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European Confederation of Pharmaceutical Entrepreneurs AISBL

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Townhall 3.0 Meeting

Virtual, 23 April 2024

Competition Law Compliance Policy

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Competition Law Compliance Policy

There are certain matters which **should not** be discussed with competitors before, during or after any such meetings. These include:

- Territorial restrictions, allocation of customers, restrictions on types of services, or any other kind of market division;
- Prices, price changes, conditions of sale (including payment terms and guarantees), price differentials, discounts;
- Current market conditions and issues, including industry pricing policies or patterns, price levels; capacity (including planned or anticipated changes regarding those matters), except where limited to the discussion of historical or public information;

[cont'd]

Competition Law Compliance Policy

- Individual costs, cost accounting formulas, methods of calculating costs;
- Individual company figures on market shares, sources of supply, capacity;
- Information as to future plans of individual companies concerning technology, capacity, marketing or sales; and
- Matters relating to individual suppliers or customers.

Attention: these rules equally apply to informal discussions before, after, or during each meeting. If any sensitive information is discussed or disseminated, insist that the discussion be terminated immediately and make sure that your objection is recorded in the minutes. If necessary, leave the meeting and immediately inform EUCOPE's General Counsel.

Agenda

I. Introduction and objectives

II. Regulatory provisions

III. Incentives framework

IV. Next steps and conclusions

V. Annexes: Overview on other topics

I.
Introduction and objectives

Victor Maertens

Key takeaways

- Overall, the **European Parliament** (EP) **reports broadly reflect the Commission's initial proposal**

- Several important changes have been made that **improve the Commission's initial proposal:**
  - Additional predictability to the incentives framework
  - Removal of launch conditionality, replaced by a new access proposal
  - Clarifications on regulatory provisions

- Other changes have **reinforced the negative proposals** made initially by the European Commission
  - Implementation of the access proposal
  - Definition of (high) unmet medical needs (H-UMN)
  - Stronger environmental requirements

Next Steps

- This is NOT the final legislative text
- **The Council is still working on their positions**
- **Trilogues** will need to take place when both EU Institutions have adopted their “first reading” positions
- We should not expect an agreed text before 2026, which would **go into effect in 2028** at the earliest

What will EUCOPE be doing:

- Actively engaging with Council and Member States
- Updating EUCOPE narrative on the proposal, taking into account the EP reports
- Planning to discuss with MEPs after elections and Commission, in preparation of trilogues

II.
Regulatory provisions

Dr Seán Byrne

Regulatory Provisions

Timelines

EMA will have 180 instead of 210 days. For authorisation, the Commission will have 46 instead of 67 days

Regulatory Sandboxes

Largely unchanged just a few clarifications reaffirming that it is meant to be used in cases where no other pathway exists

Expanded PRIME eligibility

Developers must now only meet ONE of the criteria below:

- Are likely to address UMN;
- OMP and likely to address HUMN;
- Of major interest for public health (esp. therapeutic innovation, or provided for in the WHO priority pathogens list for R&D of new antibiotics, or any other equivalent list of priority pathogens adopted at EU level)

EMA structure change

CHMP and PRAC remain as committees

EP introduce four ad-hoc WGs:

- ATMP
- OMP
- Paediatrics
- ERA

Separation of rapporteurs active in providing advice pre-submission and those involved in MA approval

Phased review

For products that display exceptional therapy advancement in the diagnosis, prevention or treatment of a life-threatening, seriously debilitation or serious and chronic condition
AND/OR major public health interest

Phased review can be stopped at any point by the EMA should there be insufficiently complete data sets

Shortages of Medicines and Security of Supply

Chapter X Regulation

- The provisions and notification requirements remain broadly unchanged
- However, the EP introduced some **additional requirements**:
  - MAH shall **'explain the reasons**' of any supply disruptions or suspensions
  - Temporary suspension or disruption of supply shall be notified as soon as possible (and no later than six months before the start of the disruption) **if foreseeable** by the MAH **or the national competent authority**, or as soon as the MAH become aware in case **of unforeseeable disruption**
- EP proposes to **reinforce responsibilities and role of the EMA, the MSSG and Member States on monitoring and addressing shortages**
  - National website on medicine shortages shall be created
  - **MSSG may recommend monitoring forecast of supply and demand and request monitoring of available stocks in the whole supply chain**
  - **"Voluntary Solidarity Mechanism for Medicines"** may be activated by MSSG and Member States for transfer of medicines suffering from shortages
  - Shortage prevention plans of critical medicines should be assessed by MSSG
- The role of patient organizations and healthcare professionals is reinforced (e.g., in defining the list of critical medicines)

