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NOTE

From : General Secretariat of the Council
to : Working Party on Pharmaceuticals and Medical Devices

No. prev. doc: 17589/09 MI 466 SAN 368 ECO 155 ENT 219 CODEC 1460
No. Cion prop. : 17504/08 MI 566 SAN 355 ECO 198 ENT 334 CODEC 1889

Subject : Proposal for a Directive of the European Parliament and of the Council amending Directive 2001/83/EC as regards the prevention of the entry into the legal supply chain of medicinal products which are falsified in relation to their identity, history or source

About this document

1. Delegations will find attached an updated document reflecting the state of play after the Working Party meeting of 15 April. The main purpose of this document is to verify that delegations' positions are correctly reflected. To this aim, delegations are kindly invited to inform the Presidency and the Council Secretariat about any changes to positions reflected in the footnotes and, in particular, about **footnotes that can be lifted** by Friday 23 April (end of business).

This document will not be used in the next meeting of the Working Party. A new document intended for the continued examination will be issued based on replies by delegations by the above deadline.

2. The text of the legislative proposal is set out in the annex to this note. The text conventions are the same as those outlined in previous versions of document 5184/10.

General remarks

3. While contributing constructively to the discussions on many points, the Commission representatives have, in general, reserved their position on changes to the Proposal, pending the outcome of the examination in Parliament.
 4. It is noted that the entry into force of the Lisbon Treaty necessitates changes to the proposal, some of which are of an editorial nature, others of which are substantial, *e.g.* as regards comitology. In this version of the legal text, the recitals have been updated to set out all such changes. The enacting terms will be updated in a forthcoming document.
 5. It is further noted, that at this stage all delegations have a general scrutiny reservation on the entire legislative proposal. The Danish, Maltese and United Kingdom delegations have entered Parliamentary scrutiny reservations.
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Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directive 2001/83/EC as regards the prevention of the entry into the legal supply chain of medicinal products which are falsified in relation to their identity, history or source

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty *establishing the European Community on the functioning of the European Union*, and in particular Article 95¹ 114 and paragraph 4 point c of Article 168 thereof,

Having regard to the proposal from the *European Commission*²,

Having regard to the opinion of the European Economic and Social Committee³,

*[Having regard to the opinion of the Committee of the Regions]*⁴,

Acting in accordance with the *ordinary legislative procedure laid down in Article 251 of the Treaty*⁵,

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 use⁶ lays down the rules for *inter alia* manufacturing, importation, placing on the market, and wholesale distribution of medicinal products in the *Community Union* as well as rules relating to active pharmaceutical ingredients used as starting materials.

¹ The Commission has proposed that the Legal basis under the TEC be changed to Articles 114 and 168(4c) of the Treaty on the functioning of the European Union (see document 17193/09 ADD1).

² OJ C , , p. .

³ OJ C , , p. .

⁴ ~~OJ C , , p. .~~ The Committee of the Regions has not been consulted, it has nevertheless given an opinion

⁵ OJ C , , p. .

⁶ OJ L 311, 28.11.2001, p. 67.

- (2) There is an alarming increase of medicinal products detected in the ~~Community~~ Union which are falsified in relation to their identity, history or source. These products usually contain sub-standard or falsified ingredients, or no ingredients or ingredients in the wrong dosage, including active pharmaceutical ingredients, thus posing an important threat to public health.
- (3) Past experience shows that such medicinal products are not only marketed through illegal supply chains, but reach the patient via the legal supply chain as well. This poses a particular threat to human health and may lead to a lack of trust of the patient also in the legal supply chain. ~~The rules contained in~~ Directive 2001/83/EC should be amended in order to respond to this increasing threat.
- (4) The potential threat to public health is also recognised by the World Health Organisation (WHO), who set up the International Medical Products Anti-Counterfeiting Taskforce ("IMPACT"). IMPACT developed, ~~with the active participation of the Community,~~ Principles and Elements for National Legislation against Counterfeit Medical Products, which were endorsed by the IMPACT General Meeting in Lisbon on 12 December 2007. The Union participated actively in the Taskforce.

7

- (4a) This Directive is without prejudice to provisions concerning intellectual and industrial property rights and aims specifically to prevent falsified medicines from entering the legal distribution chain.

⁷ A recital referring to the Convention on counterfeit medical products under preparation in the Council of Europe should be inserted if that Convention is adopted.

- (4b) A definition of "falsified medicinal product" should be introduced in order to distinguish such products from legal but unauthorised medicinal products. Furthermore, authorised or otherwise legitimate products with quality defects and medicinal products that due to mistakes in the manufacturing or subsequent handling do not comply with the requirements of Good Manufacturing Practices or Good Distribution Practices should not be confused with falsified medicinal products.
- (5) Persons procuring, holding, storing, supplying or exporting medicinal products are only entitled to pursue their activities if they meet the requirements for obtaining a wholesale distribution authorisation in accordance with Directive 2001/83/EC. However, Today's distribution network for medicinal products is increasingly complex and involves many players which are not necessarily wholesale distributors as defined in that Directive 2001/83/EC. In order to ensure reliability of the distribution chain, pharmaceutical legislation should address all actors in the distribution chain: this includes not only wholesale distributors who procure, hold, store and supply products, but also persons, brokers, acting as intermediaries who are involved in sale transactions without owning and physically handling the products. Such intermediaries should be subject to appropriate provisions submitted to proportionate rules in order to exclude, by all practical means, the possibility that medicinal products which are falsified in relation to their identity, history or source to enter the legal supply chain in the Union Community.

