Answer to the request for feedback on the revision of the EU general pharmaceutical legislation

The European Respiratory Society, (ERS) is one of the leading medical organisations in the respiratory field, with a growing membership spanning over 160 countries. ERS prioritises science, education and advocacy in order to promote lung health, alleviate suffering from disease and drive standards for respiratory medicine globally.

Introduction

The European Respiratory Society (ERS) appreciates the efforts made by the European Commission (EC) to revise the EU general pharmaceutical legislation with an extensive and impressive proposal, balancing equal access to medicines for all European citizens while supporting scientific innovation and development. The high level of public health protection and harmonisation already achieved for the authorisation of medicinal products in Europe is expanded by ensuring more timely, safe and equitable access to medicines.

The Pharmaceutical Package has the potential to create a suitable framework for research, development and competitiveness to thrive in Europe. The strong involvement and commitment of the Commission to stakeholders working in the healthcare sectors, during the consultation phase, is well reflected in the proposal. This package has the potential to create an attractive environment to improve availability, accessibility and affordability, especially with measures such as the new and improved incentive system or the reform of intellectual property ensuring a simplified, workable system. The focus on securing supply and how to address shortages through specific measures is particularly welcome.[1] The measures will clearly help to maintain high standards of quality, safety and efficacy of medicines.

Specifically, the European Respiratory Society, would like to present feedback on the following topics covered in the Regulation and Directive:

[1] Including stronger obligations on marketing authorisation holders to notify potential or actual shortages and marketing withdrawals, cessation and suspensions in advance of a foreseen interruption to continued supply of a medicinal product to the market; European Commission. Proposal for a Regulation of the European Parliament and of the Council https://eur-lex.europa.eu/resource.html?uri=cellar:e3f40e76-e437-11ed-a05c-01aa75ed71a1.0001.02/DOC_1&format=PDF.

Unmet Medical Needs

The new approach to unmet medical needs is a welcome improvement compared to the previous legislation and clarifies the requirements[2] for a medicinal product to be considered as addressing an unmet medical need.[3]

Through the novel system of incentives, it will allow the revision to have a positive influence on competitiveness. It will also facilitate the early entry into the market of generic and biosimilar medicinal products, hopefully providing better access and affordability for patients.

Moreover, important efforts are made to fill the gap with advanced therapy medicinal products – ATMPs, as explained in Article 2 of the Directive. This clause allows for ATMPs to be prepared under hospital exemptions to ensure "individual medical prescription for a custom-made product for an individual patient" (Article 2 subparagraph 1). Keeping healthcare professionals and patients at the centre of this proposal will help to ensure that no-one is left behind.

Orphan and Paediatrics

The European Respiratory Society commends the European Commission's approach to the Orphan and Paediatric medicinal products, where healthcare professionals and patients are kept at the centre of the legislation, especially with regard to providing proper and understandable information on the safe and effective use of medicinal products in the paediatric population.

We would like to make the following specific observations:

- ERS supports the list of requirements in Article 70 of the Regulation "Orphan medicinal products addressing a high unmet medical need" which better defines the requirements needed for an orphan medicinal product to be considered addressing a high unmet medical need;[4]

[2] Article 83 (1): "A medicinal product shall be considered as addressing an unmet medical need if at least one of its therapeutic indications relates to a life threatening or severely debilitating disease and the following conditions are met: (a) there is no medicinal product authorised in the Union for such disease, or, where despite medicinal products being authorised for such disease in the Union, the disease is associated with a remaining high morbidity or mortality;(b) the use of the medicinal product results in a meaningful reduction in disease morbidity or mortality for the relevant patient population."

[3] European Commission. Directive of the Parliament and of the Council on the Union code relating to medicinal products for human use, and repealing Directive 2001/83/EC and Directive 2009/35/EC. https://eur-lex.europa.eu/resource.html?uri=cellar:bfcb9e00-e437-11ed-a05c-01aa75ed71a1.0001.02/DOC_1&format=PDF. Article 83, pp.100.

[4] European Commission. Proposal for a Regulation of the European Parliament and of the Council https://eur-lex.europa.eu/resource.html?uri=cellar:e3f40e76-e437-11ed-a05c-01aa75ed71a1.0001.02/DOC_1&format=PDF. Article 70, pp.86-87.

