Working Party on Pharmaceuticals and Medical Devices on 28-29 May 2024

Proposed wording by to enhance the text on the directive and regulation as proposed by the BE presidency in the first column, with suggestions by EFPIA in the middle column and rationale in the right column

Changes compared to the Commission proposals are indicated in ~~strikethrough~~ for deletions and **bold/underline** for new text.

	Suggested adaptations to the text	**Rationale**
Proposal for a Directive of the European Parliament and of the Council on the Union code relating to medicinal products for human use, and repealing Directive 2001/83/EC and Directive 2009/35/EC		
ADAPTED FRAMEWORKS		
Chapter II **Application requirements for national and centralised marketing authorisations**		
Section 5		
Adapted dossier requirements		
Article 28		
Adapted frameworks due to the characteristics or methods inherent to the medicinal product ***or category of medicinal products***		

1. Medicinal products ***or category of medicinal products*** listed in Annex VII shall be subject to specific scientific or regulatory requirements due to the characteristics or methods inherent to the medicinal product ***or category of medicinal products***, when:		
(a) it is not possible to adequately assess the medicinal product or category of medicinal products applying the applicable requirements due to scientific or regulatory challenges arising from characteristics or methods inherent to the medicinal product ***or category of medicinal products***; and		
(b) the characteristics or methods positively impact the quality, safety and efficacy of the medicinal product or category of medicinal product or provide a major contribution to patient access **to treatment** or patient care.		
2. **Based on a recommendation by the Agency, t**~~T~~he Commission is empowered to adopt delegated acts in accordance with Article 215 to amend Annex VII in order to take account of scientific and technical progress.		

3. The Commission ~~**may adopt implementing acts**~~ is empowered to adopt delegated acts in accordance with Article 215 to supplement this Directive by laying down:		*We anticipate that Article 28 will complement the Regulatory Sandbox proposal and could help to implement learnings from Regulatory Sandboxes, so EFPIA continues to be supportive of its inclusion.*
(a) **specific** ~~detailed~~ rules for the marketing authorisation and supervision of the medicinal products ~~referred~~ **pursuant** to **the criteria referred to** in paragraph 1;		
(b) the technical documentation to be submitted by applicants for marketing authorisations for medicinal products referred to in paragraph 1.		
~~**Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 214(2).**~~		
4. The detailed rules referred to in paragraph 3, point (a), shall be proportionate to the risk and impact involved. These may entail adapted, enhanced, waived or deferred requirements. Any waiver or deferral shall be limited to the extent strictly necessary,		

proportionate and duly justified by the characteristics or methods inherent to the medicinal product, and shall be regularly reviewed and evaluated. Apart from the detailed rules referred to in paragraph 3, point (a), all other rules laid out in this Directive shall apply.		
5. Until the adoption of detailed rules for specific medicinal products listed in Annex VII pursuant to paragraph 3, an application for a marketing authorisation for that medicinal product may be submitted in accordance with Article 6(2).		
6. When adopting delegated acts ~~**or**~~ **implementing acts** referred to in this Article, the Commission shall take into account any available information resulting from a regulatory sandbox established in accordance with Article 115 of the [revised Regulation (EC) No 726/2004].		
REGULATORY DATA PROTECTION, UNMET MEDICAL NEEDS, REWARDS FOR PAEDIATRICS		

Chapter VII **Regulatory protection, unmet medical needs and rewards for paediatric medicinal products**		
Article 80		
Regulatory data and market protection		
1. The data referred to in Annex I, originally submitted with the view to obtaining a marketing authorisation shall not be referred to by another applicant for a subsequent marketing authorisation during the period determined in accordance with Article 81 (‘regulatory data protection period’).		
2. A medicinal product concerned by a subsequent marketing authorisation referred to in paragraph 1 shall not be placed on the market for a period of two years after the expiry of the relevant regulatory data protection periods referred to in Article 81.		
The period shall be extended to three years if, during the regulatory data protection		

