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Spain

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Abstract

Spain is a very attractive market for pharmaceuticals within the European Union ("EU"). However, it is also a very regulated market, and the decisions are taken by different authorities at different levels. This is why market access can appear complex. In the following chapter, we will seek to explain the most significant rules that must be taken into account in order to understand the process of pricing and reimbursement ("P&R") in Spain.

Market introduction/overview

In 2024, the pharmaceutical market in Spain reached €24.8 billion, of which €10.6 billion correspond to the hospital market, and €14.2 billion to products dispensed through retail pharmacies. In 2025, year-to-date figures (until April 2025) show an 8.4% increase in the hospital market with respect to the same period of 2023 and a 2.6% increase of the retail market with respect to the same period in 2024.[1]

According to data of Farmaindustria[2] (the association of the Spanish innovative pharmaceutical industry), the Spanish pharmaceutical industry is the most productive sector of Spain (double the industry average): it is one of the leaders in exports (exceeding €20 billion per year); and by comparison with other sectors in Spain, it has a higher concentration of stable, qualified and diverse employment (96% of its workers are permanent, 70% have university studies and 33% are young people).

As regards demographics, in April 2025 (last data available), almost 49.1 million inhabitants lived in Spain. The last gross data available on natality and life expectancy sets out a gross birth rate of 6.61 births per 1,000 inhabitants and an average maternal age of 33 years. Life expectancy at birth reached 83.77 years. Since 2017, Spain has the typical population pyramid of a developed country where the number of deaths increases more than the number of births. Data from the *Instituto Nacional de Estadística*[3] from 2024 shows that (i) a slight increase in births can be expected from 2024 to 2042, and (ii) the population is expected to increase by 7 million inhabitants in 13 years due to migration. The percentage of the population aged 65 years and over may reach 30.5% in 2055, and the number of persons that are dependent on others will continue increasing up to almost 75.3% in 2052.

In relation to the Spanish healthcare system, Article 43 of the Spanish Constitution establishes the right to healthcare as one of the basic principles that must inspire action by all public administrations, and this has been interpreted to recognise universal access to healthcare.[4]

As regards the pharmaceutical provision of the National Health System ("NHS"), during the year 2022 (last data available), 1,342 presentations of medicinal products were included in the provision of the NHS,[5] bringing the total to 22,438. This represents 68.4% of all medicinal products authorised in Spain by the regulatory agency (Spanish Agency of Medicines and Medical Devices, "AEMPS"). Furthermore, Spain is a market with numerous innovative therapies included within the provision of the NHS.

In Spain, market access has two stages: (i) the granting of the marketing authorisation ("MA") by AEMPS or the inscription at AEMPS registry of products approved under the EU centralised procedure; and (ii) the resolution on P&R by the Ministry of Health ("MOH"). AEMPS also intervenes to some extent in the P&R procedure by issuing a so-called Therapeutic Positioning Report ("IPT", for its acronym in Spanish), on which the MOH relies when deciding on P&R.

Furthermore, an aspect that must be taken into account is that Spain is a decentralised country and regions play a large role in market access. Even though the MOH decides which therapies are financed, the regions allocate the budget for financing such therapies. This means that in the case of high budgetary impact products, companies must expect access to the market to be subject to agreements with regional authorities (or sometimes with local hospitals) regarding the conditions under which the product will be available in such region or hospital.

Finally, it is important to note that since 2024, the MOH has initiated several legislative procedures aimed at approving new regulations which, once adopted, will significantly impact market access in Spain. These initiatives include: the draft Royal Decree on Health Technology Assessment ("Draft Royal Decree on HTA"), published in August 2024; the public consultation on the Royal Decree on Pricing and Reimbursement, published in December 2024; and the Draft Law on Medicinal Products and Medical Devices ("Draft Law"), published in April 2025. Throughout the different sections of this chapter, we will comment on the potential changes that these regulations could introduce if ultimately approved.

Pharmaceutical pricing and reimbursement

Regulatory classification

According to Article 19 of the Spanish Law on Medicinal Products ("Royal Legislative Decree 1/2015"), when AEMPS authorises a medicinal product, it will determine whether the product is subject to medical prescription or not.

The same Article establishes that certain medicinal products, when they meet certain conditions, will always be subject to medical prescription. This is the case for those medicines that may present a risk, either directly or indirectly (even under normal conditions of use), when they are used without medical supervision. The same happens with those medicinal products that are used frequently under abnormal conditions of use, and this may involve, directly or indirectly, a risk to health. Spanish law also sets forth that those medicinal products that contain substances (or preparations based on these substances) whose activity and/or adverse reactions must be studied in more depth, must also be classified as subject to a medical prescription. The same applies to those medicinal products that are parentally administered.

AEMPS may also establish some subcategories for medicines that can only be dispensed under medical prescription. This will apply to products subject to a special medical prescription regime, or to products that can only be dispensed by certain means (such as medicinal products for hospital use). It is also relevant to note that the MOH may also establish restrictions as regards the prescription, dispensing and financing of some medicinal products within the NHS. These may include the need to go through a special visa procedure before the patient is given a product under reimbursement by the NHS. Under Spanish

law, the regions are not entitled to lay down local measures restricting the prescription, dispatching or financing of medicines or devices that have been accepted for reimbursement at a national level.

AEMPS may classify as medicinal products that are not subject to medical prescription those that are destined for processes or conditions that do not require an accurate diagnosis, or those whose toxicological, clinical or use evaluation data and route of administration do not require medical prescription. These medicines will be dispensed by a pharmacist who will inform, advise and instruct about their correct use.

Spanish law also contemplates the classification of medicines between brand medicinal products, generic medicinal products, biologic medicinal products or biosimilar medicinal products.

Article 2 of Royal Legislative Decree 1/2015 defines generic medicinal products as any medicinal product that has the same qualitative and quantitative composition in active ingredients and the same pharmaceutical form, and whose bioequivalence with the reference medicine has been demonstrated by adequate bioavailability studies. The different salts, esters, ethers, isomers, mixtures of isomers, complexes or derivatives of an active ingredient will be considered the same active ingredient, unless they have considerably different properties in terms of safety and/or efficacy. Biosimilar products are not defined under Spanish law, although there exist provisions under which all biological products are considered non-eligible for substitution without the prior approval of the prescribing doctor.

Under Spanish law, the distinction between over-the-counter medicines and non-prescription medicines does not exist, because the law only distinguishes between prescription and non-prescription medicines.

Who is/who are the payer(s)?

Spain's Autonomous Regions pay for all healthcare services from their own budgets and, subject to certain conditions that may derive from European and Spanish rules on public procurement, they enjoy a large degree of autonomy to decide how they purchase the goods and services they may require in order to provide healthcare services to patients.

The MOH is the department of the central Government responsible for approving reimbursement of medicinal products. As explained, the public funds that may be used to finance this reimbursement come out of the budget of the 17 Autonomous Regions into which Spain is divided. Because of this, the regions participate in the specific committee at the MOH responsible for assessing applications for deciding on the maximum ex-factory price ("PVL") for reimbursed products. This committee is called the Interministerial Committee for the Price of Medicines ("ICPM").

This generates a complex situation where the basic content of the pharmaceutical provision is set forth at state level (because the MOH makes the decision on P&R) but where the Autonomous Regions are responsible for the financing of these medicines, without being allocated a specific budget for each medicinal product, and having to administer their budget and complying with the basics of the pharmaceutical provision.

On the other hand, products that patients obtain at retail pharmacies are subject to co-payment rules under which the patient must pay part of the price of the product. The co-payment percentage depends on the type of product and on the type of patient.

What is the process for securing reimbursement for a new pharmaceutical product?