Environmental Risk Assessment (ERA)

Art. 4, 22, 47, 87 *et al.* Directive

- Provisions on ERA are retained, with both positive and negative changes
- ERA should **cover the entire life-cycle of a medicine, including manufacturing** (stricter, if compared to Commission proposal)
  - Assessment should be made publicly available
- ERA of products, approved under the current legislation, shall be updated and mitigation measures should be implemented as required
- For products approved before October 2005, there are only minor changes to the Commission's proposal
- **More difficult to refuse/ revoke MA** (improvement to EC proposal):
  - MA can be refused or revoked if there is **no justification for an incomplete ERA**, and only if risk cannot be mitigated, and any such decision should take into account the benefit of the product, the need of patients and alternative treatments available
  - For products approved before 2005, MA can be revoked if the ERA is incomplete, and the product is identified as a potential harm to the environment

QUESTIONS

COMMENTS

REFLECTIONS

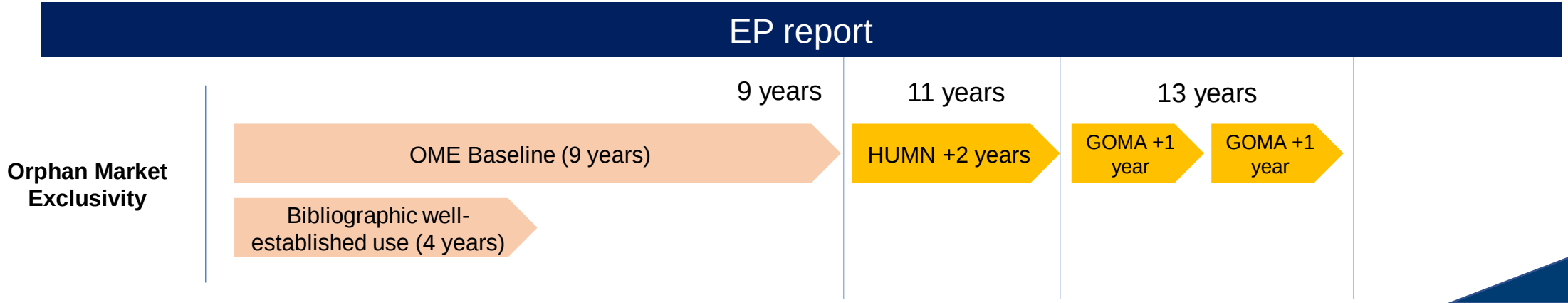
III.
Incentives framework

Victor Maertens & Stefano Romanelli

OME Modulation/ incentive framework

Art. 71 Regulation

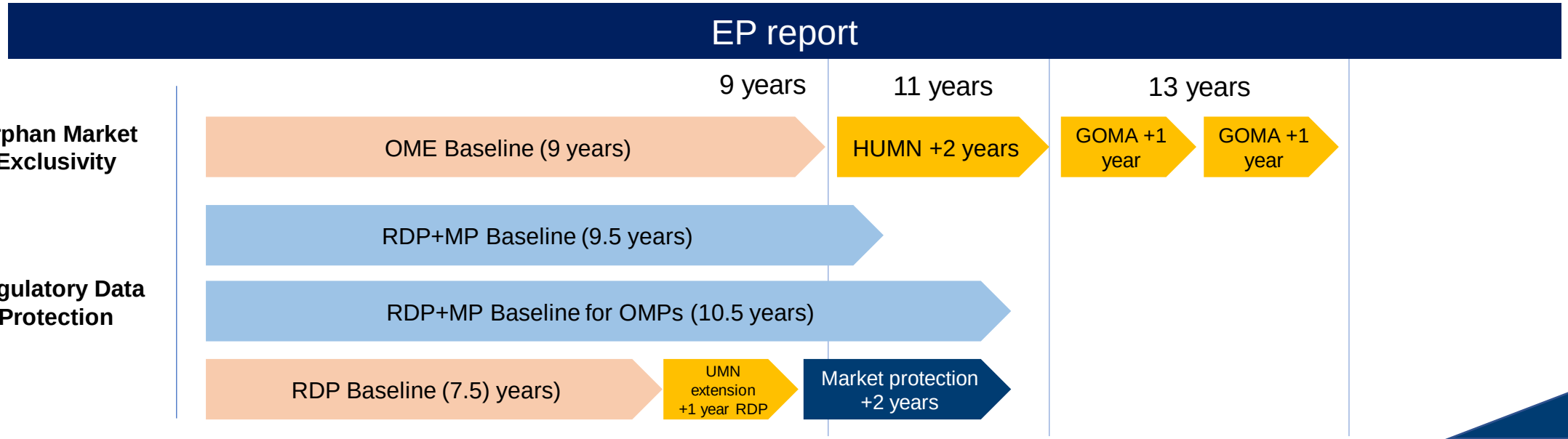
- Modulation framework
  - 9-year baseline for all orphans
  - 11 years for HUMN (raised from the Commission proposal)
  - 4 years for bibliographic assessment
- GOMA (global orphan marketing authorization) – extension of baseline protection
  - Remains unchanged at +1 year per new orphan indication, capped at +2
  - Submissions for extension must come 2 years before the ORIGINAL OME would expire (e.g. at year 7)
- Maximum possible OME is 13 years & linked to the API
  - Non-HUMN can expect 9 to 11 years
- **Confusion regarding OME**
  - Article 71.6 – OME shall not prevent the GRANTING of a MA for a similar medicinal product, including generics or biosimilars



Incentive framework overall

Art. 71 Regulation

- RDP modulation has also been limited and capped
- **To be confirmed**: orphans are automatically UMN, thus receive the maximum 12-month extension, and are thus NOT eligible or any other RDP extending incentive under article 81



HUMN

Art. 70 Regulation

No significant change from Commission proposal, but addresses one of EUCOPE's initial concerns – what happens to first-in-disease therapies