period, the marketing authorisation holder obtains an authorisation for one or more new therapeutic indications which, during the scientific evaluation prior to their authorisation and based on supporting data submitted by the marketing authorisation holder, are held to bring a significant clinical benefit in comparison with existing therapies.		
3. By way of derogation from paragraph 1, the marketing authorisation holder concerned may grant the marketing authorisation applicant for another marketing authorisation a letter of access to its data submitted under Annex I, as referred to in Article 14.		
4. By way of derogation from the paragraphs 1 and 2, when a compulsory licence has been granted by a relevant authority in the Union to a party ~~to address a public health emergency~~, the data and market protection shall be suspended with regard to that party insofar as the compulsory licence requires, and		

during the duration period of the compulsory licence.		
5. The data protection period set out to in paragraph 1 shall also apply in Member States where the medicinal product is not authorised or is no longer authorised.		
5a. The Agency shall include information on data and market protection periods for both centrally authorised products and products that have been granted a national marketing authorisation in the database referred to in Article 138 paragraph 1, (n) of the [revised Regulation].[1]		
Article 81		
Regulatory data protection periods		
1. The regulatory data protection period shall be six years from the date when the marketing authorisation for that medicinal product was granted in accordance with Article 6(2). For marketing authorisations that belong		

[1] ***Presidency note: In order to be coherent, it should be specified in Article 16 of the Regulation (on 'marketing authorisations') that this information on data and market protection periods should be integrated into the register referred to in Article 138. However, as this Article is a central Article in the 'authorisations cluster', we decided not to add it to this cluster.***

to the same global marketing authorisation the period of data protection shall start from the date when the initial marketing authorisation was granted in the Union.		
2. Subject to a scientific evaluation by the relevant competent authority, the data protection period referred to in paragraph 1 shall be prolonged by:		
(a) 24 months, where the marketing authorisation holder demonstrates that the conditions referred to in Article 82(1) are fulfilled within two years, from the date when the marketing authorisation was granted or, within three years from that date for any of the following entities:		
(i) SMEs within the meaning of Commission Recommendation 2003/361/EC;		
(ii) entities not engaged in an economic activity (‘not-for-profit entity’); and		
(iii) undertakings that, by the time of granting of a marketing authorisation, have received not more than five centralised marketing authorisations for the undertaking concerned		

or, in the case of an undertaking belonging to a group, for the group of which it is part, since the establishment of the undertaking or the group, whichever is earliest.		
(b) six months, where the marketing authorisation applicant demonstrates at the time of the initial marketing authorisation application that the medicinal product addresses an unmet medical need as referred to in Article 83;		
(c) six months, for medicinal products containing a new active substance, where the clinical trials supporting the initial marketing authorisation application use a relevant and evidence-based comparator in accordance with scientific advice provided by the Agency;		
~~(d) 12 months, where the marketing authorisation holder obtains, during the data protection period, an authorisation for an additional therapeutic indication for which the marketing authorisation holder has demonstrated, with supporting data, a~~		

~~significant clinical benefit in comparison with existing therapies.~~		
In the case of a conditional marketing authorisation granted in accordance with Article 19 of [revised Regulation (EC) No 726/2004] the prolongation referred to in the first subparagraph, point (b), shall only apply if, within four years of the granting of the conditional marketing authorisation, the medicinal product has been granted a marketing authorisation in accordance with Article 19(7) of [revised Regulation (EC) No 726/2004.		
~~The prolongation referred to in the first subparagraph, point (d), may only be granted once.~~		
The cumulative duration of data protection for a medicinal product shall not exceed eight years from the date the initial marketing authorisation was granted. [This limitation does not apply in the case of		

Article 40 of [revised Regulation (EC) No 726/2004].][2]		
3. The Agency shall set the scientific guidelines referred to in paragraph 2, point (c), on criteria for proposing a comparator for a clinical trial, taking into account the results of the consultation of the Commission and the authorities or bodies involved in the mechanism of consultation referred to in Article 162 of [revised Regulation (EC) No 726/2004].		
Article 82 ***- Option 1***		
Prolongation of the data protection period for medicinal products supplied in Member States		
1. Within six months from the date when the marketing authorisation is granted, the competent authority of the Member State may request the marketing authorisation holder of that product of which the authorisation is valid in that Member State		

