



The European Generic medicines Association
"Making Medicines Affordable"

Main outcomes of the Pharma Review

after the Compromise between the Council and the European Parliament

December 2003



Main outcomes of Pharma Review after Compromise between Council and EP – Dec 03

Issue	Agreement Council and EP 2003	Text
Data Exclusivity	<p>8+2+1 for all procedures</p> <p>(8 years DE + 2 years market protection + 1 year for new indications)</p> <p>No restriction on manufacturing during + 2 years market protection</p> <p>+ 1 year DE for new indication only once</p>	<p>Article 14, paragraph 11 (Regulation)</p> <p><i>(11) Without prejudice to the law on the protection of industrial and commercial property, medicinal products for human use which have been authorised in accordance with the provisions of this Regulation shall benefit from an eight-year period of protection and a ten-year period of marketing protection, in which connection the latter period shall be extended to a maximum of 11 years if, during the first eight years of those ten years, the marketing authorisation holder obtains an authorisation for one or more new therapeutic indications which, during the scientific evaluation prior to their authorisation, are held to bring a significant clinical benefit in comparison with existing therapies.</i></p> <p>Art. 10 (Directive 2001/83/EC)</p> <p><i>1. By way of derogation from Article 8(3)(i), and without prejudice to the law relating to the protection of industrial and commercial property, the applicant shall not be required to provide the results of pre-clinical tests and of clinical trials if he can demonstrate that the medicinal product is a generic of a reference medicinal product which is or has been authorised under Article 6 for not less than eight years in a Member State or in the Community.</i></p> <p><i>A generic medicinal product authorised pursuant to this provision shall not be placed on the market until ten years have elapsed from the initial authorisation of the reference product.</i></p> <p><i>The ten year period referred to in the first sub-paragraph shall be extended to a maximum of eleven years if, during the first eight years of those ten years, the marketing authorisation holder</i></p>

	Prospective implementation	<p><i>obtains an authorisation for one or new therapeutic indications which, during the scientific evaluation prior to their authorisation, are held to bring a significant clinical benefit in comparison with existing therapies</i></p> <p>Article 1a (new) (amending Directive) <i>The periods of protection foreseen in Article 1, point 8, that modifies Article 10 (1), do not apply to reference medicinal products for which an application for authorisation has been submitted before the date of transposition referred to in Article 2 (1).</i></p> <p>Article 88a (new) (amending Regulation) <i>The periods of protection foreseen in Articles 14 (11) and 39 (10) do not apply to reference medicinal products for which an application for authorisation has been submitted before the date referred to in Article 89 (2)</i></p>
Single Marketing Authorisation (no Data exclusivity on line extension)	Included Data exclusivity for Line extension stopped	<p>Article 6.1. (Directive) <i>When a medicinal product has been granted an initial marketing authorisation in accordance with the first subparagraph, any additional strengths, pharmaceutical forms, administration routes, presentations, as well as any variations and extensions shall also be granted an authorisation in accordance with the first subparagraph or be included in the initial marketing authorisation. All these marketing authorisations shall be considered as belonging to the same global marketing authorisation, in particular for the purpose of the application of Article 10(1).</i></p>
Data exclusivity on new indications for WEU	Non-cumulative 1 year of Data Exclusivity on new indications for well established products	<p>Article 10, paragraph 4 (a) (new) <i>4a. In addition to the provisions laid down in paragraph 1, where an application is made for a new indication for a well-established substance, a non-cumulative period of one year of data exclusivity shall be granted, provided that significant pre-clinical or clinical studies were carried out in relation to the new indication.</i></p>
Data exclusivity on OTC Switch	1 year	<p>Article 74a (Directive) <i>Where a change of classification of a medicinal product has been authorised on the basis of significant pre-clinical tests or clinical trials, the competent authority shall not refer to the results of those tests or trials when examining an application by another applicant for or holder of marketing authorisation for a change of classification of the same substance for one year after the initial change was authorised</i></p>

