is also proposed to establish a list of critical shortages of medicinal products. In this case, the MSSG will be able to make recommendations with resolution or mitigation measures to the same addressees as above, and also to representatives of healthcare professionals.

On the other hand, it is proposed to introduce a rule that MAHs, after having obtained the corresponding authorisation, must draw up and keep up to date a shortage prevention plan.

In addition, it is proposed to amend and regulate more exhaustively the deadlines and situations in which MAHs must notify the competent authorities of their intention to cease supplying a medicinal product. Current European legislation provides for a single deadline of two months, irrespective of the cause of the cessation of supply. Under the new rules, it is proposed to establish the following deadlines:

(i) For the definitive cessation of the marketing of a medicinal product or for the definitive suspension of a marketing authorisation, the MAH shall give at least 12 months' notice.

(ii) For the temporary suspension of the placing on the market or for a temporary interruption of the supply of a medicinal product in a Member State, the MAH shall give at least 6 months' notice.

Finally, an obligation is also imposed on wholesale distributors and other legal persons that are authorised to supply medicinal products to the public to report any supply problems to the national authorities.

Package leaflet and patient information

Member States will be able to decide whether the package leaflet should be in paper or electronic form or both. However, the proposed Directive empowers the European Commission to adopt, in the future, the necessary measures to make the electronic package leaflet mandatory.

It is made compulsory for the product name to be in Braille on all medicinal products. Package leaflets must also be available in Braille.

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