- (6) Directive 2001/83/EC also applies ~~also~~ to wholesale distributors ~~which~~ who do not place medicinal products on the market of a Member State but export them to third countries after introducing them into the European Union. The ~~rules~~ provisions applicable to those wholesale distributors under this Directive ~~—which apply no matter whether the exported product is intended to be imported, i.e. placed on the market or merely introduced without being imported—~~ should be clarified, should apply regardless of whether the medicinal products are intended for the internal market of the European Union or are introduced into the European Union with the sole purpose of exportation. In particular, good distribution practices should be applicable to all these activities whenever they are performed on the European Union territory, including in areas such as free trade zones or free warehouses, without prejudice to customs legislation.
- (7) In order to take account of new risk profiles of medicinal products, while at the same time ensuring the functioning of the internal market for medicinal products, safety features designed to ensure the identification, **and** authenticity ~~of~~ **and** servicing as tampering evidence traceability of for ~~prescription~~ medicinal products **at risk of falsification** should be established at Community Union level. When introducing obligatory safety features for ~~prescription~~ medicinal products, due account should be taken of the particularities of certain products or categories of products, such as generic medicines. This includes **particular consideration of the risk of falsifications** medicines at risk of being falsified in view of their price and past incidences in the Community Union and abroad, as well as **of** the consequences of falsifications for public health in view of the specific characteristics of the products concerned or of the severity of the conditions intended to be treated.

- (8) Any actor in the supply chain who packages medicinal products has to be a holder of a manufacturing authorization. In order for the safety features to be effective, ~~the a~~ manufacturing authorization holder *who is not the himself the original manufacturer of the medicinal product* should only be permitted to remove, replace or cover these safety features under strict conditions.
- (9) These manufacturing authorisation holders should be held strictly liable for damages to patients caused by medicinal products *that they have* placed ~~by them~~ on the market which are falsified in relation to their identity.
- (10) In order to increase reliability in the ~~distribution~~ supply chain, wholesale distributors should verify, ~~either by themselves or through a body accredited for that purpose,~~ that their suppliers comply with good distribution practices⁸.
- (11) ~~To~~ *In order to* ensure transparency, a list of ~~those~~ wholesale distributors ~~whose compliance for whom it has been established that they comply~~ with applicable ~~Community rules~~ Union legislation ~~has been established after through~~ inspection by a competent authority of a Member State, should be published in a ~~Community~~ database at Union level.

⁸ **DELETED**: Add "if those suppliers are wholesale distributors themselves; where the product is obtained from the manufacturer or importer, wholesale distributors should verify that the manufacturer or importer holds a manufacturing authorisation. These requirements should always be fulfilled, even where the product is obtained through a negotiation involving a person trading the medicinal product.". (AFM-15)

- (12) Falsified active pharmaceutical ingredients *used in the manufacturing of medicinal products* pose the risks *related to* ~~of~~ sub-standard active pharmaceutical ingredients. ~~This risk~~ *These risks* should be addressed. **The requirements of good manufacturing practices for active substances used as starting materials have been agreed by the International Conference on Harmonisation and published by the Commission. Those requirements cover the manufacturing of active substances as well as operations such as packaging, repackaging, labelling, re-labelling, distribution or storage performed by active pharmaceutical ingredients distributors. These operations have also an impact on the quality of medicinal products. Manufacturers** ~~In particular,~~ ~~manufacturers~~ of medicinal products should ensure ~~either by themselves or through a body accredited for that purpose~~ that the *supplying* manufacturers and distributors⁹ *of supplying them with* active pharmaceutical ingredients *in its supply chain* complies with good manufacturing practices. **Competent authorities should be empowered to inspect distributors of active substances used as starting materials.**

⁹ **DELETED**: add other actors, repackagers, importers.

- (13) The manufacture of active pharmaceutical ingredients should be subject to good manufacturing practices ~~irrespective~~ regardless of whether those ingredients were manufactured in the ~~Community~~ Union or imported. With regard to the manufacture of active pharmaceutical ingredients in third countries, it should be ensured that the ~~rules for~~ the legislative provisions applicable to manufacture of active pharmaceutical ingredients intended for export to the ~~Community~~ Union, ~~including together with~~ inspection and enforcement, provide for a level of protection of public health equivalent to that provided for by ~~Community~~ Union legislation.
- (13a) In order to provide for a high level of protection of public health, the manufacture of certain excipients, should also be subject to appropriate good manufacturing practices irrespective of whether the excipients were manufactured in the EU or imported. For any medicinal product, these excipients should be identified by the manufacturing authorisation holder on the basis of an approach assessing the risks caused by the medicinal product to public health should the excipients used in it be sub-standard. The European Pharmacopeia, which is widely referred to by the pharmaceutical industry and competent authorities in the European Union, inter alia in applications for marketing authorisations, contains a definition of excipient. In order to ensure a harmonised approach, it is desirable to apply the same definition of excipient in this Directive as that set out in the European Pharmacopeia.
- (14) In order to facilitate enforcement and control of ~~Union~~ Community rules relating to active substances used as starting material, the manufacturers ~~or~~, importers or distributors of those substances should notify the respective competent authorities of their activities¹⁰.
- (15) ~~To~~ In order to ensure a similar level of protection of human health throughout the ~~Union~~ Community, and to avoid distortions in the internal market, the harmonised principles and guidelines for inspections of holders of manufacturing and wholesaler authorisations of medicinal products as well as of manufacturers and distributors of active substances should be strengthened. ~~This~~ Such harmonised and strengthened principles and guidelines should also help to ensure the functioning of existing mutual recognition agreements which rely on efficient and comparable inspection and enforcement throughout the ~~Union~~ Community.

¹⁰ **DELETED**: indicate consequences of no notification.

- (16)¹¹ The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred by the Commission¹².
- (17)¹³ ~~In particular the~~ The Commission should be empowered to adopt *measures delegated acts in accordance with Article 290 of the Treaty on the functioning of the EU (TFEU)* regarding safety features that shall appear on the packaging of medicinal products **subject to medical prescription at risk of being falsified** and **to adopt regarding** detailed rules for medicinal products introduced **into the EU** without being *imported placed on the market. Since those measures are of general scope and are designed to amend non-essential elements by supplementing it, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.*
- (18) Since the objective of ensuring the functioning of the internal market for medicinal products, while **ensuring achieving** a high level of protection of public health against medicinal products which are illegal in view of a falsified identity, history or source, cannot be sufficiently achieved by the Member States, ~~as they cannot adopt individually harmonised measures applicable in the Community~~ and can be better achieved *by action at Community Union level, the Community Union* may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty *on European Union (TEU)*. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

¹¹ The Regulatory procedure with scrutiny is replaced by delegated acts/implementing measures under the Lisbon Treaty. (Article 290/291 of the Treaty on the Functioning of the EU). As a result, this recital is no more correct and should be deleted. Recital (17) has been modified accordingly.

