Capsulas

The HTA Regulation: one year on

Emerging legal challenges after its first year of application

One year after the entry into force of Regulation (EU) 2021/2282 on Health Technology Assessment (HTA), attention is increasingly shifting to the practical challenges of its implementation. Early experience shows that this new framework not only transforms the way clinical evidence is assessed but also raises important legal issues that merit attention.

Limited access to Joint Scientific Consultations (JSCs)

The first challenge concerns Joint Scientific Consultations (JSCs). These consultations, similar to the EMA's scientific advice, are intended to allow companies to obtain early guidance on clinical trials design and align evidence generation with joint assessment requirements. JSCs are already operational and provide a unique forum for dialogue with HTA authorities, which may prove decisive for a medicinal product's development strategy.

However, access to these consultations is limited. After only one year, it has become apparent that capacity constraints means that not all companies can benefit from them. In practice, access may depend more on available resources than on scientific or clinical criteria. From a legal perspective, this poses a challenge in terms of fairness: Article 41 of the Charter of Fundamental Rights of the EU (CFR) guarantees the right to good administration, including equal treatment and non-discrimination. If access to JSCs is restricted for resources constraints, questions arise as to how fair access of companies can be ensured, particularly when such consultations may strongly influence development strategies.

Lack of predictability around the definition of PICOs

Another key issue concerns the definition of PICOs (Population, Intervention, Comparator and Outcomes) in Joint Clinical Assessments (JCAs). Member States may propose multiple PICOs, which creates uncertainty regarding the scope of the assessment and how to organise the generation of evidence.

This is particularly problematic when comparators include off-label uses or interventions that differ significantly from those being evaluated. According to the HTA Coordination Group's Guidance on the Scoping Process (13 November 2024), comparators may include unauthorised treatments or non-pharmacological interventions. A single PICO could end up facing alternatives with very different regulatory realities and development plans; for example, an industrially manufactured product and a magistral formula. This not only complicates the preparation of evidence, but also creates an incentive challenge: an authorised, industrially developed medicinal product will have borne the full costs and requirements of the entire regulatory process, whereas an off-label comparator or magistral formula may not have undergone the same level of development.

From a legal standpoint, this lack of predictability affects legal certainty and undermines companies' ability to plan clinical evidence and launch strategies. Ensuring that PICOs are proportionate and reasonable is therefore essential to comply with the principles of good administration under Article 41 CFR.

Further uncertainty arises from the strict procedural timelines under the HTA Regulation. The 100-day deadline for preparing HTA dossiers is particularly challenging, as it depends on the timing of EMA procedures and may change unexpectedly.

This creates compliance risks, especially for small and medium-sized companies with limited regulatory capacity. The problem is compounded by the possibility that several PICOs may apply to a single product and by the lack of clarity regarding the consequences of submitting an incomplete dossier or failing to submit one at all.

Together, these factors increase legal uncertainty and highlight the need for careful planning.

Conflicts of interest

The European HTA system relies on highly specialised experts to carry out JCA. However, the more innovative the technology (such as ARMPs or orphan medicinal products), the smaller the pool of available experts and the greater the likelihood of conflicts of interest. Regulation (EU) 2021/2282 acknowledges the challenge of reconciling the requirement for impartial procedures with the need to preserve the scientific rigour and technical depth of assessments that demand an exceptionally high level of expertise.

Implementing Regulation 2024/2745 adopts a pragmatic approach, allowing experts with conflicts of interest to participate in exceptional cases where no viable alternative exists, provided strict transparency and risk-mitigation measures are applied. This solution reflects a significant shift in the legal debate: conflicts of interest are no longer conceived as a binary category (existing or non-existent) but as a factor to be managed in light of the overall public interest and the need for high-quality scientific input. Experience to date confirms that the real challenge lies in balancing independence, expertise and legal certainty in an increasingly demanding regulatory environment.