Commission Proposal	EP Report
1. An orphan medicinal product shall be considered as addressing a high unmet medical need where it fulfils the following requirements: a. there is no medicinal product authorised in the Union for such condition or where, despite medicinal products being authorised for such condition in the Union, the applicant demonstrates that the orphan medicinal product, in addition to having a significant benefit, will bring exceptional therapeutic advancement; b. the use of the orphan medicinal product results in a meaningful reduction in disease morbidity or mortality for the relevant patient population	1. An orphan medicinal product shall be considered as addressing a high unmet medical need where it fulfils the following: a. there is no medicinal product authorised in the Union for such condition; or; b. where a medicinal product is authorised for such condition, addition to having a significant benefit, it will bring exceptional therapeutic advancement and the use of the orphan medicinal product results in a meaningful reduction in disease morbidity or mortality for the relevant patient population.

Significant Benefit & ODD

Art. 2.2.7 Regulation / art. 63, 66, 67 Regulation

- **Significant benefit definition**: means a clinically relevant advantage or a major contribution to patient care of an orphan medicinal product if such an advantage or contribution benefits a ~~**substantial**~~ **relevant** part of the target population

- **ODD criteria**:
  - 7-year ODD has been RETAINED
  - Commission delegated act to update ODD criteria REMOVED
  - Recital refers to hospital preparation **SHOULD** instead of may, be considered a satisfactory treatment

- **Sponsor requirements**:
  - Orphan sponsors must justify WHY the request withdrawal of ODD which will be made publicly available
  - Must clarify why transferring ODD

Broader Rare Disease Changes

Art. 73a and 73b new Regulation

- **Joint Procurement**:
  - Multiple references, including affirming it as a tool to improve access and availability, and address shortages
  - Article 73a – joint procurement for centrally authorized products, upon request from the Member States

- **Rare Disease Framework**: Formerly the Rare Disease Action Plan
  - Call for the Commission to establish a European Framework for Rare Diseases, to frame and coordinate EU policy