¹² OJ L 184, 17.7.1999, p. 23.

¹³ This recital has been adapted to the introduction of delegated acts/implementing measures under the Lisbon Treaty. (Article 290/291 of the Treaty on the Functioning of the EU).

(18a) In accordance with point 34 of the Inter-institutional Agreement on better law-making¹⁴, Member States are encouraged to draw up, for themselves and in the interests of the *Union*, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public.

(19) Directive 2001/83/EC should ~~therefore~~ be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

¹⁴ OJ C 321, 31.12.2003, p. 1.

Article 1

Directive 2001/83/EC is amended as follows:

(0) In Article 1, the following point 3a is inserted after point 3:

“3a. *Excipient*:

Any constituent of a medicinal product other than the active substance and packaging material.¹⁵”

0a) In Article 1, the following point 5a is inserted after point 5:

“5a. *Falsified medicinal product*:

Any medicinal product with a false representation of:

a) its identity, including its packaging and labelling, name, composition in respect of any of its components and strength

and/or

b) its source, including the manufacturer, country of manufacturing, country of origin, marketing authorization holder

and/or

c) its history, including the records and documents relating to distribution channels;”

16

¹⁵ **DELETED**: Prefers WHO definition.

¹⁶ **DELETED**: Need definition: "*Active substance or Active Pharmaceutical Ingredient*: Any substance or mixture of substances intended to be used in the manufacture of a drug (medicinal) product and that, when used in the production of a drug, becomes an active ingredient of the drug product. Such substances are intended to furnish pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, or prevention of disease or to affect the structure and function of the body" (AFM-17). **DELETED**: suggests reference to GMP part II.

1) In Article 1, the following point 17a is inserted after point 17:

‘17a. Brokering ~~Trading~~ of medicinal products¹⁷ :

All activities in relation to sale or purchase of medicinal products except for retail supply and wholesale distribution as defined in point 17 of this article, that do not include physical handling and that consisting of negotiating independently and on behalf of another legal or natural person or a body provided for by national law. ~~the sale or the purchase of medicinal products, or billing or brokering medicinal products, apart from supplying medicinal products to the public, and not falling under the definition of wholesale distribution.~~^{18 19}

2) In Article 2, paragraph 3 is replaced by the following:

‘(3) Notwithstanding paragraph 1 and Article 3(4), Title IV of this Directive shall apply to the manufacture of medicinal products intended only for export and to intermediate products, and active substances²⁰ and excipients used as starting materials.’

2a) In Article 2, the following paragraph 4 shall be inserted:

‘(4). Paragraph 1 is without prejudice to Articles 52b and 85a²¹.’

¹⁷ **DELETED**: reservation.

¹⁸ **DELETED**: brokers should be subject to license. **DELETED**: licence requirement could be overly burdensome; prefer a system of notification or registration.

¹⁹ **DELETED**: Need to cover transporters in this Directive in order to stop falsified products from entering the legal supply chain. **DELETED**: Reservation; prefers national legislation on transports.

²⁰ See also Presidency proposals to Article 46(f).

²¹ **DELETED**: add "which relate to medicinal products introduced but not imported into the EU".

2b) In Article 8, paragraph 3, the following point shall be added after point h):

‘(ha) A written confirmation that the manufacturer of the medicinal product has verified compliance of the active substance manufacturer with good manufacturing practice by conducting audits²², in accordance with Article 46(f). The written confirmation shall entail the time of the audit and a declaration that the findings of the audit verify manufacture according to good manufacturing practice.

This information shall be updated on a regular basis.’

3) Article 46 is amended as follows:

(a) ~~The first subparagraph of p~~Point (f) is replaced by the following:

‘(f) to comply with the principles and guidelines of good manufacturing practice for medicinal products and to use as starting materials only active substances, which have been manufactured and distributed in accordance with the detailed guidelines on good manufacturing practice for starting materials. To this end, the holder of the manufacturing authoris~~z~~ation shall verify compliance of the active substances manufacturer and distributors with good manufacturing practices by conducting audits at the manufacturing and distribution sites of the active substances manufacturer and distributors by himself or through a body accredited for this purpose by the competent authority of a Member State’²³.

For excipients potentially presenting a risk, the manufacturer, taking into account the source and intended use of the excipients and previous incidents shall ensure that the appropriate good manufacturing practices are applied on the basis of a formalised risk assessment in accordance with the applicable guidelines referred to in Article 47 second paragraph, taking into account other suitable quality system requirements, and document this.

²² **DELETED**: Scrutiny reservation on the requirement to conduct audits.

²³ **DELETED**: reservation on deletion of accreditation, in particular as regards manufacturers. Propose wording allowing for MS to establish an accreditation system : "The competent authorities of the Member States may establish a system of accreditation for persons undertaking audits of active substance manufacturers."

(b) The following point (g) is added:

‘(g) to inform the competent authority immediately upon getting knowledge of products manufactured by him that they he gets knowledge of which are, or ~~which~~ are suspected to of being, falsified ~~in relation to the identity, history or source of products manufactured by him.~~’

3a) In Article 46a, paragraph 1 is replaced by the following:

‘1. For the purposes of this Directive, manufacture of active substances used as starting materials shall include both total and partial manufacture or import of an active substance used as a starting material as defined in Part I, point 3.2.1.1 (b) Annex I, as well as the storage, the distribution, and the various processes of dividing up, packaging or presentation prior to its incorporation into a medicinal product, including repackaging or re-labelling, such as are carried out by a distributor of starting materials.’

4) The following Article 46b is inserted after Article 46a:

‘Article 46b

(1) Member States shall take appropriate measures to ensure that the manufacture and distribution on their territory of active substances used as starting material, including active substances that are intended for export, complies with good manufacturing practices for active substances.