Bolar	Included. Tests, trials and authorisation of generic medicine are not patent infringing	Article 10, paragraph 5 (Directive) <i>5. Conducting the necessary tests and trials with a view to the application of paragraphs 1, 2, 3 and 4 and the consequential practical requirements shall not be regarded as contrary to patent rights or to supplementary protection certificates for those medicinal products."</i> ;
Export generic version of patent products for compulsory licence in third country	Not Included (Commission undertaking to included in new measures to be proposed in 2004)	
Generic definition	Included - taking into account public health concerns raised by European Parliament but based on current NTA and ECJ.	Article 10, paragraph 2, point (b) <i>(b) "generic medicinal product" shall mean a medicinal product which has the same qualitative and quantitative composition in active substances and the same pharmaceutical form as the reference medicinal product, and whose bioequivalence with the reference medicinal product has been demonstrated by appropriate bioavailability studies. The different salts, esters, ethers, isomers, mixtures of isomers, complexes or derivatives of an active substance shall be considered to be the same active substance, unless they differ significantly in properties with regard to safety and/or efficacy. In such cases, additional information providing proof of the safety and/or efficacy of the various salts, esters or derivatives of an authorised active substance must be supplied by the applicant. The various immediate-release oral pharmaceutical forms shall be considered to be one and the same pharmaceutical form. Bioavailability studies need not be required of the applicant if he can demonstrate that the generic medicinal product meets the relevant criteria as defined in the appropriate detailed guidelines.</i>

<p>“Is marketed” issue of originator withdrawal of MA to avoid generic competition</p>	<p>Resolved</p>	<p>Article 10.1 (Directive) <i>... the applicant shall not be required to provide the results of pre-clinical tests and of clinical trials if he can demonstrate that the medicinal product is a generic of a reference medicinal product which is or has been authorised ...</i> <i>(also paragraph 3 introducing the ‘European Reference Product’, see below)</i></p>
<p>Application of abridged procedure for Bio-similar where appropriate.</p>	<p>Included</p>	<p>Recital 14a (new) (Directive) <i>Biological medicinal products similar to a reference medicinal product do not usually meet all the conditions to be considered as a generic medicinal product mainly due to manufacturing process characteristics, raw materials used, molecular characteristics and therapeutic modes of action.</i> <i>When a biological does not meet all the conditions to be considered as a generic medicinal product, the results of appropriate tests should be provided in order to fulfil the requirements related to safety (pre-clinical tests) or to efficacy (clinical tests) or to both.</i></p> <p>Article 10, paragraph 4 (Directive) <i>4. Where a biological medicinal product which is similar to a reference biological product does not meet the conditions in the definition of generic medicinal products, owing to, in particular, differences relating to raw materials or in manufacturing processes of the biological medicinal product and the reference biological medicinal product, the results of appropriate pre-clinical tests or clinical trials relating to these conditions must be provided. The type and quantity of supplementary data to be provided must comply with the relevant criteria stated in Annex I and the related detailed guidelines. The results of other tests and trials from the reference medicinal product's dossier shall not be provided.</i></p>
<p>European Reference Product</p>	<p>Included</p>	<p>Article 10 (Directive) <i>The first subparagraph shall also apply if the reference medicinal product was not authorised in the Member State in which the application for the generic medicinal product is submitted. In this case, the applicant shall indicate in the application form the name of the Member State in which the reference medicinal product is or has been authorised. At the request of the competent authority of the Member State in which the application is submitted, the competent authority of the other Member State shall transmit within a period of one month, a confirmation that the reference medicinal product is or has been authorised together with the full composition of the reference product and if necessary other relevant documentation.</i></p>

Legal basis for SmPC harmonisation	Included	<p style="text-align: center;">Article 30.2. (Directive)</p> <p><i>2. In order to promote harmonisation of authorisations for medicinal products authorised in the Community, Member States shall, each year, forward to the coordination group a list of medicinal products for which a harmonised summary of product characteristics should be drawn up.</i></p>
Provision to overcome usage patent problems	Included	<p style="text-align: center;">Article 3, paragraph 3, point b) (Regulation)</p> <p><i>(b) the summary of the product characteristics is in all relevant respects consistent with that of the medicinal product authorised by the Community - except for those parts of the summary of product characteristics referring to indications or dosage forms which are still covered by patent law at the time the generic medicine was marketed;</i></p>
Clear use of both Centralised and Decentralised/ MRP for generic version of CP approved reference products	Included	<p style="text-align: center;">Art 3 (Regulation)</p> <p><i>3. A generic medicinal product of a reference medicinal product authorised by the Community may be authorised by the competent authorities of the Member States in accordance with Directive 2001/83/EC and Directive 2001/82/EC under the following conditions:</i></p> <p><i>(a) the application for authorisation is submitted in accordance with Article 10 of Directive 2001/83/EC or Article 13 of Directive 2001/82/EC;</i></p> <p><i>(b) the summary of the product characteristics is in all relevant respects consistent with that of the medicinal product authorised by the Community; and</i></p> <p><i>(c) the generic medicinal product is authorised under the same name in all the Member States where the application has been made. For the purposes of this provision, all the linguistic versions of the INN (international non-proprietary name) shall be considered to be the same name.</i></p>
Scope of compulsory CP	Centralised Procedure not compulsory for all NCEs	<p style="text-align: center;">Annex to Regulation</p> <p><i>- biotech;</i> <i>- NCEs for AIDS, Cancer, Diabetes, Neurodegenerative disorder, autoimmune diseases and other immune dysfunctions, viral diseases</i> <i>- orphan medicinal products</i></p>