- We hope that the new paediatric investigation plans (PIPs) are a concept that will advance access to medicines for children.[5] The new proposal envisages that if the molecular mechanism of action may be efficacious against a disease in children, that is different from the one for which it was initially designed for use in adults, the product will have to be studied for use in children too. This requirement, apart from increasing the number of medicinal products adequately studied for use in children, has the potential to promote much needed innovation and research.[6]
- ERS supports the new proposal on Market Exclusivity (as stated in Articles 71 and 72) in the Regulation, as it offers a well-balanced framework which is appropriate to incentivise and boost innovation for orphan and paediatrics.[7,8]

Shortages

The growing problem of shortages of medicinal products across the EU may lead to a reduced quality of care given to patients, as well as a growing burden on national healthcare systems and healthcare professionals. Patients must be able to get the correct medications in a timely, affordable and accessible manner. In addition, there are unacceptably high differences in access across Europe. The proposal represents a good step forward in avoiding shortages proactively and will allow Europe to be better prepared for future emergencies and other unexpected challenges. Particularly, ERS welcomes the proposed notification procedures to be followed when the production of a medicinal product is permanently ceased (Article 116 – Regulation).[9]

Moreover, the steps envisioned for a shortage prevention plan (Article 117 - Regulation) and for shortage monitoring (Article 118 - Regulation) establish a path to prevent them in a proactive and reactive way. The Regulation considers a multitude of stakeholders ensuring an open channel of communication among Member States, the European Medicines

[5] The new proposal envisages that if the molecular mechanism of action may be efficacious against a disease in children that is different from the one for which it was initially designed for use in adults, the product will have to be studied for use in children too. This requirement, apart from increasing the number of medicinal products adequately studied for use in children, is also expected to promote innovation and research
[6] European Commission. Proposal for a Regulation of the European Parliament and of the Council https://eur-lex.europa.eu/resource.html?uri=cellar:e3f40e76-e437-11ed-a05c-01aa75ed71a1.0001.02/DOC_1&format=PDF.
[7] European Commission. Proposal for a Regulation of the European Parliament and of the Council https://eur-lex.europa.eu/resource.html?uri=cellar:e3f40e76-e437-11ed-a05c-01aa75ed71a1.0001.02/DOC_1&format=PDF. Articles 71, 72. pp. 87-88.
[8] European Commission. Proposal for a Regulation of the European Parliament and of the Council https://eur-lex.europa.eu/resource.html?uri=cellar:e3f40e76-e437-11ed-a05c-01aa75ed71a1.0001.02/DOC_1&format=PDF. Article 71, pp. 87-88.
[9] European Commission. Proposal for a Regulation of the European Parliament and of the Council https://eur-lex.europa.eu/resource.html?uri=cellar:e3f40e76-e437-11ed-a05c-01aa75ed71a1.0001.02/DOC_1&format=PDF. Article 116, pp. 109-110.

Agency and Member States, taking the right steps to achieve an appropriate supply and management of medicinal products across all Member States.[10]

While addressing these issues, it is of utmost importance to include healthcare professionals in the decision-making process, to ensure that they will be able to guide their patients properly and provide the best care available.[11]

We are furthermore impressed by the body of work and concrete proposals presented by the Commission in the communication on shortages of critical medicines. We hope sufficient funding will be attached to these proposals.

Repurposing

During the consultation phase, we called for improved text around repurposing to be included in the Commission proposals and we are happy to see this now reflected. The provided incentive of four years of data protection (as mentioned in Article 84 of the Directive) can be considered fit for purpose and we hold that it would advance research, (such as in the case of paediatric medicines) and increase availability and affordability of medicines across the 27 Member States.[12]

Regulatory Sandboxes

We welcome the possibility for the European Commission to set up regulatory sandboxes (following the recommendations of the European Medicines Agency) that will boost the possibility to develop new types of medicines or new approaches that were not available before, hence creating a flexible framework for innovation that does not match existing Regulation. This would remove unnecessary challenges by creating specific flexible categories that would enhance the development of new products in a swifter way ensuring quicker availability and access to treatment for patients.[13]

---

[10] European Commission. Proposal for a Regulation of the European Parliament and of the Council https://eur-lex.europa.eu/resource.html?uri=cellar:e3f40e76-e437-11ed-a05c-01aa75ed71a1.0001.02/DOC_1&format=PDF. Article 124, pp. 115.

[11] European Commission. Proposal for a Regulation of the European Parliament and of the Council https://eur-lex.europa.eu/resource.html?uri=cellar:e3f40e76-e437-11ed-a05c-01aa75ed71a1.0001.02/DOC_1&format=PDF. Chapter X, pp. 109-121.

[12] European Commission. Directive of the Parliament and of the Council on the Union code relating to medicinal products for human use, and repealing Directive 2001/83/EC and Directive 2009/35/EC. https://eur-lex.europa.eu/resource.html?uri=cellar:bfcb9e00-e437-11ed-a05c-01aa75ed71a1.0001.02/DOC_1&format=PDF. Article 84, pp.100.