(2)²⁴ Active substances used as starting material shall only be imported if ²⁵:

(a) they have been manufactured in accordance with ~~by applying~~ standards of good manufacturing practice at least equivalent²⁶ to those laid down by the Community; and

²⁴ **DELETED**: Reservation on this paragraph.

²⁵ **DELETED**: In general there is no concept exactly corresponding to GMP in third countries. Difficult for organisations in third countries to check whether their rules are compliant with EU rules.

²⁶ **DELETED**: This concept must be specified. Which organisation verifies that practices are equivalent? **DELETED**: What is the impact on imports to the EU?

(b) they are accompanied by a written confirmation from the exporting third country that the standards of good manufacturing practice applicable to the plant manufacturing the exported active substance are at least equivalent to those laid down by the Community, and that the plant is subject to control and enforcement ensuring that those good manufacturing practices cannot be circumvented.^{27 28}

(3)²⁹ The requirement set out in point (b) of paragraph 2 shall not apply if the exporting country is listed in accordance with Article 111b.

(4) For exceptional reasons of availability of medicines and for a temporary period not exceeding 3 years, when a plant manufacturing an active substance for export has been inspected by a Member State and found compliant with the principles and guidelines of good manufacturing practice laid down in Article 47, the requirement set out in point 2(b) may be waived by any Member State.[?]

5) In Article 47, the third paragraph is replaced by the following:

‘The principles of good manufacturing practice for active substances used as starting materials referred to in point (f) of Article 46 and in Article 46b shall be adopted in the form of detailed guidelines.’

²⁷ **DELETED**: this paragraph must be clarified in order to serve its purpose.

²⁸ **DELETED**: Reservation about this written confirmation- could there be unintended, undesirable effects of this provision?

²⁹ **DELETED**: Reservation on this paragraph.

5a) The following Article 47a is added³⁰:

'Article 47a

- (1) The safety features referred to in point (o) of Article 54 shall not be partly or fully removed or covered-up, unless the following conditions are fulfilled:
- (a) The manufacturing authorisation holder verifies, prior to partly or fully removing or covering-up the safety feature referred to in Article 54(o), that the product is authentic and it has not been tampered with;
- (b) The manufacturing authorisation holder complies with point (o) of Article 54 by replacing the safety features with safety features which ~~is~~ are equivalent as regards the possibility to ascertain identification, authenticity and tampering evidence of the medicinal product, and without opening the immediate packaging as defined in Article 1(23);
- (c) These operations shall be conducted in accordance with applicable good manufacturing practices for medicinal products;
- (d) The replacement of the safety features is subject to supervision³¹ by the competent authority.
- (2) Manufacturing authorisation holders, including those performing the activities described in paragraph (1) of this Article, shall be considered as producers within the meaning of Council Directive 85/374/EEC and may therefore be held liable in case of damages arising due to the falsification of medicinal products.

³⁰ This article includes the previous Article 54a(2) and (3) of the proposal.

³¹ **DELETED**: Doubts on possibilities for competent authorities to supervise. **DELETED**: How shall the supervision by Member States be carried out?

6) In Article 51, paragraph 1, the following point (c) is added after point (b):

‘(c) in the case of products intended to be placed on the market in the Community, that the safety features referred to in point (o) of Article 54 have been affixed on the packaging.’

7) The following Articles 52a and 52b are inserted after Article 52:

Article 52a

Importers, ~~and~~ manufacturers, and distributors of active substances used as starting materials established in the Community shall, at least, notify³² their address to the competent authority of the Member State where they are established.

Article 52b

(1) Notwithstanding Article 2(1), and without prejudice to Title VII, Member States shall ~~ensure that~~ take the necessary preventive measures with regard to medicinal products that are introduced in the European Union but are not intended to be placed on the market ~~are not introduced into the Community~~ if there are sufficient grounds to suspect that these products are falsified ~~if there are reasons to believe that the products claim a falsified identity, history or source.~~

³² **DELETED**: an authorisation is needed - not just a notification. (AFM-9)(AFM-14)
DELETED: Support. **DELETED**: suggests a licensing system.. **DELETED**: Make clear that the economic operators can not start carrying out their activities before they have notified authorities.

- (2) ~~The Commission shall adopt the necessary measures for the implementation of paragraph 1. Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 121(2a).²~~

With the aims established in paragraph (1), the Commission shall be given the power to adopt delegated acts in accordance with **Article 290**³³ TFEU as regards the following measures supplementing the provision in paragraph 1:

- The criteria to be considered and the verifications to be made by the national competent authorities when assessing medicinal products introduced into the EU without being imported, including inspections to be performed in free trade zones or free warehouses and the regulatory actions that can be taken when these medicinal products are found to be falsified. This shall include identification of triggers for inspections.
 - The customs procedures under which the medicinal products will be subject to the measures referred to in paragraph 1.³⁴
 - The documentation (including electronic data) that shall accompany or be associated with the medicinal product for the purpose of enforcement, without prejudice to the applicable documentation requirements in accordance with customs legislation.
- (3) For the delegated acts referred to in paragraph 2, the procedure set out in Articles 121a, 121b and 121c shall apply.

³³ **DELETED**: scrutiny reservation on use of Article 290 for the powers mentioned, find Article 291 more appropriate.

³⁴ **DELETED**: customs provisions should be laid down separately.

8) In Article 54, the following point (o) is added^{36 37}:

‘(o) safety features making it possible to ascertain identification and ~~–~~authenticity ~~and~~ ~~traceability~~ of and serving as tampering-evidence for medicinal products, other than radiopharmaceuticals, ~~subject to medical prescription as defined in Title VI~~ in risk of being falsified **or tampered with**.

The requirement to apply these safety features for products or categories of products, shall be based on the outcome of a risk assessment³⁸ undertaken in accordance with **paragraph 4 point b** of Article 54a.

³⁵ **DELETED**: It should be possible to read the batch number, required under point (m), automatically.

