European Communities

EUROPEAN PARLIAMENT

Working Documents

1981 - 1982

5 June 1981 DOCUMENT 1-246/81

Report

drawn up on behalf of the Committee on Economic and Monetary Affairs

on the proposal from the Commission of the European Communities to the Council (Doc. 1-787/80) for a directive amending Directives 65/65/EEC, 75/318/EEC and 75/319/EEC on the approximation of provisions laid down by law, regulation or administrative action relating to proprietary medicinal products

Rapporteur: Mr K. von WOGAU

By letter of 16 December 1980 the President of the Council of the European Communities requested the European Parliament, pursuant to Article 100 of the EEC Treaty, to deliver an opinion on the proposals from the Commission of the European Communities to the Council for a directive amending Directives 65/65/EEC, 75/318/EEC and 75/319/EEC on the approximation of provisions laid down by law, regulation or administrative action relating to proprietary medicinal products and for a recommendation concerning tests relating to the placing on the market of proprietary medicinal products. (Doc. 1-787/80).

The President of the European Parliament referred these proposals to the Committee on Economic and Monetary Affairs as the committee responsible and to the Committee on the Environment, Public Health and Consumer Protection for its opinion.

On 30 January 1981 the Committee on Economic and Monetary Affairs appointed Mr von Wogau rapporteur.

It considered these proposals at its meeting of 13 and 14 May 1981.

At its meeting of 14 May 1981, the committee unanimously adopted:

- the proposal for a directive amending Directives 65/65/EEC, 75/318/EEC and 75/319/EEC on proprietary medicinal products,

- the proposal for a recommendation concerning tests relating to the placing on the market of proprietary medicinal products (Doc. 1-787/80),

- the motion for a resolution.

Present: Mr DELEAU, acting chairman; Mr DE FERRANTI, vice-chairman; Mr von WOGAU, rapporteur; Mr ALBERS (deputizing for Mr SCHWARTZENBERG), Mr BEAZLEY, Mr DAMSEAUX (deputizing for Mr COMBE), Mr HERMAN, Mr LANGE (deputizing for Mr DELORS), Mr MIHR, Mr PETRONIO, Mr TURNER (deputizing for Mr HOPPER) and Mr WAGNER.

By letter of 30 April 1981, the chairman of the Committee on the Environment, Public Health and Consumer Protection stated that his committee's opinion would be delivered separately.

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The Committee on Economic and Monetary Affairs hereby submits to the European Parliament the following motion for a resolution together with explanatory statement:

MOTION FOR A RESOLUTION

embodying the opinion of the European Parliament on the proposal from the Commission of the European Communities to the Council for a directive amending Directives 65/65/EEC, 75/318/EEC and 75/319/EEC on the approximation of provisions laid down by law, regulation or administrative action relating to proprietary medicinal products.

The European Parliament,

- having regard to the proposal from the Commission of the European Communities to the Council[1],
- having been consulted by the Council (Doc. 1-787/80),
- having regard to the report of the Committee on Economic and Monetary Affairs (Doc. 1-246/81),

1. Stresses the importance of the free movement of medicinal products both for the protection of public health and the development and international competitiveness of the Community's pharmaceutical industry;

2. Notes that, despite the directives so far adopted, a great number of technical barriers to the free movement of medicinal products still remain, particularly with regard to the admission of new products to the market; these remaining technical barriers are the results, in part, of:

   - the defects in the present procedure for the placing on the market of medicinal products,
   - the lack of homogeneity in Member States' regulations governing the information required for new proprietary medicinal products to be allowed on the market;

3. Approves, therefore, the principle behind the amendments proposed by the Commission to the marketing procedure, introducing the mutual recognition of marketing authorizations issued by the Member States and the harmonization of the tests required to obtain such authorizations; considers that the mututal recognition of marketing authorizations is the most appropriate procedure for attaining the free movement of medicinal products;

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[1] OJ No. C 355 of 31.12.80, p.1.