[2] ***Whether or not the one year data protection that is awarded in the context of the voucher referred to in Article 40 of the Regulation should be part of this capping (not allowing the use of the voucher for a product which already profits from eleven years of regulatory protection) or should come on top of it (allowing to go to twelve years of regulatory protection for a certain product via the voucher), should be part of the discussion on the voucher itself.***

to submit an application for pricing and reimbursement for the medicinal product.		
1**a**. The prolongation of the data protection period referred to in Article 81(2), first subparagraph, point (a), shall only be granted to medicinal products if**:** ~~they are released and continuously supplied into the supply chain in a sufficient quantity and in the presentations necessary to cover the needs of the patients in the Member States in which the marketing authorisation is valid.~~		
(a) the marketing authorisation holder, following the request referred to in the first paragraph of this Article, submits, on reasonable terms, an application for pricing and reimbursement of the medicinal product;		
(b) there is a positive decision on the pricing and reimbursement of the medicinal product in accordance with Articles 2 and 6 of Council Directive 89/105/EEC;		
(c) the marketing authorisation holder submits a detailed acces and availability		

plan for the medicinal product in the Member State. [The plan shall be agreed upon by the competent authority of the Member State];		
(d) the product is released and supplied in the Member State according to the plan referred to in point c.		
The prolongation referred to in the first subparagraph shall apply to medicinal products that have been granted a centralised marketing authorisation, as referred to in Article 5 or that have been granted a national marketing authorisation through the decentralised procedure, as referred to in Chapter III, Section 3.		
2. To receive a prolongation referred to in Article 81(2), first subparagraph, point (a), the marketing authorisation holder shall apply for a variation of the relevant marketing authorisation.		
The application for a variation shall be submitted between 34 and 36 months after the date when the initial marketing authorisation		

was granted, or for entities referred to in Article 81(2), first subparagraph, point (a), between 46 and 48 months, after that date.		
The application for a variation shall contain documentation from the Member States in which the marketing authorisation is valid. Such documentation shall~~:~~		
~~(a)~~ confirm that the conditions set out in paragraph 1 have been satisfied in their territory; ~~or~~		
~~(b) waive the conditions set out in paragraph 1 in their territory for the purpose of the prolongation.~~		
~~Positive decisions adopted in accordance with Articles 2 and 6 of Council Directive 89/105/EEC[3] shall be considered equivalent to a confirmation referred to in the third subparagraph, point (a).~~		
3. To receive the documentation referred to in paragraph 2, third subparagraph, the marketing authorisation holder shall make a		

~~[3] Council Directive 89/105/EEC of 21 December 1988 relating to the transparency of measures regulating the prices of medicinal products for human use and their inclusion in the scope of national health insurance systems (OJ L 40, 11.2.1989, p. 8).~~

request to the relevant Member State. Within 60 days from the request of the marketing authorisation holder, the Member State shall issue a confirmation of compliance or, a reasoned statement of non-compliance ~~or alternatively provide a statement of non-objection to prolong the period of regulatory data protection pursuant to this Article~~.		
4. In cases where a Member State has not replied to the application of the marketing authorisation holder within the deadline referred to in paragraph 3, it shall be considered that a statement of non-objection has been provided.		
For medicinal products granted a centralised marketing authorisation the Commission shall vary the marketing authorisation pursuant to Article 47 of [revised Regulation (EC) No 726/2004] to prolong the data protection period. For medicinal products granted a marketing authorisation in accordance with the decentralised procedure, the competent authorities of the Member States shall vary the		

marketing authorisation pursuant to Article 92 to prolong the data protection period**.**		
5. Member States representatives may request the Commission to discuss issues related to the practical application of this Article in the Committee established by Council Decision 75/320/EEC[4] ('Pharmaceutical Committee'). The Commission may invite bodies responsible for health technology assessment as referred to in Regulation (EU) 2021/2282 or national bodies responsible for pricing and reimbursement, as required, to participate in the deliberations of the Pharmaceutical Committee.		
6. The Commission, based on the experience of Member States and relevant stakeholders, ~~may~~ **shall** adopt implementing measures relating to the procedural aspects outlined in this Article and regarding the conditions mentioned in paragraph 1**a**. Those implementing acts shall be adopted in		

