# The EU pharmaceutical package: a look at the future orphan legislation

**Is the draft legislation creating a favourable and secure environment for orphan medicinal products development? Find out more about the envisioned EU pharmaceutical package.**

**9 June 2023**

On 26 April 2023, the European Commission published its proposal to reform the EU's pharmaceutical legislation. The package consists of two legislative proposals: a **new Directive** and a **new Regulation**, which together will replace the existing pharmaceutical legislation and aim to reshape – among other topics – the legislation applicable to rare diseases. For this purpose, the Regulation proposes to merge the orphan regulation with the legislation applicable to all medicinal products, with a view to simplification and consistency.

The main goals are to address the medical needs of patients with rare diseases as 95% of rare diseases do not have authorised treatment, to reduce the price of medicinal products for healthcare systems and to give access to medicines across the EU, to entitle all patients to the same quality of treatment. It also aims to refocus investments, increase innovation, improve the competitiveness of the EU pharmaceutical industry and supress administrative burdens.

To achieve these goals, the package proposes an overhaul of the marketing of orphan medicinal products (**1**) as well as market exclusivity and market protection (**2**), it being specified that transitional provisions should also be provided (**3**).

## 1. Marketing of an orphan medicinal product

As currently provided in the Regulation (EC) No 141/2000 ("**Orphan Regulation**"), which would be repealed, the Regulation proposal will maintain a two-step procedure starting with the orphan designation ("**OD**") prior to marketing authorisation ("**MA**").

This proposed legislation would give a key role to the European Medicines Agency ("**EMA**"), which would become the main counterpart to designate a medicinal product as an orphan medicinal product, to extend the OD period, to manage the Register of designated orphan medicinal products, to draw up scientific guidelines, to give recommendations to the Commission and to advise orphan medicine sponsors prior to the submission of an application for MA.

Responsibility for granting, refusing or transferring an OD would be transferred from the Commission to the EMA. The Committee for Orphan Medicinal Products would become only a working group. This would be expected to facilitate and expedite the designation procedure,

as a decision granting or refusing the OD would have to be issued within 90 days of the receipt of a valid application.

While the orphan medicinal product's definition would not change, the Regulation proposal would enable the Commission to adopt delegated acts in order to supplement the criterion which states that the disease must "*affect more than five in 10 000 persons in the Union*" by setting specific criteria when needed, on the basis of a recommendation of the EMA.

Regarding the OD criteria, the criterion referring to return on investment would be definitively deleted, as it has never been used. For the other criteria, the industry highlighted the need for predictability, as investment decisions are taken long before the incentives for a successful development can be acquired. In this regard, the Regulation proposal foresees an increase in litigations as ODs are already today a litigious topic.

The OD would be granted for 7 years (renewable) whereas it is currently unlimited under the Orphan Regulation. This measure aims to accelerate MA application for the product. The validity of the OD could nevertheless be extended by the EMA if the orphan medicine sponsor could provide evidence that the relevant studies supporting the use of the designated medicinal product in the applied conditions are ongoing and promising with regard to the filing of a future application.

Once the OD is granted, the designated medicinal product would be added in Register of designated orphan medicinal products, managed by the EMA, which would replace the Community Register of Orphan Medicinal Products.

Finally, to ensure the same quality, safety and efficacy of medicinal products to patients suffering from orphan conditions as other patients, application for a MA for orphan medicinal products would be submitted to the normal evaluation process carried out by the Committee of Medicinal Products for Human Use. A separate MA may be granted for indications which do not fulfil the criteria of an orphan medicinal product. After the MA is granted for the orphan medicinal product, the OD would cease to be valid.

# 2. Market exclusivity and market protection

Among the key proposals of orphan legislation, the Regulation proposal tends to reduce the period of market exclusivity (**2.1**) and considerably softens the orphan's market protection[1] (**2.2**).

### 2.1. Reduced duration of market exclusivity

As more detailed in our previous article [The EU pharmaceutical package: Data and market protection as rewards], the market exclusivity granted to orphan medicinal products tends to be reduced. In this context, the duration of market exclusivity for orphan products would be, as follows:

- 10 years for orphan medicinal products addressing a high unmet medical need;

