

**Proposal for a Directive of the European Parliament and of the Council amending the Directive 2001/83/EC as regards traditional herbal medicinal products**

(2002/C 126 E/03)

(Text with EEA relevance)

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*(Submitted by the Commission on 17 January 2002)*

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the Economic and Social Committee,

Acting in accordance with the procedure laid down in Article 251 of the Treaty <sup>(1)</sup>,

Whereas:

- (1) Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use <sup>(2)</sup> requires that applications for the authorisation to place a medicinal product on the market have to be accompanied by a dossier containing particulars and documents relating in particular to the results of physico-chemical, biological or microbiological as well as pharmacological and toxicological tests and clinical trials carried out on the product and thus proving its quality, safety and efficacy.
- (2) Where the applicant can demonstrate by detailed references to published scientific literature that the constituent or the constituents of the medicinal product have a well established medicinal use with recognised efficacy and an acceptable level of safety in the sense of Directive 2001/83/EC, he should not be required to provide the results of pre-clinical tests or the results of clinical trials.
- (3) A significant number of medicinal products, despite their long tradition, do not fulfil the requirements of a well established medicinal use with recognised efficacy and an acceptable level of safety and are not eligible for a marketing authorisation. To maintain these products on the market, the Member States have enacted different procedures and provisions. These differences currently existing between the provisions laid down in the Member States may hinder trade in traditional medicinal

products within the Community and lead to discrimination and distortion of competition between manufacturers of these products. They may also have impact on the protection of public health since the necessary guarantees of quality, safety and efficacy are not always given at present.

- (4) Having regard to the particular characteristics of these medicinal products, especially their long tradition, it is desirable to provide a special, simplified registration procedure for certain traditional medicinal products. However, this simplified procedure should be eligible only where no marketing authorisation under Directive 2001/83/EC, in particular due to lack of sufficient scientific literature demonstrating a well established medicinal use with recognised efficacy and an acceptable level of safety, can be obtained. It should likewise not apply to homeopathic medicinal product eligible for a marketing authorisation or for a registration under Directive 2001/83/EC.
- (5) The long tradition of the medicinal product enables to renounce clinical trials, insofar as the efficacy of the medicinal product is plausible on the basis of long-term use and experience. Pre-clinical tests do not seem necessary, where the medicinal product on the basis of the information on its traditional use proves not to be harmful in specified conditions of use. However, even the long tradition does not exclude that there may be concerns with regard to the product's safety, so that the competent authorities should be entitled to ask for all data necessary for assessing the safety. The quality aspect of the medicinal product is independent of its traditional use so that no derogation should be made with regard to the necessary physico-chemical, biological and microbiological tests.
- (6) The vast majority of medicinal products with a sufficiently long and coherent tradition are based on herbal substances. It therefore seems appropriate to limit the scope of the simplified registration in a first step to traditional herbal medicinal products.
- (7) The facilitated registration should be acceptable only where the herbal medicinal product may rely on a sufficiently long medicinal use in the Community. Medicinal use outside the Community should be taken into account only, if the medicinal product has been used within the Community for a certain time.

<sup>(1)</sup> OJ C 95, 30.3.1998, p. 1.

<sup>(2)</sup> OJ L 311, 28.11.2001, p. 67.

- (8) With the objective to further facilitate the registration of certain traditional herbal medicinal products and to further enhance harmonisation, there should be the possibility to establish a Community list with herbal substances that fulfil certain criteria, such as being in medicinal use for a sufficiently long time, and hence do not seem harmful in the normal conditions of use.
- (9) Having regard to the particularities of herbal medicinal products, a specific committee should be established within the European Agency for the Evaluation of Medicinal Products set up by Council Regulation (EEC) No 2309/93 of 22 July 1993 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Agency for the Evaluation of Medicinal Products<sup>(1)</sup> (hereinafter: the Agency). The committee should be composed of experts in the field of herbal medicinal products. Its tasks should relate in particular to establishing Community herbal monographs relevant for the registration as well as the authorisation of herbal medicinal products.
- (10) It is important to ensure full consistency between the new committee and the committee for human medicinal products already existing at the Agency, in particular in case of a procedure regarding an application, which concerns a herbal medicinal product and relies on Directive 2001/83/EC, appropriate coordination between the two committees should be ensured, relying on the provisions of Article 55(2) of Regulation 2309/93.
- (11) When deciding upon an application for registration of a traditional herbal medicinal product, the Member State concerned should be obliged to take due account of authorisations or registrations previously granted by another Member State for that product. In case where the authorisation or registration refers to a herbal medicinal product for which a monograph has been established under this Directive, it should be recognised, unless there are major objections of public health.
- (12) The Commission should present a report on the application of the chapter on traditional herbal medicinal products to the European Parliament and to the Council including an assessment on the possible extension of traditional use registration to other categories of medicinal products.
- (13) It is therefore appropriate to amend Directive 2001/83/EC accordingly,