Regulatory Protection Modulation

Art. 80-81 Directive

- **7 years and 6 months** baseline Regulatory Data Protection (RDP), increased in comparison to Commission's proposal (6 years baseline RDP)
- Possible **+1-year RDP extension** upon conditionalities, **cap at 8 years and 6 months**:
  - +1 year addressing unmet medical needs (increased, compared to 6 months from the Commission)
  - +6 months for conducting comparative clinical trials (in line with the Commission)
  - +6 months if significant R&D (incl. pre-clinical development) is carried out in the EU in cooperation with a public entity of the EU (new condition introduced by Parliament)
- RDP is followed by 2 years Market Protection (MP), same as Commissions proposal
  - +1-year market protection for new indication (Commissions proposal instead provided 1 year RDP for fulfilling this condition)
- Total max. protection (RDP and MP): 11 years and 6 months

4-year RDP for repurposed medicinal products *(art. 84 Directive)* remains

"Six months, where the marketing authorisation holder demonstrates that a significant share of research and development, including preclinical and clinical, related to the medicinal product has been done within the Union and at least in part in collaboration with public entities, including university hospital institutes, centres of excellence or bioclusters located in the Union"

Unmet medical needs (UMN)

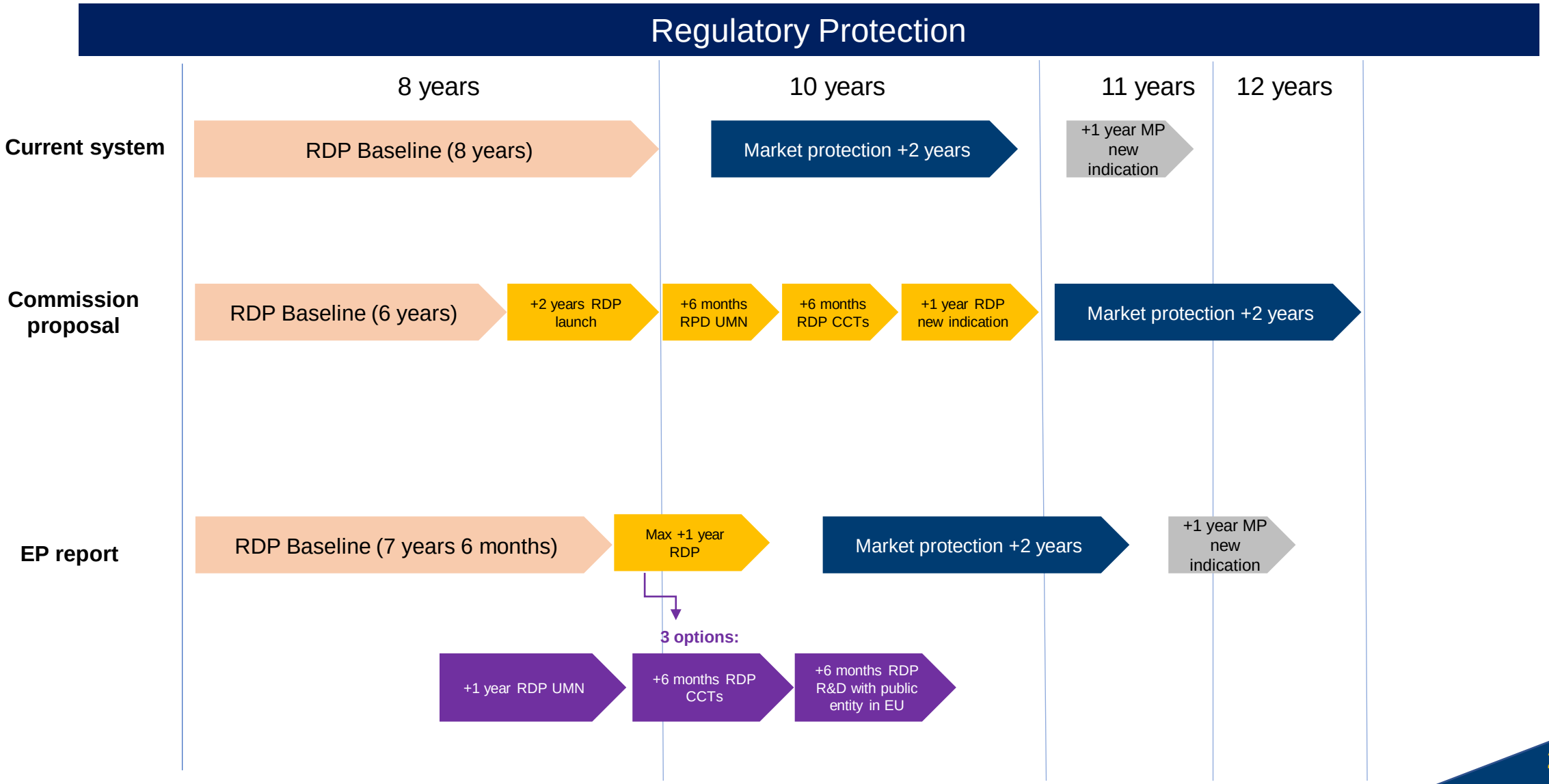
Art. 83 Directive

- **No changes to the criteria**, in comparison to the Commission's proposal

> 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**.

- However, the **reward for addressing UMN is increased to 12-month RDP** (6-month in the Commission's proposal)
- Moreover, the **EMA shall consult industry** and other stakeholders (as per art. 162 Regulation) in **adopting scientific guidelines** (a positive clarification to Commission's proposal)
- EP proposes positive clarifications in the recitals on UMN:
  - **UMN should not influence P&R decisions**
  - The concept of "morbidity" should include various factors, such as quality of life, burden of disease and treatment, and take into account Patient Experience Data (PED)
- **All orphan drugs will be considered as addressing UMN**

Regulatory Protection Modulation



Launch Conditionality/Access proposal

Art. 81-82 Directive / Art. 58new Directive

- **Member States must request** that a MAH file for P&R in their country **within 12 months** of receiving MA