The reimbursement process starts *ex officio* and it is compulsory, meaning that the marketing authorisation holder ("MAH") does not have the right to say that it is not interested in reimbursement and that it will launch the product for the private market only, right away. Under Article 92 of Royal Legislative Decree 1/2015, the MAH must go through this process so that the MOH decides whether the product shall be reimbursed and covered by the NHS or not.

In Spain, the process regarding P&R of a medicinal product that is centrally approved begins when AEMPS gives final clearance for the packaging materials that are to be used in Spain. Once AEMPS has approved

the final packaging materials of the product, it shall record this decision and notify it to the MAH and to the Directorate-General for the Common Portfolio of NHS Services and Pharmacy ("DG Pharmacy"), which is the body within the MOH competent to rule on reimbursement. As explained, the reimbursement process then starts *ex officio*. The DG Pharmacy shall send a letter to the MAH or to its local representative, informing it that the process has begun and granting the company a period between 10 and 15 working days to make any submission it deems convenient on the reimbursement of the product.

Under the law, the process to decide on P&R may take up to 180 days. Furthermore, the authorities usually request additional information, and these requests may stop the clock of the procedure. In practice, companies may well expect the reimbursement approval to run for a minimum of six months. Occasionally, procedures take up to a year.

Finally, it is worth mentioning that the Draft Law and the Draft Royal Decree on P&R foresee an accelerated and conditional reimbursement system for those drugs or indications that address unmet medical needs, offer potentially relevant clinical benefits, and are intended for patients for whom treatment cannot be delayed. Under this system, the most disruptive innovations may be provisionally included in public financing until a final decision is made, which may revoke or revise the provisional decision. Additionally, a "cost equalisation" rule is established, under which the provisional/conditional inclusion must not result in a final cost or budgetary impact for the NHS greater than that arising from the conditions set in the final P&R ruling. The same cost and budget impact equalisation rule will apply for early access programmes, in the sense that the company will have to accept a chargeback for the difference between the price at which it supplied the product via the early access programme and the price at which the MOH agrees to reimburse the product in Spain.

Who influences the decision?

The most important decision-maker in the reimbursement process is the central Government. The MOH, through the DG Pharmacy and the ICPM, decides on reimbursement and then on price. In theory, the DG Pharmacy is the first to decide on whether the product is reimbursed or not, and the ICPM then decides on the maximum reimbursed price. In practice, however, the two procedures run in parallel and overlap because the decision of the DG Pharmacy regarding reimbursement is also based on the price that the ICPM would set for the product. The DG Pharmacy, on the other hand, takes care of process management, preparing the rulings that the ICPM shall adopt; it is also the *de facto* leader of the negotiations with the MAH, and coordinates the work carried out by evaluation teams who handle the dossiers prior to the meeting of the ICPM.

AEMPS has a major role in the reimbursement process when issuing its IPT. In 2020, a network called REvalMED was set up and became responsible for the coordination of the whole IPT process from late 2021 until September 2023. REvalMED comprised a therapeutic evaluation group (led by AEMPS), an economic evaluation group (led by MOH) and therapeutic area specialists. Within REvalMED, AEMPS still retained significant power, especially with respect to the therapeutic evaluation of the product; however, this power was shared with the DG Pharmacy of the MOH, which increased its influence on the IPT process, mainly with respect to the economic evaluation. Moreover, the Autonomous Regions had a remarkable role in this decision because they fund the dispensing of the product to the patient. This is also why three of the Autonomous Regions are members (on a rotating basis) of the ICPM. At present, representatives of all other Autonomous Regions may participate as observers at all ICPM meetings. Autonomous Regions also had a relevant role within REvalMED, providing input to the therapeutic and economic groups, respectively, and appointing "expert reviewers" that were entitled to review and provide comments on IPT drafts before their approval. In June 2023, the National High Court declared null and void the Plan that created REvalMED. Since this ruling, the IPTs are being carried out only by the AEMPS and do not include an economic evaluation section.

As a consequence of this judgment, the MOH published the Draft Royal Decree on HTA. The MOH proposal is to create a health technology assessment system separate from the price and reimbursement system. Therefore, if approved, the evaluation will be separated from the decision-making process. A health technology evaluation includes an evaluation of clinical aspects and another of non-clinical aspects. The latter will assess economic, environmental, ethical and patient quality of life aspects. The guidelines that will be used to prepare these reports will be developed later by the MOH. Once these two reports have been completed, the Positioning Group – formed, among others, by representatives of the MOH and the Autonomous Regions – will make a final assessment of the clinical and non-clinical evaluation reports and will issue a recommendation (the Positioning Reports, "PRs") on the health technology that will serve as a basis for the decision-making body to decide on its reimbursement.

On the other hand, while the central Spanish Government (through its legislative an executive branch) has exclusive competence to enact legislation on medicinal products, the Constitutional Court has established in several cases that this applies to the rules related to the evaluation, approval and surveillance of medicinal products, but not necessarily to the rules relevant to how individual patients may get access to medicines.[6] This is essential because the Autonomous Regions are thus competent to establish the specific procedural rules that may apply to how the patients may get access to reimbursed products.

It is also noteworthy that there are other relevant stakeholders, including doctors, medical and hospital pharmacy societies and patient associations, who may try to exercise some influence. Anyhow, the procedure is bilateral, and between the interested company and the MOH. Other entities (including associations, competitors, etc.) do not have legal standing to intervene as interested parties, nor do they have the right to make allegations. However, please note that this may change with the new legislation that the MOH is working on. As an example, the draft Royal Decree on HTA provides for the participation of patient and consumer organisations in the Positioning Group. It also foresees the involvement of patients and clinical experts – either individually or collectively – in the preparation of evaluation reports for each medicinal product.

Regarding the right of access to the information provided by the interested company, we refer to the "Confidentiality and transparency" section below.

What pharmaceutical products are eligible/ineligible for reimbursement?

Under Article 92 of Royal Legislative Decree 1/2015, the inclusion of a medicinal product in the financing of the NHS is decided according to a selective funding system and taking into account general objective and published criteria, more precisely, the following:

a) the seriousness, duration and sequels of the pathologies for which the product is approved;

b) the needs of special groups of people;

c) the therapeutic and social utility of the product, as well as its incremental clinical benefit, taking into account its cost and effectiveness;

d) the need to limit and rationalise public pharmaceutical expenditure and the impact of the medicinal product on the NHS;

e) the existence of medicines already available and the existence of other alternatives for the same illnesses, which have a lower price; and

f) the degree of innovation of the product.

This being said, Royal Decree-Law 16/2012 introduced new rules stating that, when deciding on whether a product must be accepted for reimbursement or not, the MOH shall also specifically consider:

a) The impact that financing such product may have on the public budget.

b) A cost-efficiency analysis.

c) The innovation of the product: whether it provides an indisputable therapeutic advance for altering the course of an illness or easing the course of such illness; and its prognostics, results or contribution to the NHS.

d) The contribution of the product to Spain's gross domestic product. This is awkward because it could indicate that local manufacturing or development operations have an influence on P&R; something that would be entirely contrary to EU law principles.

e) The return mechanisms that may be proposed by the MAH (discounts, price reviews). This is the result of the increasing relevance that risk-sharing schemes are currently having in Spanish practice; many companies, especially for high-budgetary-impact products, are required to offer specific arrangements to obtain reimbursement. These may be in various forms, including caps on the number of units that will be reimbursed by the NHS and chargebacks in the event that some established therapeutic results are not achieved.