HAVE ADOPTED THIS DIRECTIVE:

*Article 1*

Directive 2001/83/EC is amended as follows:

1. In Article 1 the following points 29 to 32 are added:

*'29. Traditional herbal medicinal product:*

a herbal medicinal product that fulfils the conditions laid down in Article 16a;

*30. Herbal medicinal product:*

any medicinal product, containing as active ingredients one or more herbal substances or one or more herbal preparations, or one or more such herbal substances in combination with one or more such herbal preparations;

*31. Herbal substances:*

all mainly whole, fragmented or cut plants, plant parts, algae, fungi, lichen in an unprocessed, usually in dried form but sometimes fresh. Certain exudates that have not been subjected to a specific treatment are also considered to be herbal substances. Herbal substances are precisely defined by the plant part used and the botanical name according to the binomial system (genus, species, variety and author);

*32. Herbal preparations:*

preparations obtained by subjecting herbal substances to treatments such as extraction, distillation, expression, fractionation, purification, concentration and fermentation. These include comminuted or powdered herbal substances, tinctures, extracts, essential oils, expressed juices and processed exudates.'

2. The following new chapter 2a is inserted in title III.

**'Chapter 2a: Specific provisions applicable to traditional herbal medicinal products**

*Article 16a*

A simplified registration procedure (hereinafter "traditional use registration") is hereby installed for herbal medicinal products which fulfil the following criteria:

- (a) they are indicated exclusively for indications adapted to a traditional herbal medicinal product, which, by virtue of its composition and purpose, is intended and designed for use without the intervention of a medical practitioner for diagnostic purposes or for prescription or monitoring of treatment;

<sup>(1)</sup> OJ L 214, 24.8.1993, p. 1, Regulation as last amended by Commission Regulation (EC) No 649/1998 (OJ L 88, 24.3.1998, p. 7).

- (b) they are exclusively for administration in accordance with a specified strength;
- (c) they are an oral, external and/or inhalation preparation;
- (d) the period of traditional use as stipulated in Article 16c(1)(c) has elapsed;
- (e) the data on the traditional use of the medicinal product is sufficient, in particular the product proves not to be harmful in the specified conditions of use and the pharmacological effects or efficacy of the medicinal product are plausible on the basis of long-term use and experience.

However, in cases where the competent authorities judge that a traditional herbal medicinal product fulfils the criteria for an authorisation in accordance with Article 6 or a registration pursuant to Article 14, the provisions of this chapter do not apply.

#### Article 16b

1. The applicant and registration holder shall be established in the Community.
2. In order to obtain traditional use registration, the applicant shall submit an application to the competent authority of the Member State concerned.

#### Article 16c

1. The application shall be accompanied by:
  - (a) the particulars and documents:
    - (i) referred to in Article 8(3)(a) to (h), (j) and (k),
    - (ii) the results of pharmaceutical tests referred to in the first indent of Article 8(3)(i),
    - (iii) the summary of product characteristics without the data specified in Article 11(4),
    - (iv) in case of a combination, as referred to in Article 1(30), the information data referred to in Article 16a(e) relating to the combination as such; if the individual active ingredients are not sufficiently known, the data need also relate to the individual active ingredients;
  - (b) any authorisation or registration obtained by the applicant in another Member State, or in a third country, to place the medicinal product on the market, and details of any decision to refuse to grant an authorisation or registration, whether in the

Community or a third country, and the reasons for such a decision;

- (c) bibliographical or expert evidence to the effect that the medicinal product in question, or a corresponding medicinal product has been in medicinal use in the Community throughout a period of at least thirty years preceding the date of application;
- (d) a bibliographic review of safety data together with an expert report, and where required by the competent authority, upon justified request, data necessary for assessing the safety of the medicinal product.

Annex I shall apply by analogy to the particulars and documents specified in point (a).

2. A corresponding medicinal product, as referred to in paragraph 1(c), is characterised by having the same active ingredients, irrespective of the excipients used, the same or similar intended purpose, equivalent strength and the same or similar route of administration as the medicinal product applied for.

3. The requirement to show medicinal use throughout the period of thirty years, referred to in paragraph 1(c), is satisfied even where the marketing of the product has not been based on a specific authorisation. It is likewise satisfied if the number or quantity of ingredients of the medicinal product has been reduced during that period.

4. If the product has been available within the Community for at least 15 years, the applicant may supply evidence of medicinal use throughout a period of time, which completes the period of 30 years in a specified territory or territories outside the Community.