  - Recognition that industry does not have full control over access discussions
  - In case of a **positive P&R**, **MAH must, to the best of their ability ensure appropriate and continued supply** to cover the needs of patients in that Member State in line with the obligations of the MAH under the Directive
- MAH must **file for P&R within 12 months of a request, or 24 months** if they are a SME, non-profit, or at time of granting MA has fewer than 5 centralised marketing authorisations
  - Separate timelines can be negotiated
- **OMPs and ATMPs may choose to only fulfil the P&R** filing requirement where a **relevant patient population is identified –** justify NOT filing in specific countries
- The EC will **establish list of products to be exempted** from this requirement
- A conciliation mechanism is established
- **Non-compliance with the obligations** shall be subject to the imposition of **effective, proportionate and dissuasive financial penalties**.

Paediatric requirements

- **MoA or Molecular Target:** EMA may grant waivers for products intended solely for adult populations unless scientific data demonstrate that the product's molecular target **OR** mechanism of action is linked to a different disease or condition in children within the same therapeutic area as the adult indication (Art. 75.1b Regulation)

- The **5-year cap on deferrals for PIPs** is retained, requiring justification based on scientific and technical, or public health considerations (Art. 81.3 Regulation)

Annexes

Overview on additional topics

- **R&D Transparency** – Pharmaceutical Strategy Task Force – Stefano Romanelli (romanelli@eucope.org)
- **Paediatric framework** – Paediatric Working Group – Stefania Alessi (alessi@eucope.org)
- **Hospital Exemption** – Cell and Gene Therapy Working Group – Victor Maertens (maertens@eucope.org)
- **Platform Technology** – Cell and Gene Therapy Working Group – Victor Maertens (maertens@eucope.org)
- **Electronic Patient Information (ePI)** – Regulatory Working Group – Dr Seán Byrne (byrne@eucope.org)
- **Antimicrobial Resistance (AMR) and Transferable Exclusivity Vouchers (TEV)** – Pharmaceutical Strategy Task Force – Stefano Romanelli (romanelli@eucope.org)
- **European Health Emergency Prepardeness and Response Authority (HERA)** – Pharmaceutical Strategy Task Force – Stefano Romanelli (romanelli@eucope.org)