The medicines that are directly excluded from the pharmaceutical provision are: those that are not subject to medical prescription; medicinal products that are not addressed at healing a concrete illness; and products that are considered cosmetics, dietetics, mineral waters, elixirs, dentifrices and other similar products. Spanish law also specifies that those medicinal products that are indicated for syndromes or illnesses of minor severity, and those that do not respond to current therapeutic needs, shall also be excluded from the pharmaceutical provision.

The Draft Law proposes important changes in this area, such as: the explicit inclusion of the patient perspective when assessing the relevant incremental clinical benefit of a medicine; the strengthening of efficiency or cost-effectiveness criteria; the need to consider the uncertainty associated with clinical benefit, costs for the NHS and budget impact; the environmental impact of the medicinal product; the explicit recognition of incremental innovation; the contribution to antimicrobial resistance; and the existence of multiple indications for a single medicine.

What is the relationship between pricing and reimbursement?

Under Spanish law, the ICPM determines the maximum price for the units of the products that are reimbursed by the NHS. The MOH will also take note of the so-called "notified price". The notified price is the price at which the MAH intends to market the product if it is not reimbursed by the NHS. This may apply to products that are not eligible for reimbursement and also to units of reimbursed products that are marketed outside the NHS (i.e., private patients or products that wholesalers may parallel-export from Spain to other EU Member States). The MOH, when receiving notice of the notified price, may only oppose it on the grounds of protecting public interest. The MOH may also establish maximum retail prices for non-reimbursed products sold in Spain (including non-prescription medicinal products) that might be needed for the protection of public health in the context of exceptional health crisis (such as the COVID-19 crisis). The only condition that the law imposes on the MOH is that its decisions must be based on objective factors and must be transparent. The fixed prices will remain valid throughout the duration of the exceptional circumstances that motivated the administrative intervention.

Finally, it is noteworthy to mention that the decision on financing a product does not have to affect all the therapeutic indications of such a product. It is viable that only certain indications of products are financed. In these cases, it is customary for the MOH to make prescriptions of these products subject to a visa system.

How are drug prices set?

As regards setting the price of medicinal products, Spain has always been said to follow a "cost plus" system, under which the maximum PVL should respond to the cost of the product plus a given profit margin. This is what Royal Decree 271/1990 contemplates in accordance with the provisions of Directive EC 89/105.

The cost of the product is to be determined through the analytical application of the "Complete Cost", including R&D, manufacturing costs, and allocations corresponding to commercial and administration costs. In determining the Complete Cost, three groups of variables are established: variables that are considered; variables that are not considered; and variables that are subject to intervention and may be limited:

a) Variables that are considered:
   - Level of activity of the company.
   - Evolution of costs of the company.
   - Evolution of sales of the company.
   - Sales estimates.
   - Impact that manufacture of the product may have on overhead costs of the company.

b) Variables that are not considered since they are treated as unjustified or unnecessary costs:
   - Overvaluation of active substances in comparison with market prices.
   - Excessive royalties (trademarks or technology).
   - Promotion or advertising expenses that are not adequate to the characteristics of the product.
   - Expenses that are not necessary to the normal development of the activities of the company.

c) Variables that are subject to intervention and may be limited by the Government Delegate Commission for Economic Affairs:
   - R&D.
   - Promotion and publicity.

Under the Order of 17 November 1990, R&D expenses are not subject to any limitation. Therefore, R&D expenses may be incorporated into the cost of the product if they are justified, and prior deduction of all public aids granted to the company under R&D programmes. The R&D percentage that may be incorporated to the cost of the product is the equivalent of the percentage that the total expenses of R&D represent of the company's total sales.

As to promotion and advertising expenses, they may only be incorporated into the cost of the product within a range of 12–16% of such cost.

As regards the profit component, the rule is that the target profit of each company shall be within a range of 12–18% on capital allocated to exploitation, including own resources (share capital, update and revaluation accounts, reserves, and others) and external resources with financial cost.

Finally, we note that alternative P&R rulings, such as payment based on results, have become increasingly popular in the last years, particularly for medicinal products with a high budgetary impact and with an important R&D component such as CAR-T medicinal products. In this respect, on 22 October 2019, an information system[7] to support the collection and processing of health outcomes (the so-called "VALTERMED") was officially presented by the MOH.

Issues that affect pricing

As a matter of practice, it has always been known that the price-approval process entails a negotiation with the authorities where the cost and the profit margin are not really the variables that are considered.

Companies should be prepared for prices mainly to be determined by the following two issues:

a) A comparative pharmaco-economic evaluation of the medicine in which the advantages of the new product should be quantified.

b) The price of the product in other EU Member States.

Other than these, companies must be ready for the authorities to consider other issues such as the activities performed by the company in Spain (R&D, manufacturing, etc.) and the relationship with a local company through a co-marketing or licensing arrangement.

It should be noted that under the Royal Legislative Decree 1/2015, the authorities, when dealing with the price-approval process, must take into account the criteria mentioned above when discussing reimbursement approval. It is also true that in the case that a similar product is commercialised in the Spanish market, the authorities may use it in order to determine the price. The price of any competing product inside Spain will undoubtedly serve as a reference for the MOH when discussing the price of a new product.

Moreover, it is also relevant to highlight that PRs, which will include economic evaluations, are expected to significantly increase their influence on P&R negotiations going forward.

Finally, it is worth noting that the Draft Law moves towards requiring pharmaceutical companies to provide documentation related to the costs and public funding received for the research and development of medicines. In this regard, it states that, for the purposes of price setting, "justifiable costs shall be taken into account, including those related to research and development, production, and marketing, as well as the sources of funding for these costs and the degree of public–private collaboration, especially that associated with preclinical and clinical studies conducted in Spain". Furthermore, it introduces the obligation to inform the MOH of any direct or other financial support received from any public administration for the development of their product. These provisions are aligned with the Draft Royal Decree on HTA, which also establishes the obligation to submit "reliable costs of production, research and development, as well as the sources of funding for such costs, whether public or private".

What is the process to appeal a decision?

Companies may file an administrative appeal against the decision taken by the ICPM once this is notified. The appeal must be filed within one month of the date on which the decision is considered to have been notified. These decisions are notified electronically, and companies have a period of 10 days to download the notice once they receive the alert that it is ready to be downloaded.

If the administrative appeal is rejected, the company may file a court action seeking a declaration that the ICPM acted wrongly. However, in P&R cases, the chances of a court action being successful are rather limited given that the MOH has wide discretionary powers on these matters. In general, companies have more chances of being successful at the administrative appeal level if they are able to provide evidence of some major mistake in the administrative decision.

In February 2022, the High Court of Justice of Madrid issued a judgment regarding a ruling of the MOH pursuant to which the reimbursement of a medicinal product was denied on the basis of "cost-effectiveness and budgetary criteria, and the existence of alternatives at low cost". The MAH challenged this decision on the grounds that it lacked sufficient statement of reasons, as it did not explain which studies had been conducted leading to the conclusions, nor did it provide cost-effectiveness data. In support of its claims, the MAH requested the court to appoint an independent expert that concluded that the medicinal product "is a unique, and [...] innovative product" and constitutes a "more beneficial alternative to plasma". Plasma was the lower-priced therapeutic alternative on which the MOH relied to deny reimbursement. The court assessed the expert report as required by law (in accordance with the logical and reasonable rules of evaluation) and concluded that its reasoning was convincing. On the basis of the above, the court ruled that the MOH must re-examine the medicinal product's dossier. On the basis of this judgment, we believe that the administration cannot resort to "technical discretion" in an indiscriminate manner. Whenever solid and substantiated data support different conclusions to those reached by the MOH, companies may rely on such data to defend their position both before the administration and the courts. These data should be introduced in the relevant proceedings by way of expert reports, which may be issued by experts appointed by the court or by a party.