#### Article 16d

When evaluating an application for traditional use registration, each Member State shall take due account of registrations or authorisations granted by another Member State.

#### Article 16e

1. Traditional use registration shall be refused if the application does not comply with Articles 16a, 16b or 16c or if at least one of the following conditions is fulfilled:

- (a) the qualitative and/or quantitative composition is not as declared,
- (b) the therapeutic indications do not comply with the conditions laid down in Article 16a,
- (c) the product could be harmful in the normal conditions of use,

(d) data on traditional use is insufficient, especially if pharmacological effects or efficacy are not plausible on the basis of long-term use and experience,

(e) the pharmaceutical quality is not satisfactorily demonstrated.

2. The competent authorities of the Member States shall provide the applicant, the Commission and any competent authority requesting this, with any decision it makes to refuse traditional use registration on safety grounds and the reasons for this.

#### Article 16f

1. The Committee referred to in Article 16h shall set up a list of herbal substances. The list shall contain with regard to each herbal substance the therapeutic indication, the specified strength, the route of administration and any other information necessary for the safe use of the herbal substance.

2. If an application for traditional use registration relates to a herbal substance contained in the list, referred to in paragraph 1, the data specified in Article 16c(1)(b)(c) and (d) does not need to be provided. Article 16e(1)(c) and (d) shall not apply.

3. If a herbal substance ceases to be included in the list, referred to in paragraph 1, registrations pursuant to paragraph 2 for herbal medicinal products containing this substance shall be revoked unless the particulars and documents, referred to in Article 16c(1) are submitted within three months.

#### Article 16g

1. Articles 3(1) and (2), 4(4), 12, 17(1), 19, 20, 23, 24, 25, 40 to 52, 70 to 85, 101 to 108, 111(1) and (3), 112, 116 to 118, 122, 123, 125, 126 second indent, 127 of this Directive as well as Commission Directive 91/356/EEC <sup>(1)</sup> shall apply, by analogy, to traditional use registration granted under this chapter.

2. In addition to the provisions laid down in Articles 54 to 65 any labelling and user package leaflet shall contain a statement to the effect that:

(a) the product is a herbal medicinal product for traditional use in a specified indication and that the efficacy of the product has not been clinically proven but relies exclusively on long-term use and experience; and

(b) the user should consult a doctor or a qualified practitioner if the symptoms persist during the use of the medicinal product.

A Member State may provide that the labelling and the user package leaflet shall also state the nature of the tradition in question.

3. In addition to the provisions laid down in Articles 86 to 99 any advertisement for a medicinal product registered under this chapter shall contain the following statement: "traditional herbal medicinal product for use in [specified indication] for which efficacy has not been proven".

#### Article 16h

1. A Committee for Herbal Medicinal Products is hereby established. That Committee shall be part of the Agency.

2. The Committee for Herbal Medicinal Products shall consist of one member nominated by each Member State for a term of 3 years, which shall be renewable. They shall, as appropriate, be chosen by reason of their role and experience in the evaluation of herbal medicinal products and shall represent their competent authorities.

3. The Committee shall establish Community herbal monographs for herbal medicinal products with regard to the application of Article [10a] [10(1)(a)(ii)] as well as traditional herbal medicinal products. The appropriate co-ordination with the committee for human medicinal products shall be ensured by the Executive Directive of the Agency according to Article 55(2) of Regulation 2309/93. The Committee shall fulfil further responsibilities conferred upon it by provisions of this chapter and other Community law.

When Community herbal monographs in the sense of this paragraph have been established they shall be used as the basis for any application.

When new Community herbal monographs are established, the registration holder shall within one year after the date of establishment of such monograph, introduce a modification to the registration dossier in order to comply with that monograph. The registration holder shall notify that modification to the competent authority of the Member State concerned.

4. The Committee shall adopt its own rules of procedure.

#### Article 16i

Until ... [date], the Commission shall present a report to the European Parliament and the Council concerning the application of the provisions of this chapter.

The report shall include an assessment on the possible extension of traditional use registration to other categories of medicinal products.'

<sup>(1)</sup> OJ L 193, 17.7.1991, p. 30.

*Article 2*

1. The Member States shall take the measures necessary to comply with this Directive by 31 December 2004. They shall forthwith inform the Commission thereof. When Member States adopt the said measures, they shall contain a reference to this Directive or be accompanied by such a reference when officially published.

2. For the traditional herbal medicinal products as referred to in Article 1 of this Directive, which are already on the market on the entry into force of this Directive, the

competent authorities shall apply the provisions of the present Directive within five years after its entry into force.

*Article 3*

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

*Article 4*

This Directive is addressed to the Member States.

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