The limited role of the developers in the HTA Process

The procedural design of Regulation (EU) 2021/2282 assigns the developer a particularly restricted role at key stages of the JCAs. At the scoping stage, Article 8.6 of the HTA Regulation expressly excludes health technology developers from defining the PICO parameters, which are constructed primarily on the basis of extracts from the dossier submitted to the EMA and contributions from Member States. Unlike patients and clinical experts, developers are not granted a formal channel for providing substantive comments on the scope of the assessment, despite this being a determining factor in the outcome of the HTA.

This limited position is maintained in subsequent stages of the procedure. The scoping clarification meetings provided for in Implementing Regulation (EU) 2024/1381 are purely explanatory in nature and do not allow the developer to influence the content of the scope, in addition to being optional. Likewise, the Implementing Regulation restricts the developer's right to comment on the draft JCA report to the identification of factual or technical errors, with particularly short review deadlines.

These restrictions raise an important legal question: is the procedure for preparing a JCA compatible with the right to be heard and the right to good administration enshrined in Article 41 of the CFR? Although the answer is nuanced, it is clear that the Regulation does not grant the developer the weight it ought to have in the process, thereby missing the opportunity to make the most of the direct knowledge of those who know the product best.

Although the company has its own interest in the assessment, this should not be used to restrict its

participation at various stages. The real challenge, as noted in the section on conflicts of interest, is to recognise and manage this conflict in a balanced manner, rather than using it as an argument to reduce the developer's participation.

Uncertainty regarding the use of JCAs in national procedures

A further question raised by Regulation (EU) 2021/2282 concerns how the relationship between JCAs and national assessment and decision-making procedures will be structured in practice. The Regulation itself adopts a deliberately ambivalent formulation: on the one hand, JCAs are expressly non-binding and "should therefore not affect the discretion of Member States to carry out assessments on the clinical added value of the health technologies concerned" (recital 14); on the other hand, Member States are required to "give due consideration" to these reports and to attach them to their national assessments, also informing the Coordination Group of how they have been used (Articles 13 and 14 of the Regulation). This combination of formal non-binding nature and obligation to take them into account leaves ample room for divergent reinterpretations at national level, with the consequent risk of fragmentation.

In the case of Spain, this uncertainty is amplified by the decentralised structure of the National Health System itself. Although the Ministry of Health has expressed its intention to respect joint clinical assessments developed at European level, the current legal framework allows JCAs to be integrated into complex national processes, involving multiple authorities and decision-making levels, and in which additional assessments or successive re-evaluations cannot be ruled out (e.g. at the level of the Autonomous Communities or even at hospital level). All this takes place in an area – the allocation of resources for national health systems and pricing and reimbursement decisions – that EU primary law reserves to the Member States (Article 168 TFEU).

The question therefore remains open as to whether the new system will succeed in reducing duplication of clinical assessments and achieving genuine harmonisation, or whether national application of JCAs will ultimately reproduce, in new forms, the divergences the Regulation seeks to address.

Conclusions

One year after the launch of European HTA, the legal and procedural challenges are evident: limited access to JSCs, uncertain PICOs, off-label comparators, tight deadlines and restricted developer participation. This compels companies to plan strategically, combining science and law from the earliest stages.

Added to this is national-level development. The Royal Decree on Health Technology Assessment, which will regulate the national stage, is at an advanced stage of preparation and was submitted o the Council of State for revision this month. It is expected to be approved soon by the Council of Ministers. The new Law on Medicinal Products and Medical Devices, on the other hand, remains subject to an uncertain legislative timetable. These national regulations will complete the European framework and shape the next phase of adaptation for companies.

The first year delivers a clear message: European HTA is not only a technical challenge, but also a strategic and legal one. Those able to anticipate developments and act with flexibility will be better positioned to demonstrate the value of their technologies and remain competitive in an increasingly demanding market. Close attention to national developments will be essential to finalise the regulatory framework and support informed decision-making.