[13] European Commission. Proposal for a Regulation of the European Parliament and of the Council https://eur-lex.europa.eu/resource.html?uri=cellar:e3f40e76-e437-11ed-a05c-01aa75ed71a1.0001.02/DOC_1&format=PDF. Chapter IX, pp. 109-121.

Antimicrobial Resistance – AMR

ERS is impressed by the EC approach on AMR and agrees that it should remain a priority of the legislation.

Antimicrobial resistance is resulting in a global crisis of Multi Drug Resistant Tuberculosis (MDR-TB) that threatens to reverse the gains made over decades of effort to contain the TB epidemic. Multi drug resistant pathogens are typically respiratory pathogens and most antibiotics prescribed in Europe are for respiratory infections. The commonest pathogen identified in Chronic Obstructive Pulmonary Disease *Haemophilus influenzae* is becoming resistant as is *Streptococcus pneumoniae,* the leading cause of pneumonia in children under 5 years of age and the over 65's globally.

The new measures to promote the development of priority antimicrobials (such as the support envisioned for SMEs which often choose to invest in this area) are well designed to promote the scientific advancement needed while creating an agile framework for development, considering the additional year of regulatory data protection will provide an appropriate financial support to developers. International collaboration continues to be fundamental for consistent development of new solutions as we are set to face new challenges and to guarantee significant advances across Europe. This was exemplified by the irrefutable case of international cooperation during the COVID-19 pandemic.

All strategies need to be considered in the battle against AMR, even non-antibiotic measures. Without negating the importance of research into new antimicrobials, we would like to highlight the necessity of innovation in non-antimicrobial strategies as an alternative to manage infections. Antimicrobials always face the risk of resistance developing and with AMR rising globally, there is a need to shift towards non-antimicrobial solutions.

Transparency

In order to create a context where medicines are more affordable, it will be necessary to aim at the highest level of transparency possible, to improve the understanding of all R&D costs and therefore shape incentives accordingly.

The request to increase transparency regarding the contribution of public funding to research and development costs is welcomed as well as necessary. However, we ask the European Commission to include not only the direct public funding but also the indirect public funding, under the scope of Article 57 of the Directive. It should be always clarified how much is provided in order to better understand the challenges as well as properly support the research and development of medicines that are needed.

Intellectual Property – IP

The section on the reform of intellectual property provides, in our view, an achievable, predictable and robust structure to accelerate R&D investments and accelerate innovation in Europe. The proposed reduction of the current baseline for data exclusivity from eight to six years together with the possible extension depending on whether the Marketing Authorisation Holder will fulfill certain conditions, (i.e. two additional years for releasing and continuously supplying the products in all 27 Member States within two years of marketing authorisation (three years for SMEs), half a year for meeting the definition of unmet medical need, and half a year for performing comparative clinical trials, a possibility for one additional year for one new therapeutic indication only) will improve access across borders and boost innovation and research.[14]

European Health Data Space

ERS welcomes the efforts made to highlight the importance of the European Health Data Space (EHDS), both in the Directive and the Regulation. A properly implemented EHDS will provide a much-needed common framework across Member States for the use of real-world health data and therefore support the competitiveness and innovation in Europe, promoting progress in research and development of medicinal products, and providing new tools for pharmacovigilance and comparative clinical assessment.

Given the importance of health data, we appreciate that the EC has highlighted the need for a plan to prevent, detect and mitigate possible cyber-attacks (as well as abuse of data) in order to have an effective implementation and public trust in the EHDS.

European Network

Article 95 of the Regulation is fundamental for the correct development of the new legislation, to create a European Network of patient representatives, academics, medicines developers, investigators and centres with expertise in the performance of studies in the paediatric population.

We however insist on including healthcare professionals for all the age groups in the above list, as they are on the frontline of medical emergencies and general healthcare.

[14] European Commission. Directive of the Parliament and of the Council on the Union code relating to medicinal products for human use, and repealing Directive 2001/83/EC and Directive 2009/35/EC. https://eur-lex.europa.eu/resource.html?uri=cellar:bfcb9e00-e437-11ed-a05c-01aa75ed71a1.0001.02/DOC_1&format=PDF. Article 80-82, pp.97-100.

Conclusion:

Overall, the European Respiratory Society strongly supports this proposal for the revision of the EU general pharmaceuticals legislation. It is a step in the right direction and more patients across Europe will have access to innovative and affordable medicines, which is fully supported by all the patients and patient organistions working together with the European Lung Foundation. If adopted, it will create a new and attractive framework that can both boost competitiveness and keep Europe at the forefront of medical innovation and research in the coming years.