Finally, we note that courts cannot rule on the reimbursement of a medicinal product. For this reason, the effect of the judgment of the High Court of Madrid was the recommencement of the reimbursement proceeding before the MOH. This being said, it is important to highlight that the MOH, when re-examining the case, is bound by the Court ruling and, therefore, the MOH is not permitted to deviate from the Court's considerations and conclusions.

The administrative appeal does not suspend the application of the decision taken by the ICPM. The suspension may be requested when filing the administrative appeal and this request must be answered within one month. In this case, failure to respond by the MOH acts in favour of the appellant, because in such event the suspension is deemed granted. Afterwards, however, the MOH may lift such suspension when deciding on the substance of the appeal. In order for the suspension request to have any chance of success, the applicant must provide evidence that the immediate entry into force of the ICPM's decision will result in irreparable harm. Thus, the threshold is rather high, and this is why we normally consider that the chances of succeeding in a request for suspension are rather low.

One issue that often arises when dealing with administrative procedures in Spain refers to the general climate, and whether companies that are strict in enforcing their rights, and even file administrative or court appeals, may suffer some sort of negative reaction by the MOH. Our opinion, based on over 20 years of experience dealing with these matters, is that neither AEMPS, nor the MOH nor the ICPM penalise companies for defending their position – provided this is carried out under general good faith principles. In some cases, special diplomacy may need to be exerted to ensure that the position of the company is not misinterpreted – it is important to play fair – however, in general terms, it is not something to be too concerned about.

Reference pricing

It is also crucial to bear in mind that in Spain, the public financing of medicines is subject to a reference price system. Once a generic version of a medicinal product is approved, or even in other circumstances if no generic exists in Spain but the main active ingredient of a product has been generally available in the EU for the last 10 years, the MOH may make it subject to a reference price, which will apply to all financed product presentations having the same level 5 of the Anatomical Therapeutic Chemical ("ATC") Classification System of the World Health Organization and identical administration route.

The reference price is the maximum price that the Spanish authorities will pay for these products when they are prescribed and dispatched through an official prescription at a pharmacy. Such price is fixed on the value represented by the lowest cost of the treatment per day of the presentations of the medicinal products included in each group. The reference price system, as an instrument designed to guarantee the sustainability of the public pharmaceutical provision, uses the appearance on the market of competing products at the same ATC 5 Classification to establish a maximum price for the dose necessary for a day of treatment with this substance, which is the maximum price that the NHS will satisfy when the presentations with this substance are dispensed or administered to the patient charged to public funds.

Whether reference price groups must be created with presentations having the same "active substance" or the same "ATC 5 Classification" has been a controversial matter in Spain since 2014. While Article 98 Royal Legislative Decree 1/2015 used to unambiguously contemplate that reference price groups had to be created with product presentations having "the same active substance", it was not unusual for the MOH to conform groups with presentations having the same ATC 5 Classification rather than the same active substance. This way of acting led to many claims before Spanish courts where companies argued that the MOH was inadequately including product presentations with different active ingredients in the same reference pricing group. In 2017, the Supreme Court declared that if the MOH wanted to include two product presentations in the same reference price group on the basis of the ATC 5 Classification, the MOH had to provide sufficient evidence that the active ingredients of the two presentations were the same; otherwise, such presentations could not be included in the same group. This 2017 Supreme Court

decision was followed by many others with the same rationale. In view of these court rulings, the MOH changed its criterion and in 2020, it updated many reference price groups following the active-substance criterion. However, shortly after this decision, Article 98 Royal Legislative Decree 1/2015 was amended to specifically contemplate the ATC 5 level criterion to conform reference price groups. In general terms, when a medicinal product is included in the reference price system, one can expect a 40–50% reduction in the price of the reference/s product/s (the price of generics is likely to be within this range).

Between 2019 and 2025, Spanish courts ruled on several cases related to reference pricing.

A first group of cases revolve around the interpretation of the requisites laid down in Spanish law for the creation of reference price groups. In October 2019, the National High Court (*Audiencia Nacional*) of Spain had the chance to rule on an interesting case regarding the creation of reference groups when no generic or biosimilar exists in Spain.[8] In that case, the plaintiff was the MAH of an exenatide product with two presentations (an immediate release formulation and a delayed release formulation). The plaintiff claimed that the MOH inadequately created a reference price group with both presentations because such presentations were, in fact, the same medicinal product. The Court did not share this view, and resolved that the creation of the group had been correctly carried out by the MOH because the two presentations were to be considered different products for reference price purposes. The Court supported its position with the fact that the two presentations had separate MAs and were commercialised under different trademarks. The Court did not consider the fact that the two presentations were part of the same global MA for data protection purposes. An appeal against this judgment was presented to the Supreme Court. On 1 October 2020, the Supreme Court admitted the appeal and clarified that the controversial matter that was sufficiently relevant to be submitted to the Supreme Court was "whether a reference price group may be created exclusively with presentations of the same medicinal product that, despite being commercialised under different names/trademarks, are owned by the same company". On 28 June 2021, the Supreme Court dismissed the appeal and confirmed that, indeed, a reference price group may be created exclusively with presentations of the same medicinal product that are commercialised under different names/trademarks but owned by the same company. The Supreme Court considered that the fact that the presentations are marketed by the same company is irrelevant for the purpose of forming a reference price group because the law does not give any relevance to this circumstance.

A second group of judgments refer to matters related to the challenging of already-formed reference price groups. In this group, we find particularly interesting a judgment of the National High Court in October 2019, which discussed the test that should be carried out to determine whether the commercialisation of a product is economically viable after the price reduction operated by its inclusion in a reference price group.[9] The Court considered that such test should compare the PVL with the actual commercialisation and manufacturing costs of the product, and disregard any profit margin. Although the Court finally refused the plaintiff's arguments on the basis that the plaintiff did not provide sufficient evidence about the costs associated to the product, the message conveyed by the Court is relevant to the extent that it expressly recognises that a product may be deemed economically inviable if the plaintiff can prove that its PVL falls below its manufacturing and commercialisation costs. As a final comment, we note that in the recent past, Spanish courts have usually been reluctant to accept this type of economic rationale when companies challenge the inclusion of its products in reference price groups.

A third group of judgments refer to cases where plaintiffs argued that the MOH was inadequately conforming reference price groups on the basis of the ATC Classification System. Such cases, however, have become moot because, as mentioned, the law was changed with effect as from 1 January 2021 to contemplate that reference price groups must be created with presentations having the same ATC 5 Classification rather than the same active substance.

Finally, we note that on 3 March 2020, the Spanish Government approved a resolution pursuant to which it was declared that orphan medicinal products with no therapeutic alternative (or with a therapeutic

alternative but providing a significant benefit with respect such alternative) would not be subject to the reference price system.

In 2021–2025, there have been four rulings regarding the subjection of orphan medicinal products to the reference price system.

First, on 2 December 2021, the National High Court issued a judgment of great importance on this matter following an appeal lodged by Farmaindustria against the 2019 Order updating the reference price system. The ruling stated: that Regulation 141/2000 on orphan medicinal products prevails over national regulation; that Article 98(2) of Royal Legislative Decree 1/2015 is an obstacle to the fulfilment of the objectives of European regulation; and that, therefore, Article 98(2) of Royal Legislative Decree 1/2015 should not be applied with respect to orphan medicinal products. Article 98(2) of Royal Legislative Decree 1/2015 is the main rule in Spain regarding the reference price system and states that all presentations of reimbursed medicinal products (regardless of whether they are orphan or not) with the same ATC 5 level and identical route of administration are subject to the reference price system. This judgment of the National High Court did not mention the Resolution of 3 March 2020. However, and with all necessary caveats, it seems reasonable to conclude that, according to the judgment, orphan medicinal products should be excluded from the reference price system unconditionally, as required by Regulation 141/2000's primacy over Spanish national law. This judgment of the National High Court was not appealed and, therefore, it became final.