		<i>After 4 years, the Commission, having consulted the Agency, may present any appropriate proposal modifying point 3 of the Annex and the Council shall take a decision on that proposal by qualified majority.</i>
Creation of decentralised procedure allowing co-concurrent RMS and CMS applications	Included	<p style="text-align: center;">Article 28 (Directive)</p> <p>3. <i>In cases where the medicinal product has not received a marketing authorisation at the time of application, the applicant shall request the reference Member State to prepare a draft assessment report, a draft summary of product characteristics, and a draft of the labelling and package leaflet. The reference Member State shall prepare these draft documents within 120 days of receipt of a valid application and shall send them to the concerned Member States and to the applicant.</i></p> <p>4. <i>Within 90 days of receipt of the documents referred to in paragraphs 2 and 3, the Member States concerned shall approve the assessment report, the summary of product characteristics, and the labelling and package leaflet and shall inform the reference Member State to this effect. The reference Member State shall record the agreement of all parties, close the procedure and inform the applicant accordingly.</i></p> <p>5. <i>Each Member State where an application has been submitted in accordance with paragraph 1 shall adopt a decision in conformity with the approved assessment report, the summary of product characteristics and the labelling and package leaflet as approved, within 30 days of acknowledgement of the agreement.</i></p>
Sunset clause for market authorisation	3 years with <u>general</u> exception for public health reasons	<p style="text-align: center;">Art. 24 (Directive)</p> <p><i>Any authorisation which within three years of its granting is not followed by the actual placing on the market of the authorised product in the authorising Member State shall cease to be valid.</i></p> <p>5. <i>When an authorised product previously placed on the market in the authorising Member State is no longer actually present on the market for a period of three consecutive years, the authorisation for that product shall cease to be valid.</i></p>
Renewals	<u>One</u> five-year renewal	<p style="text-align: center;">Art. 24 (Directive)</p> <p><i>Without prejudice to paragraphs 4 and 5, a marketing authorisation shall be valid for five years.</i></p> <p><i>Once renewed, the marketing authorisation shall be valid for an unlimited period, unless the competent authority decides, on justified grounds relating to pharmacovigilance, to proceed with one additional five-year renewal in accordance with paragraph 2.</i></p>

Different linguistic versions of INN	Included	<p style="text-align: center;">Art 3 (Regulation)</p> <p><i>c) the generic medicinal product is authorised under the same name in all the Member States where the application has been made. For the purposes of this provision, all the linguistic versions of the INN (international non-proprietary name) shall be considered to be the same name.</i></p>
Expanding advertising/ information	Excluded	
EMEA Management Board	25 for Member States, 2 for Commission, 2 for Parliament and some other interested parties. <u>No Industry</u>	<p style="text-align: center;">Art 65.1 (Regulation)</p> <p><i>The Management Board shall consist of one representative of each Member State, two representatives of the Commission and two representatives of the European Parliament.</i></p> <p><i>In addition, two representatives of patients' organisations, one representative of doctors' organisations and one representative of veterinarians' organisations shall be appointed by the Council in consultation with the European Parliament on the basis of a list drawn up by the Commission and which includes appreciably more names than there are posts to be filled.</i></p>
Obligation of <u>uninterrupted</u> supply of medicinal product	<u>"uninterrupted"</u> supply changed to <u>"appropriate"</u>	<p style="text-align: center;">Article 81, subparagraph 2 (Directive 2001/83/EC)</p> <p>The holder of a marketing authorisation for a medicinal product and the distributors of the said medicinal product actually placed on the market in a Member State shall, within the limits of their responsibilities, ensure appropriate and continued supplies of that medicinal product to pharmacists and persons authorised to supply medicinal products so that the needs of patients in the Member State in question are covered.</p>