[4] Council Decision of 20 May 1975 setting up a pharmaceutical committee (OJ L 147, 9.6.1975, p. 23).

accordance with the procedure referred to in Article 214(2).		
Article 82 ***- Option 2***		
Prolongation of the data protection period for medicinal products supplied in Member States		
1. **Within six months from the date when the marketing authorisation is granted, the competent authority of the Member State may request the marketing authorisation holder of that product of which the authorisation is valid in that Member State to submit an application for pricing and reimbursement for the medicinal product.** The prolongation of the data protection period referred to in Article 81(2), first subparagraph, point (a), shall only be granted to medicinal products if**:** ~~they are released and continuously supplied into the supply chain in a sufficient quantity and in the presentations necessary to cover the needs of the patients in the Member States in which the marketing authorisation is valid.~~		

(a) (the marketing authorisation holder, following the request referred to in the first paragraph of this Article, submits, on reasonable terms, an application for pricing and reimbursement of the medicinal product;		
(b) there is a positive decision on the pricing and reimbursement of the medicinal product in accordance with Articles 2 and 6 of Council Directive 89/105/EEC;		
(c) the marketing authorisation holder submits a detailed acces and availability plan for the medicinal product in the Member State. [The plan shall be agreed upon by the competent authority of the Member State].		
The prolongation referred to in the first subparagraph shall apply to medicinal products that have been granted a centralised marketing authorisation, as referred to in Article 5 or that have been granted a national marketing authorisation through the decentralised		

procedure, as referred to in Chapter III, Section 3.		
2. To receive a prolongation referred to in Article 81(2), first subparagraph, point (a), the marketing authorisation holder shall apply for a variation of the relevant marketing authorisation.		
The application for a variation shall be submitted between 34 and 36 months after the date when the initial marketing authorisation was granted, or for entities referred to in Article 81(2), first subparagraph, point (a), between 46 and 48 months, after that date.		
The application for a variation shall contain documentation from the Member States in which the marketing authorisation is valid. Such documentation shall~~:~~		
~~(a)~~ confirm that the conditions set out in paragraph 1 have been satisfied in their territory; ~~or~~		
~~(b) waive the conditions set out in paragraph 1 in their territory for the purpose of the prolongation.~~		

~~Positive decisions adopted in accordance with Articles 2 and 6 of Council Directive 89/105/EEC[5] shall be considered equivalent to a confirmation referred to in the third subparagraph, point (a).~~		
3. To receive the documentation referred to in paragraph 2, third subparagraph, the marketing authorisation holder shall make a request to the relevant Member State. Within 60 days from the request of the marketing authorisation holder, the Member State shall issue a confirmation of compliance or, a reasoned statement of non-compliance ~~or alternatively provide a statement of non-objection to prolong the period of regulatory data protection pursuant to this Article~~.		
4. In cases where a Member State has not replied to the application of the marketing authorisation holder within the deadline referred to in paragraph 3, it shall be		

~~[5] Council Directive 89/105/EEC of 21 December 1988 relating to the transparency of measures regulating the prices of medicinal products for human use and their inclusion in the scope of national health insurance systems (OJ L 40, 11.2.1989, p. 8).~~

considered that a statement of non-objection has been provided.		
For medicinal products granted a centralised marketing authorisation the Commission shall vary the marketing authorisation pursuant to Article 47 of [revised Regulation (EC) No 726/2004] to prolong the data protection period. For medicinal products granted a marketing authorisation in accordance with the decentralised procedure, the competent authorities of the Member States shall vary the marketing authorisation pursuant to Article 92 to prolong the data protection period**.**		
5. Member States representatives may request the Commission to discuss issues related to the practical application of this Article in the Committee established by Council Decision 75/320/EEC[6] ('Pharmaceutical Committee'). The Commission may invite bodies responsible for health technology assessment as referred to in Regulation (EU) 2021/2282 or national bodies		

[6] Council Decision of 20 May 1975 setting up a pharmaceutical committee (OJ L 147, 9.6.1975, p. 23).

responsible for pricing and reimbursement, as required, to participate in the deliberations of the Pharmaceutical Committee.		
6. The Commission, based on the experience of Member States and relevant stakeholders, ~~may~~ **shall** adopt implementing measures relating to the procedural aspects outlined in this Article and regarding the conditions mentioned in paragraph 1**a**. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 214(2).		
Article 82 ***- Option 3***		
Prolongation of the data protection period for medicinal products supplied in Member States		
1. Within six months from the date when the marketing authorisation is granted, the competent authority of the Member State may request the marketing authorisation holder of that product of which the authorisation is valid in that Member State to submit an application for pricing and reimbursement for the medicinal product.		