Second, in February 2022, the Supreme Court issued two judgments that essentially ratified the validity of the 3 March 2020 Resolution. As per the Supreme Court, it is not correct to state that orphan products shall not be, in general, subject to the reference price system. As per the Court, the general rule shall be that orphan medicinal products are subject to the reference price system as any other medicinal product, *ex* Article 98(2) of RDL 1/2015, which, according to the Court, does not contravene Regulation 141/2000. Only those orphan products that comply with the provisions of the 3 March 2020 Resolution (i.e., products with no authorised therapeutic alternative or, if such alternative exists, products that provide a "significant clinical benefit" against the alternative) may be excluded from the reference price system after the corresponding administrative proceeding contained therein.

The Supreme Court ruling of February 2022 created some confusion regarding this matter, but the Reference Pricing Order 2022 has chosen not to include any orphan drugs. The modification of the Spanish Law on Medicines and Medical Devices announced by the Spanish Government in July 2022 may clarify this issue. However, the call for snap general elections in July 2023 will delay the passage of this new law.

Finally, another issue that has become relevant in 2022–2025 due to the increase in raw material prices and logistics costs is the lack of economic profitability of some medicinal products subject to the reference price system. Precisely because they are subject to the reference price system, their price cannot increase. The low cost of some medicinal products, linked to increased production and logistics costs, have raised the need to amend Royal Legislative Decree 1/2015 to provide the MOH with legal tools to exclude certain medicinal products from the reference price system or to exclude entire reference sets.

The Draft Law also includes several changes to the reference price system. The Draft Law provides for the possibility that those medicines which, due to a new indication, a lower dosage, a new pharmaceutical form, a pharmacokinetic advantage, or any other characteristic that objectively results in an improvement for patients or a strategic advantage for the NHS, may be exempt from the reference pricing system or may benefit from the application of a coefficient that raises their price. Along the same lines, the Draft Law also provides for the possibility of upward revision of the prices of strategic medicines included in the reference price system.

The Draft Law also contemplates, among other matters, that hospital-dispensed medicines form independent groups and that orphan drugs and plasma-derived medicines be excluded from the reference price system. As mentioned, the exclusion of orphan drugs had, *de facto*, already been applied in recent years.

Compulsory discounts

For many products, compulsory discounts or chargebacks apply. The general rule in this respect is that products for which no generic competition exists will be subject to a discount of 7.5% on their maximum PVL (4% in the case of orphan drugs). If a product has been on the market for more than 10 years, the discount will apply even if there is no generic competition, unless the product is still covered by product patent protection in any EU Member State.

Annual reviews

The MAH of products with a high budgetary impact might expect that decisions on pricing adopted by the ICPM will be subject to annual review, which may be triggered *ex officio* by the MOH. Actual sales of the product being greater than the sales forecast submitted by the company during the P&R proceeding is one of the reasons that may trigger an *ex officio* price review. In this regard, we note that on 5 June 2020, the High Court of Justice of Madrid confirmed that the price reduction of a product, due to a 15% deviation between the forecasted and actual sales of such product, was in accordance with the law.

From January 2023 until March 2024 (the latest period with available information),[10] the ICPM has reviewed the prices of more than 73 products, leading to an increase in price of 60 products and a reduction in the price of 13.

As one may expect, the *ex officio* annual review procedure will aim to lower the price of the product. Within the procedure, the MOH shall grant the company a period of 10 working days to file documents and allegations in support of its position.

May patients have access to an approved drug while the P&R process is still open?

Under Royal Legislative Decree 1/2015, a medicinal product that has received an MA valid in Spain cannot be placed on the market in Spain until the P&R process has been completed. However, under Royal Decree 1015/2009, in these situations, the product may be available for patients under the rules that apply to products for which a valid MA exists in Spain but which are not commercially available.

These rules allow access to the product if the prescribing doctor, under their own responsibility, considers that the use of such product is indispensable for the treatment of an individual patient because no other equivalent product is available in Spain. An equivalent product is one having the same composition and the same pharmaceutical form. The patient – or the patient's representative – must consent in writing the prescription, after having been informed about the benefits and risks of the treatment, and the written approval of the management direction of the healthcare centre where the patient is treated must be obtained. The law also states that: prior administrative approval from AEMPS for each individual case must be obtained; the prescribing doctor must respect any special restrictions resulting from the protocols approved at the healthcare centre; and they must also report to AEMPS the results of the treatment and any suspected adverse events.

The units of the product supplied under either of these routes can be charged to the healthcare centre requesting such medicinal product. The price is fixed by the importer normally after negotiation with the pharmacy service of the healthcare centre. The common practice is to stick to the "international" price of the product. However, there are some caveats to this: first, as a matter of practice, it is not uncommon that some units provided under this route are supplied free of charge. At present, there is no legal obligation to do so in Spain, but this is not uncommon. Second, if the product is for a patient who has previously participated in a clinical trial with this product in Spain, and the sponsor continues to receive information from the doctor/healthcare centre as regards the treatment results of such patient, then the supply must be free of charge until the product is effectively marketed in Spain after receiving all relevant approvals (Article 31 of Royal Decree 1090/2015 on clinical trials).

We note that Royal Decree 1015/2009 is under review, and it is likely to be replaced in the near future. A public consultation with respect to this initiative was run from December 2020 to January 2021 with the objective to inform all relevant stakeholders and citizens and to invite them for feedback. The need to differentiate the regimes (currently unified under Royal Decree 1015/2009) applicable to access to non-authorised products and to access to authorised but not commercially available products has been identified as one of the topics expected to be addressed with the reform.

As mentioned above, the Draft Law and the Draft Royal Decree on P&R foresee an accelerated and conditional financing system that will enable the most disruptive innovations to be provisionally included in public financing until a final decision is made.

What happens with products for which reimbursement is denied?

Up until very recently, there was a consensus in Spain in the sense that if the MOH decided to deny reimbursement, the MAH could still place the product on the market for patients or hospitals who wish to acquire the product at the notified price. The only two regulatory requirements would be: first, to inform AEMPS about the fact that the product would be commercially available; and second, for hospital use products purchased by hospitals, approval is required from the regional authorities where the hospital is located and are granted as per the process determined by each region.

This consensus has been in danger since May 2019 when the DG Pharmacy issued a report stating that medicines for which a ruling expressly denying reimbursement has been adopted cannot be paid for by hospitals or regional authorities. This report is now the subject of major controversy. Our position is that it is null and void because the DG Pharmacy is not competent, under Royal Decree 1047/2018, which defines their authority, to issue a report that creates a new category of products (those for which a ruling expressly denying reimbursement has been adopted), and which is drafted under terms that restrict the ability of the regions and of hospitals to purchase those products, and the right of patients to have access to them.

Furthermore, we sustain that Article 17.6 of Royal Decree 1718/2010 states that hospitals may buy products that are not reimbursed subject to some special approvals and procedures handled by the regional healthcare services. The report states that Article 17.6 of Royal Decree 1718/2010 refers to medicines not included in reimbursement by the NHS, but not medicines that have expressly received a resolution of no reimbursement. We think that there is no passage of Royal Decree 1718/2010, or of any other law or regulation in Spain, that supports the idea that when Royal Decree 1718/2010 refers to medicines not included in the reimbursement of the NHS, it intends to differentiate between products that are not reimbursed because the law excludes them from reimbursement and those that are not reimbursed because a ruling expressly denying reimbursement has been adopted. This is a case where the general principle of law *ubi lex non distinguit nec distinguere debemus* applies (no differences should be made when the law does not establish them).