QUESTIONS

COMMENTS

REFLECTIONS

IV.
Next steps and conclusions

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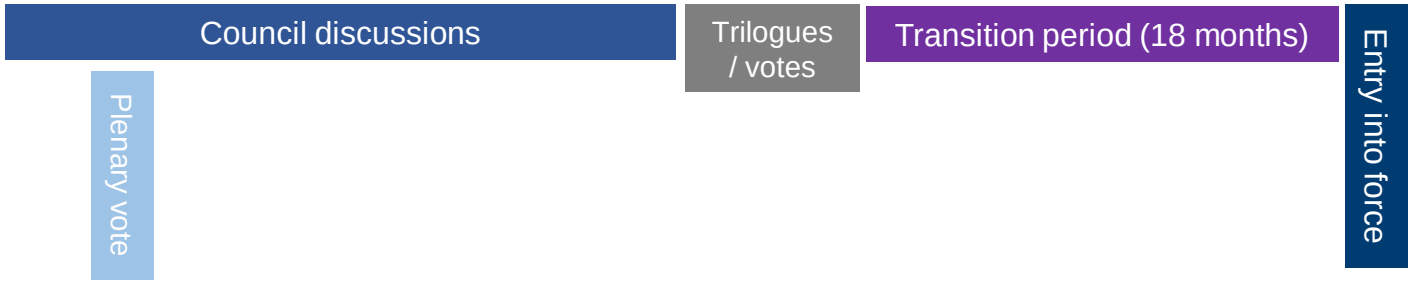
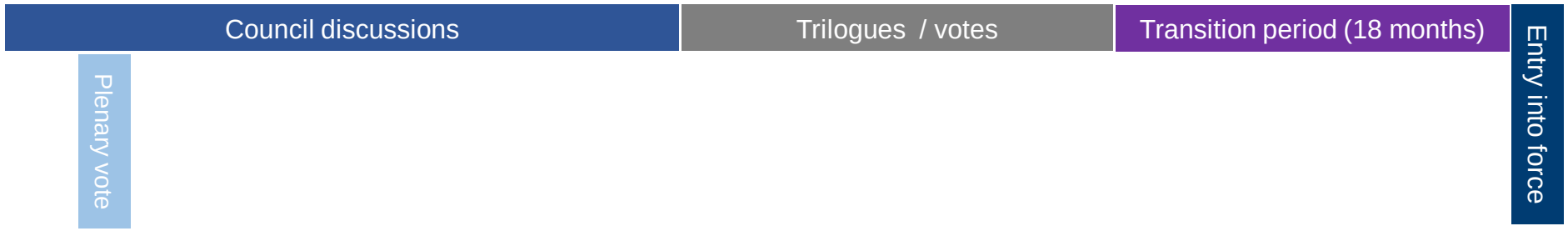
Potential implementation scenarios

These are all estimates – biggest factor will be length of Council discussions

Likely timeline – Plenary vote 10 April, and long discussions in Council



Long process – Significant delays in Council discussion and long trilogue



Transposition measures

Chapter XVI Regulation / Chapter XVIII Directive

- The Directive and the Regulation will go into effect at the same time, 18 months after the entry into force
  - Timelines can vary for specific provisions – especially where tertiary legislation is needed

- Specific guidance exists for how incentives will be awarded for therapies undergoing review during the transition
  - Products that were authorized under the existing OMP Regulation will continue to benefit from the existing (10-year OME) incentive framework
  - Products, for which marketing authorization application was submitted under the existing Directive, will continue to benefit from the existing incentive framework (8-year RDP + 2-year market protection)

Request to Members

- As discussions move to Council, opportunity to raise additional points, in particular **highly technical issues**
  - Please, flag any elements that have not been appropriate discussed in the Parliament that are relevant
  - Similar exercise ongoing in different working groups

- To support Council engagement, Members encouraged to meet with national Ministries
  - EUCOPE is happy to support or join any ongoing meetings to bring the European dimension of the conversation

V.

Annexes

R&D Transparency

Art. 57 Directive

- The marketing authorisation holder shall declare to the public any **direct financial support** received from **any public authority, publicly funded body** ***or philanthropic or non-for profit organisation or fund***, ***irrespective of its geographic location***, *and any indir***ect financial support received from any public authority or publicly funded body** *of the Union or its Member States* in relation to any activities for the research and development of the medicinal product covered by a national or a centralised marketing authorisation, irrespective of the legal entity that received that support

- Developers must indicate if they received a product or licence from a different entity, and at what stage of development it was, and if possible financial support it received before being transferred to the current MAH