4. Considers that the new procedure should make it possible to:
   - avoid delays in the marketing of products and reduce unneccessary expenditure,
   - encourage research and production in the Community's pharmaceutical industry through the creation of an open market,
   - consolidate the value on the international market of the quality label attached to European medicinal products;

5. Considers, however, that discrimination should be used in extending the range of tests conducted on medicinal products, however justifiable in terms of safety and efficacy, so as to avoid both unnecessary expenditure and excessive delays in the marketing of certain products; this applies particularly to mutagenesis tests which are not yet completely reliable;

6. Considers also that the notes for guidance designed to assist the harmonization of principles and methods for conducting tests should be drawn up in such a way as to take into account both the requirements of public health and the constraints involved in the research of any new proprietary medicinal product, so as not to damage capacity for innovation in this sector;

7. Stresses that the principle of mutual recognition of marketing authorizations must not be undermined by the systematic referral of cases to the Committee for Proprietary Medicinal Products (CPMP); stresses the importance in this connection of the role assigned to the CPMP in the implementation of this procedure;

8. Considers that the Commission's proposals constitute a first step towards the free movement of proprietary medicinal products in the Community and that the creation of a climate of mutual trust is essential for this procedure to be implemented and for further steps to be taken;
   calls, therefore, upon the Commission and the Council to take the necessary steps to ensure that by 1 January 1988, the date fixed for the revision of the procedure, the mutual recognition of marketing authorizations has become a matter of course;
   approves the Commission's proposals.

9. Instructs its President to forward this resolution and the report of its committee to the Council and the Commission of the European Communities.

B

EXPLANATORY STATEMENT

INTRODUCTION

1. One of the principal objectives of the Community is to ensure the free movement of goods between the Member States. The implementation of this principle in the field of medicinal products has long been hampered by the abusive use made by the Member States of the exceptions provided for in Article 36 of the EEC Treaty, relating to the protection of human health and life.

In most cases, however, restrictions on the free movement of medicinal products act against the real interests of the protection of health - as for example when the use of new and more effective remedies is needlessly delayed in some Member States, or, in the reverse case, when drugs whose potentially harmful effects have been detected in some Member States remain in circulation in others.

In general, the technical barriers to the free movement of proprietary medicinal products increase costs, slow down the diffusion of medicinal products and do not allow the consumer to benefit from the economies of scale which production for the Community market as a whole would permit.

In fact, research and development costs in this sector are so high that pharmaceutical firms, particularly small and medium-sized ones, are only able to meet them if they have a large market open to them.

2. To remedy this situation the Commission is proposing a series of amendments to the Directives already adopted aimed at supplementing the harmonization measures already taken. These new harmonization measures must allow the mutual recognition of marketing authorizations and bring about the genuine free movement of medicinal products, despite the continued existence of other technical barriers.

The Commission's report on the approximation of legislation relating to proprietary medicinal products, the technical harmonization measures and the new marketing procedure will be examined in turn.

I. THE STATE OF THE EUROPEAN MARKET FOR MEDICINAL PRODUCTS

3. The Commission's short report on the state of the European market for medicinal products contains two sets of observations, the first relating to the opening up of the market, the second to the insufficient transparency of the market in this sector.

1. The degree of openness of the market

4. Four Council Directives and one Council Decision relating to the abolition of barriers to the free movement of medicinal products have so far been adopted.[1] According to the Commission, these Directives, which concern more specifically safeguards for the development and manufacture of medicinal products, have been satisfactorily implemented in the Member States.

It has been possible to do away with systematic checks on imports from one Member State to another, as the supervision of the development and manufacture of medicinal products is carried out in accordance with the same rules throughout the Community.

Marketing authorizations alone have remained a national matter, although cooperation between competent authorities does take place within the Committee for Proprietary Medicinal Products.

5. The Commission notes, however, that various inadequacies in Community legislation are hampering the free movement of medicinal products. In the main, these inadequacies are:

a) the lack of homogeneity in the Member States' regulations governing the information required for the admission of new proprietary medicinal products to the market;

b) the inadequacies of the CPMP procedure - only eight applications for marketing authorizations were filed under this procedure in four years.

The pharmaceutical industry would like to see the present procedure replaced by a more effective system of mutual recognition.

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[1] Directive 65/65/EEC of 26 January 1965
Directive 75/318/EEC of 20 May 1975
Directive 75/319/EEC of 20 May 1975
Directive 78/25/EEC of 12 December 1977

2. The other barriers to the free movement of medicinal products

6. Although technical barriers are progressively disappearing, other types of barrier remain and these act indirectly against the free movement of medicinal products. The fixing of prices that are too low, for example, or the debarring of a medicine from reimbursement by social security, constitute just as effective a barrier to free movement as the refusal of a marketing authorization. Such practices are in violation of Article 30 of the EEC Treaty when their effect is to prevent a producer or an importer from selling his product on a particular market. Similarly, advertising malpractice can cause serious distortion of competition. In this field, however, the Commission considers that the proposal for a Directive on misleading and unfair advertising[1] provides an adequate basis for consumer protection and that it would be inadvisable to submit a specific proposal on proprietary medicinal products at the present time.