In 2019, a Spanish Court had the chance to rule on a significant case regarding the payment by regional authorities of medicinal products for which a ruling expressly denying reimbursement had been adopted.[11] In this case, the plaintiff (a minor patient with a severe genetic disease) claimed against the decision of a regional authority that refused to pay for the treatment that the doctor had prescribed. The plaintiff alleged that the refusal of the regional authority to pay for the treatment constituted a violation of its fundamental rights, including the "right to life", the "right to equality" and the "best interest of the child". The defendant regional authority argued that no fundamental rights were infringed and that there were no reasons to justify the payment of a product that the MOH had decided not to reimburse. The Court ruled in favour of the plaintiff and required the regional authority to pay for the treatment after recognising that the position of the regional authority infringed the right to equality of the patient (other patients in other Spanish regions were receiving the product free of charge) and the best interest of the child. The Court did

not accept any violation of the right to life. As a final note, we point out that although this judgment does not specifically refer to the report of the DG Pharmacy mentioned above, it provides for a solution that is contrary to that of the report.

In March 2020, the High Court of the Basque Country issued an interesting ruling that recognised that denying a patient access to a treatment (even if such treatment is not reimbursed nor authorised in Spain but is authorised in the US) may violate the right to life of such patient if such denial poses a significant risk for the patient's life. In 2020–2022, Spanish courts have ruled on several cases regarding access to non-reimbursed medicines. In all cases, as occurred with the 2019 case outlined in the preceding paragraph, the Court ruled in favour of the plaintiffs (patients) after recognising that the conduct of the administration being sued amounted to an infringement of the right to equality of such patients: patients in the same exact situation were treated differently without any objective reason. A ruling of a Canary Islands Court issued in September 2021 deserves to be highlighted because it insists on the idea that denying a patient access to a treatment may constitute a violation of the right to life in certain occasions.

In May 2022, the MOH issued a report[12] describing the P&R procedure where the MOH insisted on the idea that public entities should only purchase medicinal products that the MOH has decided to reimburse. Although this document has no legal value, it shows the position of the MOH in this very delicate matter. Our position remains the same: we strongly advocate in favour of the right of public hospitals and regions to purchase medicinal products even if such products are not reimbursed by the NHS.

In this regard, we note that the Supreme Court issued two important rulings on 19 February 2024 and 11 April 2024 regarding access to medicinal products that had been expressly denied reimbursement. In both cases, the principle of equality was alleged: while in some regions access to the products was denied, in other regions such access was granted.

The Supreme Court pointed out that if a patient alleges infringement of the principle of equality and provides reasonable indications of discrimination, it is up to the defendant administration to rebut such indications. In one of these two cases, the Supreme Court criticised the High Court of Justice of Extremadura for having required the patient to prove that the exact same circumstances of its case (in which access to the product was denied) were present in other cases where access to the medicinal product was approved. The Supreme Court confirmed that the patient cannot be required to prove the individualised circumstances of the other persons to whom the product was administered. Further, the Court confirmed that that the mere fact of the product not being reimbursed is not a sufficient objective and reasonable justification for denying access to the product. These judgments represent a step forward in terms of equal access to medicinal products in special situations in Spain. The fact that the burden of proof to show that there is no discrimination (once the patient has provided *prima facie* evidence of discrimination) is placed on the Administration rather than on the patient may contribute to reducing inequalities.

Finally, the aforementioned may change in the near future. The Draft Law foresees that medicines not reimbursed, or those that have been excluded from it, may be acquired within the public hospital setting under exceptional circumstances, when necessary to ensure adequate care for patients whose individual conditions require it due to the absence of alternatives or potential impact on public health. This provision is particularly relevant, as its approval would definitively settle the debate over whether hospitals and health services are allowed to acquire medicines under such circumstances.

Confidentiality and transparency

Companies involved in a P&R procedure may need to disclose confidential information to Spanish authorities. Spanish law, in this respect, contemplates that the MOH may request the company to provide information about technical, economic and financial aspects related to the product and to the activities of the company. Article 97 Royal Legislative Decree 1/2015 states that all information that the authorities may obtain from the company in these procedures is confidential. Moreover, under Article 52 of Law

7/2007, which is the general law on public employees, all civil servants are obliged to act in conformity with the law and to abide by the principle of confidentiality.

The decisions of the MOH on P&R are acts of public authority, taken in the ordinary course of its activity, and as such they are subject to the rules on transparency and freedom of information contained in Law 19/2013 on Transparency, Access to Public Information and Good Government. Under Law 19/2013, any person, without the need to prove any special interest, may have access to documents that a public authority has created in the ordinary course of its activity, and the reasons for which such access may be denied are rather limited.

Until 2019, in cases where the Spanish Transparency Council received complaints against the MOH denying access to P&R rulings, it used to decide that the MOH should deliver these rulings to the party that had requested them, only not disclosing those parts of the ruling the transparency of which could cause unfair or disproportionate damage to the company. In these decisions, the Spanish Transparency Council took this position relying on the fact that Spanish law contemplates that the information that a company provides to the MOH when applying for P&R of a drug is confidential.

Between 2019 and 2024, the Spanish Transparency Council has had the chance to rule on several matters regarding access to P&R rulings. The position of the Spanish Transparency Council on this matter has been rather erratic during this period. On the one hand, the Spanish Transparency Council has issued several resolutions ordering the MOH to disclose copies of the rulings whereby the MOH accepted to reimburse certain products and fix their PVL. On the other hand, the Spanish Transparency Council has adopted the contrary position in other cases. In this respect, in September 2019 the Spanish Transparency Council denied the right of a citizen to have access to the P&R ruling of a medicinal product (and, therefore, to its PVL) on the basis that such access would damage the legitimate interests of the company. In this case, the Spanish Transparency Council assessed the value of keeping the PVL confidential from a public interest point of view, claiming that if prices were not confidential in the EU, they would tend to be fixed at a level that could be low for richer countries but too high for countries with less economic capacity, thus making access to certain products difficult.

On another note, it is worth pointing out that the information that the MOH makes public when uploading the minutes of the meetings of the ICMP on its website has increased since mid-2019.

In view of the foregoing, it is clear that both the administrations and the bodies in charge of settling claims arising from requests for access have a significant challenge ahead in order to find the right balance between the protection of commercial, economic and strategic information of companies and the principle of transparency that should govern the activity of the public administration.

In addition to the above, it is relevant to consider that under Spanish rules on public procurement, public contracting bodies are under an obligation to make public the main terms of any contract they enter into with any supplier of any good or service. In the event that the public contracting body understands that such publication may harm legitimate private or public interests, it may only redact the documents and avoid publishing some data after having obtained permission to do so from the Spanish Transparency Council (which will probably be reluctant to agree to not publishing information on the prices at which a hospital is buying a given product).

Between 2019 and 2025, the Spanish Transparency Council has also had the chance to rule on several cases regarding requests to disclose supply prices offered to hospitals. The position of the Spanish Transparency Council in this matter, again, has been erratic. On the one hand, the Spanish Transparency Council has ruled in favour of a citizen who requested the disclosure of a list of all the medicinal products purchased by four specific hospitals from 2016 to 2018 (including units and prices paid for them by the hospitals) and also in favour of another citizen who requested access to the quantities of certain products (and their price) purchased by Spanish hospitals in 2018. On the other hand, the Spanish Transparency Council has issued decisions whereby disclosure requests have been denied.