³⁶ **DELETED**: positive scrutiny reservation. **DELETED**: exclude OTCs a priori. **DELETED**: scrutiny reservation; question method and competence for risk assessment, emphasise need for an efficient system.

³⁷ **DELETED** proposes adding "homeopathic medicinal products".

³⁸ **DELETED**: Scrutiny reservation on the risk assessment.

9) The following Article 54a is added:

*Article 54a*³⁹

(1) The safety features referred to in point (o) of Article 54 shall allow wholesale distributors ~~or~~ pharmacists⁴⁰ ~~or~~ and persons authorised or entitled to supply medicinal products to the public to perform all of the following:

(a) verify authenticity ~~by assessing overt, covert, or forensic devices~~ ;

(b) identify individual packs;

(c) verify whether the outer packaging has been tampered with.

(1a) The Commission shall be given the power to adopt delegated acts in accordance with **Article 290**⁴¹ TFEU with the objective of establishing the detailed application of the safety features referred to in point (o) of Article 54.

~~(2)⁴² The safety features referred to in point (o) of Article 54 shall not be partly or fully removed or covered up, unless the following conditions are fulfilled:~~

~~(a) The manufacturing authorisation holder verifies, prior to partly or fully removing or covering up the safety feature, the authenticity of the product;~~

~~(b) The manufacturing authorisation holder complies with point (o) of Article 54 by replacing the safety feature with a safety feature which is equivalent as regards the possibility to ascertain identification, authenticity and uninterrupted traceability of the medicinal product, and without opening the immediate packaging as defined in Article 1(23);~~

³⁹ **DELETED**: Reservation on this article.

⁴⁰ **DELETED**: Important that this provision imposes obligation that packaging shall have safety features, but does not oblige pharmacists to check these safety features.

⁴¹ **DELETED**: scrutiny reservations on use of delegated acts for all points under Article 54a paragraph 4; in particular, some delegations ponder whether point c) d) and e) could be treated through implementing acts under Article 291 TFEU.

⁴² Article 54a(2) has been amended and has become Article 47a(1).

(e) ~~The replacement of the safety feature is subject to supervision by the competent authority.~~

(3)⁴³ ~~Manufacturing authorisation holders shall be liable for damages in accordance with Council Directive 85/374/EEC caused by medicinal products which are falsified in terms of their identity.~~

(4) To this end, the delegated acts shall set out:

~~The Commission shall adopt the measures necessary for the implementation of point (o) of Article 54 and of paragraphs (1) and (2) of this Article.~~

~~Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 121(2a)~~

(a) the characteristics and technical specifications of the safety features referred to in point (o) of Article 54, with due consideration of their cost-effectiveness;

(b) the product categories or products which should bear the safety features referred to in point (o) of Article 54, considering ~~When adopting those measures, the Commission shall consider~~ the risk of falsification related to products or categories of products and at least the following criteria:

~~(a)~~(i) the price and sales volume of the product;

~~(b)~~(ii) the number of incidences of falsifications in third countries and within the Community;

~~(c)~~(iii) the evolution of those incidences in the past;

⁴³ Article 54a(3) has been amended and has become Article 47a(2).

- ~~(d)~~(iv) the specific characteristics of the products concerned⁴⁴;
- ~~(e)~~(v) the severity of the conditions intended to be treated;
- (vi) other potential risks to public health.

~~On the basis of these criteria, the requirements referred to in points (a) and (b) of paragraph (1) of this Article may be waived for certain products or product categories.~~

- (c) procedures for the notification to the Commission by national competent authorities of medicinal products at risk of falsification and a rapid system for evaluation and decision on these notifications for the purpose of the application of the provision of point b) above .
- (d) the⁴⁵ extent and modalities of verifications of the safety features referred to in point (o) of Article 54 by the manufacturers, wholesalers, pharmacists and persons authorised or entitled to supply medicinal products to the public and by the competent authorities. **In order to facilitate the effective implementation of these controls** **When establishing these provisions, the relevant particular** characteristics of the supply chain in ~~the different~~ Member States **shall be taken into account**⁴⁶ .
- (e) management and accessibility provisions relating to the information about the unique identifier necessary to identify and verify authenticity of medicinal products.

⁴⁴ **DELETED**: replace with: "the vulnerability resulting from the specific characteristics of the products concerned;(AFM-120)"

⁴⁵ **DELETED**: add "minimum".

⁴⁶ **DELETED**: Scrutiny reservation.

- (4a) ~~The measures referred to in this paragraph~~ These delegated acts shall take due account of the legitimate interests to protect information of a commercially confidential nature and of the protection of industrial and commercial property rights as well as, where appropriate, personal data.
- (4b) Articles 121a, 121b and 121c shall apply.
- (4c) The national competent authorities shall notify the Commission about medicinal products for which they judge that there are reasons to believe that they are at risk of falsification, according to the criteria set out in paragraph 34, point (b) of this Article.
- (4d) A Member State may extend the use of the safety feature referred to in point (o) of Article 54 to other medicinal products **for purposes relevant for national policies**⁴⁷, such as reimbursement.’
- (4e) **Within [five] years of entry into force of the delegated acts referred to in this Article the Commission shall present to the European Parliament and the Council a report on the application of this Directive in which the Commission shall assess the cost-effectiveness of provisions adopted in accordance with Article 54a in preventing the entry of falsified medicinal products into the legal supply chain.**

10) In Article 57, the fourth indent of the first paragraph is replaced by the following:

- ‘- without prejudice to point (o) of Article 54 and Article 54a(4d), identification and authenticity.’

11) The heading of title VII is replaced by the following:

- ‘Wholesale distribution and brokering ~~trading~~ of medicinal products’;

⁴⁷ Cion: reservation on reference to "national policies"; which is too wide a concept; instead there should be a reference to Article 57.

12) In Article 77, paragraph 4 is replaced by the following:

‘(4) The Member States shall forward to the Agency a copy of the authorization^{48 49} referred to in paragraph 1⁵⁰. The Agency⁵¹ shall enter that information in the Community database referred to in Article 111(6). At the request of the Commission or any Member State, Member States shall supply all appropriate information concerning the individual authorization which they have granted under paragraph 1.’