Finally, the Commission concludes its report with a brief section in which it stresses the primacy of research for the pharmaceutical industry and underlines the potential importance at the level of international trade of the quality label attached to Community medicinal products as a result of the harmonization of guarantees.

II. THE TECHNICAL CONDITIONS FOR THE FREE MOVEMENT OF MEDICINAL PRODUCTS

7. To remedy the inadequacies of Community legislation as it now stands, the Commission is proposing various amendments to Directives 65/65/EEC, 75/318/EEC and 75/319/EEC. The principal objective of these amendments is to increase the amount of information collected on medicinal products. The Commission is also submitting a proposal for a Council recommendation aimed at harmonizing the tests relating to the placing on the market of proprietary medicinal products.

1. Increased information

8. It is necessary in the interests of public health and the free movement of products that the competent authorities, manufacturers and consumers should have all relevant information readily at their disposal. With this in view, all applications for marketing authorizations (new Article 4a supplementing Article 4 of Directive 65/65/EEC) must henceforth be accompanied by a data sheet containing information on the name, pharmacological properties, clinical, pharmaceutical and administrative particulars of the product in question.

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[1] Doc. COM(79) 353/final

The data sheet may optionally be supplemented by economic particulars (selling price to the public of the various sizes of packs, cost of daily treatment, situation in respect of health insurance).

9. As far as the names of proprietary medicinal products are concerned, the amendment to Article 13, point 1 of Directive 65/65/EEC is essential. The special name of a medicinal product must henceforth be followed in all cases by the international non-proprietary name, in legible characters, recommended by the World Health Organization. The purpose of this measure is to facilitate the recognition of the real identity of products which appear under a variety of special names, and so to ensure at least some transparency in the market for medicinal products.[1]

The scientific information on proprietary medicinal products is also to be supplemented by two new categories of test, in addition to those described in the annex to Directive 75/318/EEC. These additional tests are for bioavailability (providing information on the rate at which and in what proportions a medicine's active principle reaches the site where its action should occur) and for mutagenesis (concerning changes in the genetic material which are spontaneous or caused by chemical products). The study of bioavailability must be undertaken in all cases where it is essential in the interests of the patient, that is where the therapeutic safety margin is narrow or where the previous tests have revealed anomalies.

10. The study of mutagenic potential is compulsory for all new substances. It would appear, however, that at the present level of scientific knowledge, mutagenesis tests can produce a certain number of 'false positive' results. This places a question mark against the additional costs incurred and the delays in making medicines which are safe and efficacious available to patients, caused by the long term carcinogenicity tests which have to be conducted when mutagenesis tests appear to be positive.

2. The harmonization of tests

11. In order to facilitate an identical interpretation of the Community Directives when tests are carried out and when applications for marketing authorizations are examined, the Commission is proposing, by means of a Council Recommendation, that these tests should be conducted in accordance with the common principles and methods set out in a series of notes for guidance.

These notes for guidance, which have been drawn up by two groups of scientific experts on 'safety and efficacy' within the CPMP, should make it possible to avoid divergences between the Member States when conducting the tests designed to verify the harmlessness, efficacy and quality of

[1] The recent proposal from the Commission for a Directive relating to parallel imports (Doc.248/80) is also aimed at preventing any modification of the qualitative or quantitive composition of proprietary products or their names for purely commercial ends.

medicinal products. These notes will inform applicants for marketing authorizations in advance of the requirements of the national authorities and will spare them the need to repeat similar tests.

12. At the present time, the duplication of tests and the delays which this entails combine to increase the cost of medicines and hamper the free movement of products.

The notes for guidance will be reviewed periodically to ensure that they are continually adapted to scientific and technical progress. As these scientific documents must be interpreted in a flexible manner and revised periodically, the Commission considered the Recommendation to be the most appropriate instrument.

The representatives of the pharmaceutical industry consider that these explanatory documents should not be drafted until the Commission has examined the need for them and the industry and the national authorities have been properly consulted in advance. It would be useful, in fact, if experts from the laboratories of the pharmaceutical industry, who are experienced in the practical problems encountered in the initiation of a research and development project in this field, could be involved from the outset in the drawing up of the notes for guidance. The notes for guidance should not be published until they have been unanimously approved by the Committee for Proprietary Medicinal Products.