In this respect, the Spanish Transparency Council ruled against the disclosure of the "annual expenditure of hospitals in Madrid for three specific medicinal products" on the basis that the disclosure would harm the economic and commercial interests of the companies and would distort competition in the market. In some rulings, the Spanish Transparency Council relied on Law 1/2019 on Commercial Secrets to support the denial to release information on unit prices. It is also relevant to mention that during 2019–2025, the Spanish Transparency Council has issued four Interpretative Criteria (1/2019, 2/2019, 3/2019 and 1/2020) on how to evaluate access requests.

Regarding access to P&R rulings, the Interpretative Criterion 1/2019[13] on how to evaluate whether disclosing certain information may cause harm to economic and commercial interests is particularly relevant. In this document, the Spanish Transparency Council states that when the requested information qualifies, in whole or in part, as a business or commercial secret under the terms of Law 1/2019 on Commercial Secrets[14] or is affected, in whole or in part, by a declaration of confidentiality contained in a law or established under the terms of the law, access must be denied by application of the limit of protection of economic and commercial interests established in Article 14.1.h of Law 19/2013.

With respect to the position of the Spanish courts, the judgments published in the period 2019–2022 did not provide for clear and unequivocal criteria on this matter and, as occurs with the Spanish Transparency Council, their position has been rather erratic. In this respect, three rulings regarding access to P&R rulings (July 2023, September 2023 and January 2024) and disclosure of supply prices offered to hospitals (May 2020, March 2021 and April 2024) reached different conclusions. However, in April 2025, the High National Court (*Audiencia Nacional*) issued a strong statement on the matter on three different judgments, leaving little room for doubt (although these rulings may be appealed before the Supreme Court).

On the one hand, a judgment of May 2020 confirmed a resolution of the Spanish Transparency Council that ruled in favour of the disclosure of the unit price for medicinal products paid by Spanish public authorities during 2018. This judgment was appealed and annulled. A Spanish court ruled (March 2021)[15] that providing such information would violate the guarantee of confidentiality established in Article 97 of Royal Legislative Decree 1/2015. In addition, this judgment of March 2021 recognised that providing this information would affect the economic and commercial interests of the pharmaceutical companies that market them. A judgment from the High Court of Justice of the Canary Islands of April 2023 declared that "pharmaceutical companies have a legitimate interest in relation to the reimbursed price of medicinal products, which is obtained from reserved information". According to the Court, the disclosure of the unit price (which in this case was the same as the PVL) can cause serious damage to the company's capacity to compete, and "said price should be considered a trade secret worthy of protection". The High Court of Justice of the Canary Island confirmed that the Law on Public Procurement does not oblige public hospitals to publish the unit price at which they acquire exclusive medicinal products.

On the other hand, there have been three recent first-instance rulings that have ruled that the MOH should grant access to the P&R resolution of three medicinal products. The courts dismissed plaintiffs' arguments and upheld the Spanish Transparency Council's position arguing that Article 97.3 of Royal Legislative Decree 1/2015 does not set out a specific global and systematic regime of the right of access to public information capable of displacing the general regime of Law 19/2013. According to the Court, Article 97.3 of Royal Legislative Decree 1/2015 should only be applied to the technical, economic and financial aspects known by the Administration in the performance of its duties, but not to the resolution on P&R and/or the PVL. In addition, the Court said that there is no evidence that the confidential information provided by pharmaceutical companies during the P&R procedure appears in each P&R ruling. Moreover, according to these judgments, the economic interests of the NHS would not be affected with the publication of the P&R rulings.

These rulings were appealed and the National High Court has just overturned them. In three different rulings of 23 April 2025, the National High Court has concluded that Article 97.3 of Royal Legislative

Decree 1/2015 constitutes a specific access regime that must prevail over the Law 19/2013. The Court concluded that disclosure of the PVL and the reimbursement decision would compromise the confidentiality guaranteed by Article 97.3 of Royal Legislative Decree 1/2015. It pointed out, following a detailed analysis, that disclosure of the PVL would make it possible to infer information on the technical, economic and financial aspects of the medicinal product, as well as to provide a significant insight into the company's activity. In addition, the three judgments emphasised that any decision to grant access to public information under the Law 19/2013 must be based on a proper balancing of the interests at stake, assessing whether there is a public or private interest that justifies granting or denying access to the requested information. In these cases, the Court finds no public or private interest that justifies disclosing the PVL. It considered that maintaining confidentiality is convenient and necessary to protect the interests of companies and also to protect the public interest. The Court accepted the arguments of the MOH that in a highly competitive global pharmaceutical market, it is in the Administration's interest to keep the PVL and the related decisions confidential. In short, confidentiality is a strategic tool that enables the Administration to secure the best possible economic conditions, particularly for innovative medicinal products, thereby benefitting the NHS. These judgments may be appealed before the Supreme Court.

Finally, the Draft Law intends to modify the wording set forth in current Article 97.3 of Royal Legislative Decree 1/2015 to expressly state that both the PVL and the reimbursement conditions shall be confidential.

Policy issues that affect pricing and reimbursement

The general political environment in Spain has affected the pricing of medicinal products. Over the last few years, budget constraints have been constant, and authorities have been strict and careful as regards pricing decisions.

It is relevant to mention that in late 2015, Farmaindustria reached an agreement with the Spanish Government (the "Farmaindustria Agreement") under which pharmaceutical expenditure was not to grow more than real GDP growth. The agreement contemplated chargebacks to be paid by pharmaceutical companies in the event that the expenditure exceeded the agreed ratio. The agreement also contemplated that if the expenditure exceeded the agreed ratio, special measures to rationalise the use of medicinal products may be adopted. These measures, in essence, would imply barriers for prescription of high-budgetary impact drugs.

The Farmaindustria Agreement was fully effective until 30 June 2020. Since then, Farmaindustria and the Spanish Government have been negotiating a new agreement. No agreement has been reached so far.

With respect to the implementation of the Farmaindustria Agreement, it is worth mentioning that at the end of 2021, the members of Farmaindustria made a claw-back payment of approx. €331 million. Such payment referred to the financial year 2019 when the agreement was still in force.

As regards more specific groups of medicines, we would also like to mention the special situation for rare disease medicines in Spain. In 2009, the Spanish MOH launched the Rare Diseases Strategy of the Spanish NHS. This Strategy was approved by the Interterritorial Council of the Spanish NHS, a committee on which the MOH sits together with representatives of all the Autonomous Regions. The Rare Diseases Strategy of the Spanish NHS was therefore a document supported by the central Spanish Government and also by all the Autonomous Regions. One of the objectives of the Strategy was to secure prompt access to treatments, and the recommendation to such effect was to shorten the periods for P&R approval once an orphan drug has obtained the relevant MA. This recommendation was confirmed when the Strategy was updated in June 2014.

Emerging trends

New Law on medicinal products and medical devices

As mentioned above, the MOH published the Draft Law to gather the opinions of interested parties. Apart from the innovations already mentioned in this chapter, the Draft Law includes the following new provisions related to P&R, prescribing, dispensing and purchasing medicinal products:

Substitution of medicinal products

One of the most significant changes in the Draft Law concerns the regulation of the pharmacist's substitution authority. Currently, biological medicines and medicines for the respiratory system administered via inhalation are examples of medicines that the AEMPS considers non-substitutable due to their bioavailability characteristics and narrow therapeutic range. In these cases, pharmacists cannot substitute them without prior consent from the prescribing physician. The Draft Law modifies this rule and opens the door for pharmacists to substitute these medicines at the point of dispensing. According to the Draft Law, only those medicines that the AEMPS determines to be non-substitutable "due to their characteristics" will be exempt from substitution.