13) Article 80 is amended as follows:

(a) Point (e) is replaced by the following:

‘(e) they must keep records either in the form of purchase/sales invoices or on computer, or in any other form, giving for any transaction in medicinal products received, dispatched or brokered ~~traded~~ at least the following information:

- date,
- name of the medicinal product,
- quantity received, supplied or brokered ~~traded~~,
- name and address of the supplier or consignee, as appropriate;
- batch number of the medicinal product⁵²;

53

48 **DELETED**: Is it necessary to send a copy of the authorization? Why not just a list? (AFM-9)(AFM-14)

49 **DELETED**: Draws the attention to the resources that authorities need to handle this.

50 **DELETED**: replace by "The Member States shall enter the information on authorizations referred to in paragraph 1" so as to ensure compatibility with EudraGMP (AFM-117).

51 **DELETED**: This is done by Member States now. Why should EMEA take over?

52 **DELETED**: Article 82 should be amended in the same way; add “batch number”.

53 **DELETED**: Add indents on "details on the manufacturer" and "expiry dates of batches" (AFM-5); **DELETED**: add indent: "details of the authority of the supplier or consignee to supply, or be supplied, as appropriate "(guidelines required).(AFM-82)

(b) The following points (h) and (i) are added:

- ‘(h) they must maintain a quality system setting out responsibilities, processes and risk management;
- (i) they must **immediately** inform the competent authority **and, where applicable, the holder of the marketing authorisation** of **medicinal** products they receive **or are offered** which they identify as **falsified or suspect to be falsified medicinal products. infringing, or they suspect of infringing, either of the following:**
- ~~Article 6(1) of this Directive;~~
 - ~~trademark holder’s rights under Community law, as provided for by Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trademark⁵⁴ or under the law of the Member State where the product has been received.~~

~~Moreover, in cases where these infringements or suspected infringements relate to a falsified medicinal product, the holder of the marketing authorisation or of the trademark that has been falsified shall be informed.’~~

⁵⁴ **OJ L 11, 14.1.1994, p. 1.**

(c) The following subparagraphs⁵⁵ are added:

‘For the purpose of point (b), in the case where the product is obtained from another wholesale distributor, holders of the wholesale distribution authorisation must verify compliance with good distribution practices of the supplying wholesale distributor including by verifying that the supplying wholesale distributor holds a wholesale distribution authorisation either by themselves or through a body accredited for that purpose by the competent authority of a Member State.

Where the product is obtained from the manufacturer or importer, holders of the wholesale distribution authorisation must verify that the manufacturer or importer holds a manufacturing authorisation.’

14) The following Articles 85a and 85b are inserted after Article 85:

Article 85a

In the case of wholesale distribution to third countries **of medicinal products introduced⁵⁶ in the European Union but not intended to be placed on the market,** Article 76, Article 80(c) **and (i)**⁵⁷, and Articles 81 and 82 shall not apply. Moreover, Article 80(b) shall not apply where a product is directly received from a third country.

⁵⁵ Several delegations have general questions on this subparagraph (see Point 7 in the introduction).

⁵⁶ **DELETED**: add "directly".

⁵⁷ **DELETED**: Scrutiny reserve.

Article 85b

Persons ~~trading~~ brokering medicinal products^{58 59} shall ensure that the ~~traded~~ brokered medicinal products are covered by a marketing authorization⁶⁰ granted pursuant to Regulation (EC) No 726/2004 or by the competent authorities of a Member State in accordance with this Directive^{61 62}. In addition, the requirements set out in Article 80(d) to (h ~~i~~) shall apply.⁶³

They shall notify their activity to the competent authority of the Member State where they are established.’

58 **DELETED**: This provision should not cover only authorised medicinal products but also *e.g.* medicinal products under testing. **DELETED**: Support.

59 **DELETED**: add "to retailers".

60 **DELETED**: add "or other authorisation".

61 **DELETED**: replace "ensure that the traded medicinal products are covered by a marketing authorization granted pursuant to Regulation (EC) No 726/2004 or by the competent authorities of a Member State in accordance with this Directive" by "register the source of any transaction in medicinal products received, dispatched or traded". (AFM-6, AFM-180)

62 **DELETED**: What about authorisation requirements for trading of intermediate products, bulk or investigational products? (AFM-5)

63 **DELETED**: What is the consequence for a trader of an inspection with negative outcome. (AFM-4)

15) Article 111 is amended as follows:

(a) ~~In paragraph 1,~~

Paragraph 1 is amended as follows:

(i)⁶⁴ the first subparagraph is replaced by the following:

“⁶⁵The competent authority of the Member State concerned, by itself or, where appropriate, in cooperation with the Agency, shall ensure that the legal requirements governing medicinal products are complied with, by means of repeated⁶⁶ inspections, and if necessary unannounced inspections, and, where appropriate, by asking an Official Medicines Control Laboratory or a laboratory designated for that purpose to carry out tests on samples.”

⁶⁴ This change to Article 111 is part of the "Pharmacovigilance Proposal". It is included here only in order to provide a full picture of the changes to this Article and should not be discussed as part of the "Proposal on prevention of Falsified medicinal products". Compare, however, the next footnote.

⁶⁵ ~~Many delegations question wording and intention. The Presidency invites the delegations to consider whether it is not necessary to modify the wording in order to clarify that inspections carried out by the national competent authorities of a Member State in that Member State are not usually subject to this coordination. A possible wording could be: *The competent authority of the Member State concerned, either by itself or under the coordination of the Agency, shall ensure...* (rest unchanged). To be clarified in the "Pharmacovigilance proposal".~~

⁶⁶ **DELETED**: Is "repeated" necessary? It puts a heavy burden on MS. Align with paragraph 1a.