Paediatric framework

- The 6-month SPC incentive, aimed at encouraging research into medicinal products for children, remains unchanged (Art. 86 Directive)
- For marketing authorisation applications lacking a Paediatric Investigation Plan (PIP) or a comparative study, applicants must provide justification and, if applicable, evidence from post-marketing long-term studies (Art. 6.5.2a new Directive)
- The outcomes of PIP assessments, specifically compliance with the paediatric investigation plan, will be made public (Art. 49.2 Directive)
- **EMA** is tasked with **drafting application guidelines for waivers** (art. 73.3a new Regulation)
- The obligation to place, within 2 years, a paediatric product in all MS where the adult indication is already placed remains unchanged (Art. 59 Directive)
- The 5-year cap on deferrals for PIPs is retained, requiring justification based on scientific and technical, or public health considerations (Art. 81.3 Regulation)
- EMA may grant waivers for products intended solely for adult populations unless scientific data demonstrate that the product's molecular target **OR** mechanism of action is linked to a different disease or condition in children within the same therapeutic area as the adult indication (Art. 75.1b Regulation)
- **20-day period for MAH to contest the EMA's scientific conclusions** regarding PIPs waivers or deferrals (Art. 87.2b new Regulation)
- Requests for changes or deferrals to PIPs due to implementation challenges are permitted, including when updating elements of initial PIP (Art. 84.1a new Regulation)

Hospital Exemption (HE)

Art. 2 Directive

- HE product must continue to be delivered on a non-routine basis in a hospital setting under the exclusive professional responsibility of a medical practitioner, and, where relevant, **a hospital pharmacist**, **to meet the special need of an individual patient**
  - The EP supports that guidelines governing the harmonized implementation of the use of HE on a non-routine basis are established through implementing acts (in line with EU Commission proposal)
  - The scope of who can manufacture HE products **has been expanded to include hospital pharmacists**
- HE applicants must now include evidence on quality, safety and **expected efficacy**
- The EP has reinforced the commission's data reporting requirements for HE products, incl. more **explicit calls for long-term follow-up data**
- The EU Commission and MS set up and maintain via regular updates a repository of (quality, safety and efficacy) data and information on authorisation, suspension or withdrawal of HE approvals. The **repository will be made publicly available**
- The EP reports **strengthened the cross-border exchange** of HE, allowing MS to authorize the exchange of HE ATMPs in **justified cases of medical need** and in the **absence of other solutions** for the individual patient

Electronic Patient Information (ePI)

Art. 63 ff. Directive

- The Parliament reports maintain **a similar approach to the Commission's** for what concerns electronic and printed leaflets:
  - Member States will decide on the format of the leaflet. The electronic-only format shall be introduced after consultation with patients and other relevant stakeholder; moreover, in this case patients have right to a printed copy and MAH can voluntarily make printed version available. If the Member States do not give any indications no indications, both formats are kept
  - For leaflets of anti-microbial, some additional requirements (e.g., inclusion of an awareness card) are introduced
  - The Parliament also proposed that, if the product is intended for dispensation by professionals, the leaflet can be made available only electronically

AMR and TEV

Chapter III Regulation

- Clarification on "**priority antimicrobials"** category
  - They can be awarded with **milestone payments** and other support (this was not included in the Commission proposal)
  - Modulated, **stricter** TEV: duration of **12, 9 or 6 months** of RDP, for 'critical', 'high' or 'medium high' priority antimicrobials (instead of 12 months TEV commission proposal). The voucher cannot be used for products that have already benefitted from the max. RDP period
- The Commission and any Member States may engage in **joint procurement** procedures of antimicrobials, taking the form of multi-year subscription with clear conditions (this was not included in the Commission proposal)
- **Much unclarity** in EP proposal on how the duration of TEV would be assigned, on how the milestone payments would work and whether the milestone payments would exclude obtaining a TEV

European Health Emergency Preparedness and Response Authority (HERA)

Art. 175new Regulation

- The Parliament introduces **new provisions on HERA** in the Regulation
- HERA is established as a **separate structure under the ECDC**
- HERA is made responsible of the **EU long-term public health R&D agenda**
- **Expanding HERA's tasks** in:
  - Collaboration with third party research
  - Giving guidance to the Commission on EU grants
  - Detecting biological and other health threats
  - Assessing vulnerability of supply chains
  - Ensuring availability of production sites for priority products
  - Facilitating joint procurement

Thank you for your attention!