Supply of non-authorised medicinal products

Under Royal Decree 1015/2009, patients in Spain may access non-authorised medicinal products. Under the current Spanish law and practice, there is no requirement to provide these products free of charge. The price is normally negotiated between the company and the hospital individually and the common practice is to stick to the "international" price of the product. However, the Draft Law establishes the obligation to supply free of charge, "generally", all medicines used prior to obtaining MA.

Homogeneous groups and Selected Price System

The introduction of the new Selected Price System ("SPS") in the Draft Law has been much contested by many stakeholders in the sector, including Aeseg, Biosim, the General Council of Pharmaceutical Colleges of Spain, Farmaindustria, and Fedifar.

As currently outlined in the Draft Law, the SPS will apply to medicines included in homogeneous groups. Each homogeneous group will include presentations of medicines with the same active ingredient and dosage. Unlike the current Royal Legislative Decree 1/2015, the package sizes of presentations included in each homogeneous group will not be required to be identical and may vary within a certain range. Pharmaceutical forms may also differ, provided they are "comparable", but in any case, the medicines must be substitutable.

Under the proposed system, pharmaceutical companies will be required every six months to submit their price offers to the MOH for the medicines included in the homogeneous groups. Based on these offers, the MOH will classify the presentations within each homogeneous group into three categories: (i) presentations with the lowest price; (ii) presentations with selected prices (price range); and (iii) non-selected presentations. Presentations that set the lowest price within the homogeneous group will not be subject to compulsory discounts.

The proposed SPS is intrinsically linked to dispensing regulations, which are also modified in the Draft Law. In this regard, the Draft Law proposes that the dispensing of medicines included in a homogeneous group be carried out as follows:

a) If the patient shows no preference, the presentation with the lowest price within the homogeneous group will be dispensed. The patient's contribution will correspond to a percentage of that price.

b) If the patient prefers a presentation with a selected price, that presentation will be dispensed, and the patient's contribution will correspond to a percentage of the price of the dispensed presentation.

c) If the patient prefers a non-selected presentation, that presentation will be dispensed; however, the patient's contribution will not correspond to a percentage of the price of that presentation but rather to a percentage of the lowest-priced presentation, plus the difference between the lowest price and the price of the presentation actually dispensed.

One of the key points of criticism is that an excessive focus on the price factor, as proposed in the Draft Law, can be counterproductive and lead to issues such as supply shortages, adherence problems, or negative impacts on the business fabric, among others. In this regard, one of the main risks of the SPS lies in the fact that by prioritising the lowest price almost exclusively as the selection criterion, it discourages the participation of operators with quality standards, logistical capacity, and long-term commitment. This type of system may attract extremely low bids, often unsustainable, from actors lacking robust structures or sufficient supply guarantees. Moreover, in a market like the pharmaceutical sector – where supply continuity is critical for public health – such situations can easily lead to shortages, especially in essential or low-margin medicines.

Excessive downward pressure on prices could compromise the economic viability of certain products, affecting not only their future availability but also companies' ability to maintain investments in innovation, quality, or even regulatory adaptations. Paradoxically, this effect could reduce competition in the medium term and generate greater dependence on a few suppliers, which runs counter to the declared objective of the system itself. Implementing a system that exclusively prioritises the lowest price may also have indirect effects on incremental innovation and the availability of differentiated formulations, adapted presentations, or technological improvements that, while not radically novel, provide clinical or logistical value.

Next steps

The Draft Law has been published for public hearing. Once the public hearing period has concluded, it is the MOH's responsibility to thoroughly analyse the contributions received from the various sector stakeholders and the general public. From this analysis, a new draft will be produced which, after requesting the required mandatory reports, will be submitted for approval as a Final Draft Law by the Spanish Government. Subsequently, the Final Draft Law will be sent to the General Courts for parliamentary processing, during which the text may be subject to further amendments and modifications. The duration of this entire process is uncertain, but based on our experience with similar processes and the unstable parliamentary majorities supporting the Government, we believe it is reasonable to expect that it will be difficult for the new law to be approved before the end of the first half of 2026.

Other trends

In December 2024, the Spanish Government approved the Strategy for the Pharma Industry 2024–2028[16] (the "Pharma Strategy"). The Pharma Strategy is a Government plan aimed at strengthening the pharmaceutical sector as a key pillar of the country. Its main goals are to ensure fair access to medicines, promote innovation, and secure strategic autonomy through a strong and sustainable supply chain. It encourages public–private collaboration, boosts research, and improves regulation to position Spain as a global leader in the bio industry and health in the coming years. The strategy also proposes a series of regulatory measures, most of which are included in the Draft Law and in the Royal Decree on P&R and the Royal Decree on HTA. How these objectives will be implemented and translated into specific measures remains to be seen over time.

Successful market access

P&R procedures in Spain entail a great deal of negotiation. As in any negotiation, defining a strategy will be of great importance. When doing so, companies must not forget that budgetary constraints in Spain

are important, so they must be ready to be confronted with incredibly strong positions by the authorities that intervene in the process.

Successful market access depends on many aspects; however, the basics in order to access pharmaceutical provision are: to prove additional therapeutic value over the existing medicines that are already being financed (for which the IPT will be essential); and to be open to entering into risk-sharing agreements with the MOH.

Endnotes

1 https://www.hacienda.gob.es/CDI/Gasto%20Sanitario/SERIE%20Gasto%20Farmac%c3%a9utico%20y%20Sanitario.xlsx

2 https://www.farmaindustria.es/web/wp-content/uploads/sites/2/2025/04/Farmaindustria-Memoria-2024.pdf

3 https://www.ine.es/dyngs/Prensa/PROP20242074.htm

4 "*Financiación pública y fijación del precio de los medicamentos*", J. Vida, Administrative Law Professor at Carlos III University of Madrid, chapter 22 of the *Tratado de Derecho Farmacéutico* by Jordi Faus and José Vida (*Thomson Reuters Aranzadi*, 2017).

5 https://www.sanidad.gob.es/estadEstudios/estadisticas/sisInfSanSNS/tablasEstadisticas/InfAnualSNS2023/INFORME_ANUAL_2023.pdf

6 See, for all, the case of 18 December 2014 on Law 12/2010 on medicines that may be dispensed in the Autonomous Community of Galicia.

7 https://www.sanidad.gob.es/areas/farmacia/infoMedicamentos/valtermed/home.htm

8 Judgment of the National High Court (*Audiencia Nacional*) of 3 October 2019 (ROJ: SAN 3786/2019).

9 Judgment of the National High Court (*Audiencia Nacional*) of 2 October 2019 (ROJ: SAN 3723/2019).

10 https://www.sanidad.gob.es/areas/farmacia/precios/comisionInteministerial/acuerdosNotasInformativas/home.htm

11 Judgment of the High Court of Justice of Murcia (*Tribunal Superior de Justicia de Murcia*) of 19 July 2019 (ROJ: STSJ MU 1751/2019).

12 https://www.sanidad.gob.es/areas/farmacia/precios/docs/20220526_Doc_Infor_Financiacion_Med_Esp.pdf

13 https://www.consejodetransparencia.es/dam/jcr:5d1e8ca3-2abe-4b2b-9689-cb40cdfe2e16/C1_2019_intereseseconycomerciales.pdf

14 Law 1/2019 on Commercial Secrets transposes into Spanish law Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information – trade secrets – against their unlawful acquisition, use and disclosure.

15 Judgment of the National High Court (*Audiencia Nacional*) of 30 March 2021 (ROJ: SAN 1544/2021).

16 https://www.sanidad.gob.es/areas/farmacia/infoIndustria/docs/Estrategia_de_la_industria_farmaceutica.pdf

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