(ia) the second subparagraph is replaced by the following **paragraph**:

"1a. The competent authority shall have a system of supervision **including by inspections , if necessary unannounced, at an appropriate frequency based on risk,** in the European Union at the premises of the manufacturers, ~~or the importers, or~~ **distributors** of active substances used as starting materials and effective follow up **thereof.**

Whenever it considers that there are grounds for suspecting non-compliance with the legal requirements **of this directive , including the principles and guidelines** of good manufacturing practice referred to in Articles **46(f) and 47,** the competent authority may carry out inspections at the premises of manufacturers or importers of excipients.

Inspections may also take place at the premises of marketing authorisation holders, **wholesale** distributors and brokers **of medicinal products.**"

(ib) the following paragraph is added before the third subparagraph:

"1b. Inspections referred to in paragraphs 1 and 1a may also be carried out in the European Union ~~Community~~ and in third countries at the request of a Member State, the Commission or the Agency."

(ic) **the third, fourth and fifth subparagraph become paragraphs 1c, 1d and 1e**

(ii)⁶⁷ in the fifth subparagraph point (d) shall be replaced by the following:

“(d) inspect the premises, records, documents and pharmacovigilance system master file of marketing authorisation holders or any firms employed by the marketing authorisation holder to perform the activities described in Title IX.”⁶⁸

(iii) the following ~~sub~~paragraph is added:

‘1f. Inspections shall be carried out in accordance with the guidelines referred to in Article 111a.’

(b)⁶⁹ Paragraph 3 is replaced by the following:

‘(3) After every inspection as referred to in paragraphs 1 to 1f⁷⁰, the competent authority shall report on whether the inspected entity ~~manufacturer, importer, or wholesale distributor~~ complies with the principles and guidelines of good manufacturing practice and good distribution practices referred to in Articles 47 and 84, or on whether the marketing authorization holder complies with the requirements laid down in Title IX.

⁶⁷ This change to Article 111 is part of the "Pharmacovigilance Proposal". It is included here only in order to provide a full picture of the changes to this Article and should not be discussed as part of the "Proposal on prevention of Falsified medicinal products".

⁶⁸ **DELETED**: Sees need to discuss the implications of the addendum to Article 122(2) “The Member States shall send electronically all inspection reports to the Agency” that is made in the Pharmacovigilance Proposal" also in the context of the "Proposal on prevention of Falsified medicinal products". Does this requirement only cover pharmacovigilance inspections? (AFM-45, PHV-43).

⁶⁹ This change to Article 111 is part both of the "Pharmacovigilance Proposal" and of the "Proposal on prevention of Falsified medicinal products".

⁷⁰ And replacement of the reference to paragraph 1 by a reference to paragraphs 1 to 1f in all following paragraphs of Article 111.

The competent authority which carried out the inspection shall communicate the content of those reports to the inspected entity ~~manufacturer, importer, marketing authorization holder,~~ or to the ~~wholesale distributor who has undergone the inspection.~~

Before adopting the report, the competent authority shall give the inspected entity ~~manufacturer, importer, marketing authorization holder,~~ or to the ~~wholesale distributor~~ concerned the opportunity to submit ~~their~~ comments⁷¹.

(c) Paragraphs 5, ~~and 6 and 7~~ are shall be replaced by the following:

‘(5) Within 90 days of an inspection as referred to in paragraph 1, a certificate of good manufacturing practice or good distribution ~~practice~~ practices shall be issued to the inspected entity ~~manufacturer, importer, or wholesale distributor~~ if the outcome of the inspection shows that ~~it the person~~ complies with the principles and guidelines of good manufacturing practice or good distribution ~~practice~~ practices as provided for by Community legislation.

If inspections are performed as part of the certification procedure for the monographs of the European Pharmacopoeia, a certificate shall be drawn up.

(6) Member States shall enter the certificates of good manufacturing practice and good distribution ~~practice~~ practices which they issue in a Community database managed by the Agency on behalf of the Community.

⁷¹ **DELETED**: suggests to use standard Community procedure for inspections.

(c1) Paragraph 7 shall be replaced by the following⁷²:

- (7) If the outcome of the inspection as referred to in points (a), (b) and (c)⁷³ of paragraph 1e or the outcome of an inspection of a distributor of medicinal products or active substances or a manufacturer of excipients used as starting materials is that the inspected entity person⁷⁴ does not comply with the legal requirements and/or the principles and guidelines of good manufacturing practices or good distribution practices as provided for by Community legislation, the information shall be entered in the Community database referred to in paragraph 6.'

⁷² The changes to Article 111(7) are part both of the "Pharmacovigilance Proposal" and of the "Proposal on prevention of Falsified medicinal products".

⁷³ The limitation to points a, b and c comes from the "Pharmacovigilance Proposal" and is connected with the introduction of paragraph 8 that deals with inspections referred to in paragraph 1(d).

⁷⁴ In the original, the "Pharmacovigilance Proposal" refers to "manufacturer". In order to cover "good distribution practices", it is suggested to change to "inspected entity".

(d)⁷⁵ The following paragraph 8 shall be added:

“8. If the outcome of the inspection as referred to in paragraph 1(d) is that the marketing authorisation holder does not comply with the pharmacovigilance system as described in the pharmacovigilance system master file and with Title IX, the competent authority of the Member State concerned shall bring the deficiencies to the attention of the marketing authorisation holder and give him the opportunity to submit his comments.

In such case the Member State concerned shall inform the other Member States, the Agency and the Commission.

Where appropriate, the Member State concerned shall take the necessary measures to ensure that a marketing authorisation holder is subject to effective, proportionate and dissuasive penalties.”

16) The following Articles 111a and 111b are inserted after Article 111:

‘Article 111a

The Commission shall adopt detailed guidelines⁷⁶ laying down the principles for inspections⁷⁷ referred to in Article 111.

⁷⁵ This change to Article 111 is part of the "Pharmacovigilance Proposal". It is included here only in order to provide a full picture of the changes to this Article and should not be discussed as part of the "Proposal on prevention of Falsified medicinal products".

⁷⁶ **DELETED**: questions extent of guidelines. Cion: refers to Compilation of Community Procedures under EC Directive 2003/94.