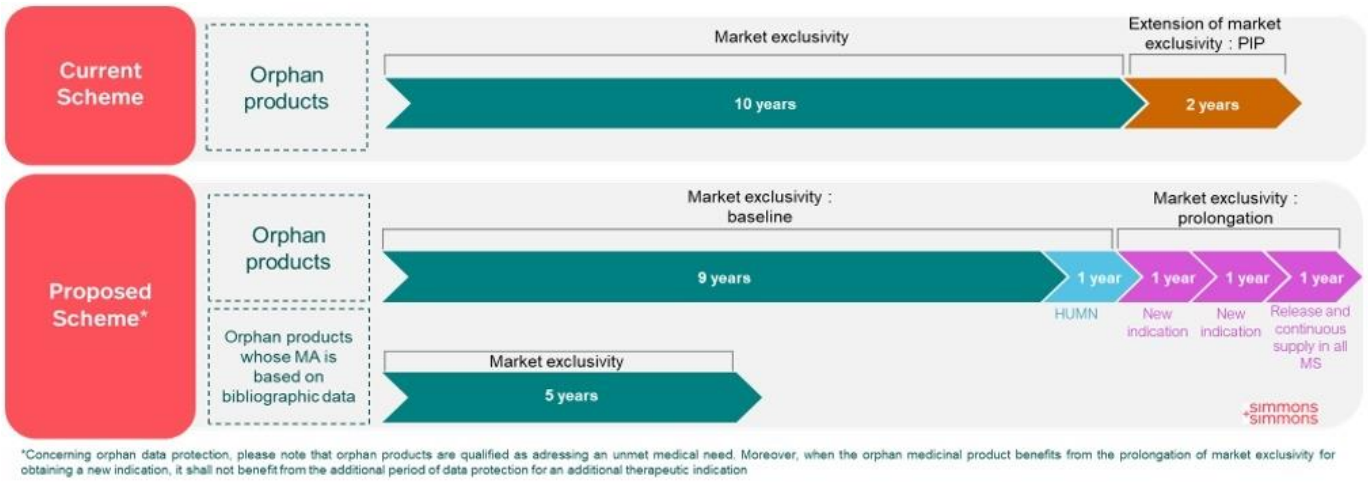
[1] Market protection corresponds to the period during which, applications for generics/biosimilars/etc. can be accepted and authorised, but cannot be placed on the market.

- 5 years for orphan medicinal products whose MA is based on bibliographic data; and
- 9 years for others orphan medicinal products.

This market exclusivity could also be prolonged by an additional 12-month period in two situations:

- for an orphan medicinal product released and continuously supplied in a sufficient quantity and in the presentations necessary to cover the needs of the patients in the Member States in which the MA is valid, within two years from the date the MA was granted ;

- for a new therapeutic indication, if at least two years before the end of the exclusivity period, the orphan MA holder obtains a MA for new therapeutic indications for a different orphan conditions, to reward R&D in rare diseases. The additional period can be granted twice.




### 2.2. Market protection limitation

Currently, the Orphan Regulation prohibits the MA application for a generic or biosimilar before the orphan market exclusivity period is over.

In the context of the drafting of the proposal of new Regulation, the impact assessment report indicates that the delayed entry of generics, biosimilars and similar medicinal products tends to have a negative impact on patient access and affordability. As market exclusivity does not allow for generics and biosimilars to apply for MA before its expiry, orphan products benefit *de facto* from an additional protection which delays the generics and biosimilars' entry on the market beyond the 10-year exclusivity.

Based on these observations, draft Article 71.6 would enable the submission, validation and assessment of a MA application for a similar medicinal product, where the remainder of the duration of the market exclusivity is less than two years.

Although such measure could undermine the economic incentive attached to the market exclusivity period, it would also foster a quicker market entry for generics and biosimilars, in the interest of patients.

# 3. Transitional provisions

Transitional provisions would be regulated by Article 180 of the Regulation proposal, which includes the following situations :

- ODs (for products that do not have a MA yet) granted before the date of application of the Regulation proposal, that have been entered and not removed from the Community Register of Orphan Medicinal Products, shall be considered to comply with the Regulation proposal and shall be included in the Register of Designated Orphan Medicinal Products.

- ODs granted before the date of application of the Regulation proposal which are either removed from the Community Register of Orphan Medicinal Products or granted a MA, shall not be considered as ODs and shall not be included in the Register of Designated Orphan Medicinal Products.

- The 7-year validity of an OD for orphan medicinal products granted before the date of application of the Regulation proposal, entered and not removed from the Community Register of Orphan Medicinal Products and not granted a MA, shall begin to run from the date of application of the Regulation proposal.

- The procedures concerning ODs which were initiated in accordance with the Orphan Regulation before the date of application of the Regulation proposal and were pending on the day before the date of application of the Regulation proposal, shall be completed in accordance with the Orphan Regulation as applicable on the day before the date of application of the Regulation proposal.

Finally, please note that Commission Regulation (EC) No 847/2000 shall continue to apply unless and until repealed.