1**a**. The prolongation of the data protection period referred to in Article 81(2), first subparagraph, point (a), shall only be granted to medicinal products if **the marketing authorisation holder, following the request referred to in the first paragraph of this Article, submits, on reasonable terms, an application for pricing and reimbursement of the medicinal product.** ~~they are released and continuously supplied into the supply chain in a sufficient quantity and in the presentations necessary to cover the needs of the patients in the Member States in which the marketing authorisation is valid.~~		
For the purpose of this point, the marketing authorisation holder shall provide information to the competent authorities concerned on steps it has taken to make the medicinal product accessible in the concerned Member State.		
The prolongation referred to in the first subparagraph shall apply to medicinal products that have been granted a centralised marketing		

authorisation, as referred to in Article 5 or that have been granted a national marketing authorisation through the decentralised procedure, as referred to in Chapter III, Section 3.		
2. To receive a prolongation referred to in Article 81(2), first subparagraph, point (a), the marketing authorisation holder shall apply for a variation of the relevant marketing authorisation.		
The application for a variation shall be submitted between 34 and 36 months after the date when the initial marketing authorisation was granted, or for entities referred to in Article 81(2), first subparagraph, point (a), between 46 and 48 months, after that date.		
The application for a variation shall contain documentation from the Member States in which the marketing authorisation is valid. Such documentation shall~~:~~		
~~(a)~~ confirm that the conditions set out in paragraph 1 have been satisfied in their territory; ~~or~~		

~~(b) waive the conditions set out in paragraph 1 in their territory for the purpose of the prolongation.~~		
~~Positive decisions adopted in accordance with Articles 2 and 6 of Council Directive 89/105/EEC[7] shall be considered equivalent to a confirmation referred to in the third subparagraph, point (a).~~		
3. To receive the documentation referred to in paragraph 2, third subparagraph, the marketing authorisation holder shall make a request to the relevant Member State. Within 60 days from the request of the marketing authorisation holder, the Member State shall issue a confirmation of compliance or, a reasoned statement of non-compliance ~~or alternatively provide a statement of non-objection to prolong the period of regulatory data protection pursuant to this Article~~.		
4. In cases where a Member State has not replied to the application of the marketing		

~~[7] Council Directive 89/105/EEC of 21 December 1988 relating to the transparency of measures regulating the prices of medicinal products for human use and their inclusion in the scope of national health insurance systems (OJ L 40, 11.2.1989, p. 8).~~

authorisation holder within the deadline referred to in paragraph 3, it shall be considered that a statement of non-objection has been provided.		
For medicinal products granted a centralised marketing authorisation the Commission shall vary the marketing authorisation pursuant to Article 47 of [revised Regulation (EC) No 726/2004] to prolong the data protection period. For medicinal products granted a marketing authorisation in accordance with the decentralised procedure, the competent authorities of the Member States shall vary the marketing authorisation pursuant to Article 92 to prolong the data protection period**.**		
5. Member States representatives may request the Commission to discuss issues related to the practical application of this Article in the Committee established by Council Decision 75/320/EEC[8] ('Pharmaceutical Committee'). The Commission may invite		

[8] Council Decision of 20 May 1975 setting up a pharmaceutical committee (OJ L 147, 9.6.1975, p. 23).