⁷⁷ **DELETED**: questions exclusion of audits. Cion: audits excluded, GMP and GDP could later be amended to regulate audits.

- (1) At the request of a third country, the ~~The~~ Commission shall assess whether ~~;~~ following a request from a third country, list that country by way of a Decision if its regulatory framework for active substances exported to the European Union ~~Community~~ and the respective control and enforcement ensure a level of protection of public health equivalent to that in the European Union ~~Community~~. **This assessment shall take the form of a review of relevant documentation and, unless there are arrangements referred to in Article 51(2) of this Directive in place that cover this area of activity, it must also include confirmation by on-site review of the third country's regulatory system and, if necessary, observed inspection of one or more of the third country's manufacturing sites for active substances.** ~~If the assessment confirms this, the Commission shall include the third country in a list, by a way of decision. In this assessment, particular~~ ~~Particular~~ account shall be taken of:
- (a) the country's rules for good manufacturing practices;
 - (b) the regularity of inspections of good manufacturing practices;
 - (c) the efficacy of enforcement of good manufacturing practices;
 - (d) the regularity and rapidity of information supplied by the third country relating to non-compliant producers of active ingredients.

⁷⁸ **DELETED**: scrutiny reservations on the article and the Presidency changes to it

⁷⁹ **DELETED**: suggests mandatory inspection as pre-requisite for import.

- (2) The Commission, ~~in accordance with the procedure set out in Article 121(2)~~, shall adopt the necessary measures for guidelines defining in detail the requirements set out in points (a) to (d) of paragraph 1. Those measures shall be adopted in accordance with the procedure set out in Article 121(2).
- (3) The Commission, ~~in cooperation with the Agency and competent authorities of the Member States~~, shall verify regularly whether the conditions set out in paragraph 1 are fulfilled. The first verification shall take place no later than 3 years⁸⁰ after the country has been listed in accordance with paragraph 1.’
- (4) The assessment and verification referred to in paragraphs 1 and 3 of this Article shall be performed by the Commission in cooperation with the Agency and competent authorities of the Member States

⁸⁰ **DELETED**: reservations, regulatory void till the first verification. **DELETED**: propose first verification prior to Commission Decision.

- 17) The following Articles ~~118a~~, 118b, and 118c are inserted after Article 118:

*~~Article 118a~~*⁸¹

~~The competent authorities shall issue the accreditation referred to in Articles 46(f) and 80(b) if the applicant can demonstrate that he is competent to carry out verification of compliance with good manufacturing practices or, in the case of wholesale distributors, good distribution practices.~~

Article 118b

The Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by [insert concrete date 18 months after publication] at the latest and shall notify it without delay of any subsequent amendment affecting them.⁸²

Article 118c

Member States, in applying this Directive, shall take the necessary measures to ensure cooperation between competent authorities for medicinal products and customs authorities.’

⁸¹ Several delegations have general questions on this article (see Point 7 in the introduction).

~~DELETED~~: reservations. ~~DELETED~~: reservation on reference to Article 80(b).

⁸² ~~DELETED~~: reservation on notification.

18) The following Articles 121a, 121b and 121c⁸³ are inserted after Article 121:

'Article 121a

Exercise of the delegation

1. The powers to adopt the delegated acts referred to in Article 52b shall be conferred on the Commission for a period of [X] years following the entry into force of this Directive. The Commission shall make a report in respect of the delegated powers at the latest [X] months before the end of the [X] year period. The delegation of power shall be automatically extended for periods of an identical duration, unless the European Parliament or the Council revokes it in accordance with Article 121b.
2. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
3. The powers to adopt delegated acts are conferred on the Commission subject to the conditions laid down in Articles 121b and 121c.

⁸³ Proposed standard articles concerning delegated acts.

Article 121b

Revocation of the delegation

1. The delegation of power referred to in Article 52b may be revoked by the European Parliament or by the Council.
2. The institution which has commenced an internal procedure for deciding whether to revoke the delegation of power shall inform the other legislator and the Commission at the latest one month before the final decision is taken, stating the delegated powers which could be subject to revocation and the reasons for a revocation.
3. The decision of revocation shall put an end to the delegation of the powers specified in that decision. It shall take effect immediately or at a later date specified therein. It shall not affect the validity of the delegated acts already in force. It shall be published in the Official Journal of the European Union.

Article 121c

Objections to delegated acts

1. The European Parliament and/or the Council may object to the delegated act within a period of 3 months from the date of notification.
2. If, on expiry of that period, neither the European Parliament nor the Council has objected to the delegated act, or if, before that date, the European Parliament and the Council have both informed the Commission that they have decided not to raise objections, the delegated act shall enter into force at the date stated in its provisions.
3. If the European Parliament or the Council objects to the adopted delegated act, it shall not enter into force. The institution which objects shall state the reasons for objecting to the delegated act.'

Article 2^{84 85 86}

- 1) Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [insert concrete date 18 months after publication] at the latest. They shall forthwith communicate to the Commission the text of those provisions ~~and a correlation table between those provisions and this Directive.~~

They shall apply those provisions from [insert concrete date 18 months after publication + one day].

However, the Member States shall apply:

- (a) the provisions necessary to comply with Article 1(4) in so far as it relates to Articles 46b(2)(b) and 46b(3) of Directive 2001/83/EC as amended by this Directive from [insert concrete date 24 months after publication];
- (b) the provisions necessary to comply with Article 1(6),(8) and (9) from [insert concrete date 48 months after publication].

Notwithstanding the above, Member States who have systems in place for the purpose referred to in Article 1(8) of this Directive shall apply the provisions necessary to comply with Article 1(6), (8) and (9) at the latest from [insert date 6 years after the date referred to in Article 2(1)(b)].

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

84 **DELETED**: suggests extension of all dates by 6 months. **DELETED**: scrutiny reservation on dates.

85 **DELETED**: reservation. **DELETED**: scrutiny reservation.

86 **DELETED**: need for transitional provisions for products already on the market. **DELETED**: need for transitional period for 'safety feature' systems already in place in some Member States.

- 2) Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 4

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament

The President

For the Council

The President