13. Furthermore, although the Recommendation is not binding upon the Member States (Art. 189 of the EEC Treaty), its terms must be respected by applicants for marketing authorizations, as it is the duty of the Member States to ensure that tests are conducted in accordance with the methods set out in the notes for guidance. However, if proper flexibility is to be maintained in this matter, applicants who conduct equivalent tests without following the recommended methodology, but who can demonstrate that they are at least as reliable, should be accepted.

III. THE NEW MARKETING PROCEDURE

1. The mutual recognition of marketing authorizations

14. The procedure for marketing authorizations, as provided for in Directive 75/319/EEC, has not been entirely satisfactory.

The conditions for initiating the procedure have proved too restrictive, particularly the requirement that a request has to be made for the product to be marketed in at least five Member States; it is also regrettable that applicants do not have the opportunity to be heard during the procedure.

All of those concerned, the pharmaceutical industry no less than the Consumers' Consultative Committee, consider the present procedure to be inappropriate. The Commission, however, does not think it advisable to introduce a system of Community authorizations issued by a European agency. The setting up of a European body with scientific experts and the research laboratories and administrative staff they would require would be prohibitive in terms of cost, even without the political and legal problems which a solution of this kind would involve.

15. The Commission proposes, therefore, to amend Chapter III of Directive 75/319/EEC relating to the Committee for Proprietary Medicinal Products. Henceforth (Art. 9), the holder of a marketing authorization issued in a Member State may request recognition of such authorization when he files an application for authorization in one or more Member States.

This provision introduces the principle of the mutual recognition of marketing authorizations which Parliament has wished to see implemented for several years.[1]

A number of objections have been raised to the mutual recognition of marketing authorizations. Previously the national authorities refused to grant authorizations on the basis of the safeguard clause provided by Article 36 of the EEC Treaty concerning prohibitions or restrictions on imports justified on grounds of the protection of health.

16. However, the Directives already adopted on this matter, together with the supplementary information and experimentation referred to above, particularly the harmonization of tests relating to the placing on the market of medicinal products, are sufficient to ensure that any medicine judged to be safe and efficacious in one Member State is today able to satisfy ipso facto the requirements of another.

The introduction of this more rapid and more economic procedure of mutual recognition is more likely, in fact, to be in the interests of public health. Should a 'lax' Member State fail to comply with the regulations or, on the contrary, impose more restrictive conditions than those provided for, then it would be the Commission's task to intervene and put an end to these practices.

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[1] De Keersmaeker report - Doc. 664/78

Recognition of marketing authorizations will be obtained within a period of 120 days in the case of old products and 60 days in the case of products containing a new substance. This shorter period can be justified by the fact that, unlike old products, new products have been the subject of thorough experimentation in accordance with common principles which comply with the state of the art in science.

2. The role of the Committee for Proprietary Medicinal Products

17. The role of the Committee for Proprietary Medicinal Products (CPMP), which consists of representatives of the Member States and of the Commission, is redefined. Henceforth, the Committee will assume a dual role, giving opinions and considering appeals. In general, its task will be to examine, at the request of its members, any question concerning the quality, safety and efficacy of a proprietary medicinal product. A national authority will therefore be able to seek the opinion of the CPMP (Article 12) before taking a decision on a problem of Community interest. Care must be taken to see that the principle of mutual recognition is not undermined by the systematic referral of cases to the CPMP.

The role assigned to the CPMP is important for the proper implementation of the procedure; as it is informed of all applications for marketing authorization and of reasoned refusals to grant authorizations, the Committee can be consulted when a national authority does not recognize the authorization or when national decisions clash (Article 11).

CONCLUSION

18. Two sets of conclusions seem to emerge from the analysis of the Commission's proposals.

There is no doubt that the proposals themselves constitute a decisive step towards the harmonization of legislation in this field. In fact, the implementation of provisions which ensure better information and greater transparency with regard to proprietary medicinal products, as well as the harmonization of tests, should enable the mutual recognition of marketing authorizations to be attained.

In this respect, the creation of a climate of mutual trust between Member States is essential both for the procedure for mutual recognition to be implemented and for further steps to be taken. The Commission and the Council should take all the necessary steps to ensure that by 1 January 1981, the date fixed for the revision of the procedure, the mutual recognition of marketing authorizations has become a matter of course.

It is essential that real freedom of movement of proprietary medicinal products be achieved in the Community; the protection of public health, the level of public health expenditure, the quality of Community production and the development of the pharmaceutical industry all depend on it.