bodies responsible for health technology assessment as referred to in Regulation (EU) 2021/2282 or national bodies responsible for pricing and reimbursement, as required, to participate in the deliberations of the Pharmaceutical Committee.		
6. The Commission, based on the experience of Member States and relevant stakeholders, ~~may~~ **shall** adopt implementing measures relating to the procedural aspects outlined in this Article and regarding the conditions mentioned in paragraph 1**a**. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 214(2).		
Article 83		
Medicinal products addressing an unmet medical need		
1. A medicinal product shall be considered as addressing an unmet medical need if at least one of its therapeutic indications relates to a	A medicinal product shall be considered as addressing an unmet medical need if at least one of its therapeutic indications relates to a **progressive,** life threatening, or severely	*An excessively narrow definition of unmet medical need risks excluding the development of important therapies for patients. It will lead to the unintended consequence of disincentivising*

life threatening or severely debilitating disease and the following conditions are met:	debilitating **or chronic disease** and the following conditions are met:	*companies to invest in R&D that may have addressed patients' unmet medical needs and reduces overall predictability. Furthermore, individual patients value the impact of new treatments differently than society, which may place a higher value on incremental improvements of diseases with a high societal burden or that help avoid future pandemics. Therefore, prioritising at disease level is not adequate and should be avoided, while introducing a relative assessment at product level could be prioritised.*
(a) there is no ~~medicinal product authorised in the Union~~ **satisfactory method of diagnosis, prevention or treatment in standard of care** for such disease, or, where despite **the existence of a satisfactory method of diagnosis, prevention or treatment in standard of care** ~~medicinal products being authorised for such disease in the Union~~, the disease is associated with a remaining high morbidity or mortality;	(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 **or impact on quality of life;**	
(b) the use of the medicinal product results in a meaningful reduction in disease morbidity	(b) the use of the medicinal product results in	*The legislation should not be mandating that comparative data from clinical*

or mortality for the relevant patient population. **The meaningful reduction in disease morbidity or mortality for the relevant patient population shall be demonstrated, where possible and appropriate, with data from clinical trials that use a relevant and evidence-based comparator in accordance with scientific advice provided by the Agency.**	**(i)** a meaningful reduction in disease morbidity, or mortality, **severity or side effects** for the relevant patient population; or **(ii)** **a meaningful positive impact on quality of life; or** **(iii)** **a meaningful prevention, delay of the onset, or delay of progression of the disease or its complications.**	*trials should be needed; doing so is, in practice, very problematic and possibly unethical. It is not appropriate to require more information than is necessary to make a decision. In addition, there are situations where comparative clinical trials are not feasible or their conduct would be unethical. Such examples include rare disease populations or drugs with a high effect size. Finally, to avoid being trapped with outdated evidence generation methodologies, the EU legislation should not define how the evidence is to be generated.*
2. Designated orphan medicinal products referred to in Article 67 of [revised Regulation (EC) No 726/2004] shall be considered as addressing an unmet medical need.		
3. ~~Where t~~**T**he Agency **shall** adopt~~s~~ scientific guidelines for the application of this Article**. To this end,** it shall consult the Commission and the authorities or bodies	3. Where the Agency adopts scientific guidelines for the application of this Article it shall consult the Commission and the authorities or bodies referred to in Article	*It is of critical importance that the appropriate stakeholders are involved in identifying unmet medical needs from different perspectives. Collaborations need to be established to get an aligned*

referred to in Article 162 of [revised Regulation (EC) No 726/2004].	162 of [revised Regulation (EC) No 726/2004], **representatives of patients' organisations in the relevant disease areas, healthcare professionals, representatives of pharmaceutical industry and other relevant stakeholders.**	*understanding of UMN. These multi-stakeholder collaborations should involve representatives from diverse patient groups, broader societal and health care system stakeholders as well as industries.*
Article 84		
Data protection for repurposed medicinal products		
1. A regulatory data protection period of four years shall be granted for a medicinal product with respect to a new therapeutic indication not previously authorised in the Union **for the active substance(s)**, provided that:		*The addition of "for the active substance(s)" doesn't make legal sense – RDP is granted for the medicinal product, not the active substance.*
(a) adequate ~~non-clinical~~ **and** ~~or~~ clinical studies **and, where relevant, non-clinical studies/tests** were carried out in relation to the therapeutic indication demonstrating that it is of significant clinical benefit, and		*With the proposed change, it is no longer mandatory to provide both non-clinical and clinical studies. It makes better sense that only where relevant, non-clinical studies/tests are needed.*
(b) the medicinal product is authorised in accordance with Articles 9 to 12**, with a different marketing authorisation holder**	(b) the medicinal product is authorised in accordance with Articles 9 to 12~~, with a different marketing authorisation holder~~	*The proposed additional wording inappropriately excludes the original*

than the reference medicinal product and has not previously benefitted from data protection, or 25 years have passed since the granting of the initial marketing authorisation of the medicinal product concerned.	~~**than the reference medicinal product**~~ and has not previously benefitted from data protection, or 25 years have passed since the granting of the initial marketing authorisation of the medicinal product concerned.	*innovator/MAH for the product from obtaining the new incentive for repurposing it in a new indication. This is not only inequitable but, since the innovator may at times be best placed to do the necessary incremental R&D needed for this purpose, the effectiveness of the incentive in bringing about the repurposing objectives will be much reduced.*
2. The data protection period referred to in paragraph 1 may only be granted once for any given medicinal product.		
3. During the data protection period referred to in paragraph 1, the marketing authorisation shall indicate that the medicinal product is an existing medicinal product authorised in the Union that has been authorised with an additional therapeutic indication.		
Article 85		

Exemption to the protection of intellectual property rights		
1. Patent rights, or supplementary protection certificates under the [Regulation (EC) No 469/2009 - OP please replace reference by new instrument when adopted] shall not be regarded as infringed when a ~~reference~~ **patented product, process~~, design~~ or invention** ~~medicinal product~~ is used for the purposes of:		
(a) studies, trials and other activities conducted to generate data for an application, **which are necessary** for:		
(i) a marketing authorisation of generic, biosimilar, hybrid or bio-hybrid medicinal products and for subsequent variations;		
(ii) health technology assessment as defined in Regulation (EU) 2021/2282;		
(iii) pricing and reimbursement.		
(b) the activities conducted exclusively for the purposes set out in point (a), may cover**, where relevant,** the submission of the application for a marketing authorisation and		

the offer, manufacture, sale, supply, storage, import, use and purchase of ~~patented~~ medicinal products or processes, including by third party suppliers and service providers.		
This exception shall not cover the placing on the market of the medicinal products resulting from such activities.		
1a. Patent rights, or supplementary protection certificates under the [Regulation (EC) No 469/2009 - OP please replace reference by new instrument when adopted] shall not be regarded as infringed by ~~procurement bids and~~ decisions on applications referred to in paragraph 1 point (a).		
1b. The procedures and decisions in Paragraph (1) and (1a) shall be considered by Member States as regulatory or administrative procedures which, as such, are independent from the enforcement of intellectual property rights.		

<u>1c. The protection of intellectual property rights shall not be a valid ground to refuse, suspend, delay, withdraw or revoke decisions related to the procedures referred to in paragraph (1) and (1a).</u>		
Article 86		
Rewards for paediatric medicinal products		
1. Where an application for marketing authorisation, includes the results of all studies conducted in compliance with an agreed paediatric investigation plan, the holder of the patent or supplementary protection certificate shall be entitled to a six-month extension of the period referred to in Article 13, paragraphs 1 and 2 of [Regulation (EC) No 469/2009 - OP please replace reference by new instrument when adopted].	1. Where an application for marketing authorisation, includes the results of all studies conducted in compliance with an agreed paediatric investigation plan, the holder of the patent or supplementary protection certificate shall be entitled to a six-month extension of the period referred to in Article 13, paragraphs 1 and 2 of [Regulation (EC) No 469/2009 - OP please replace reference by new instrument when adopted] **or, in cases where the agreed paediatric investigation plan is conducted in a different disease or condition in children than the one for which the medicinal product is intended for in the adult population in accordance with article 75(1)(b) of [revised Regulation (EC) 726/2004], to a 12 month extension of the period referred to in Article 13, paragraphs 1 and 2 of [Regulation (EC) No 469/2009 - OP please replace reference by new instrument when adopted].**	Conducting PIPs addressing paediatric needs based on the MoA of the product, rather than the intended adult condition, will bring benefits to paediatric patients whilst entailing a significant expansion of developers' current obligations. The new and more challenging scientific and development efforts required to address UMNs, potentially involving new and innovative technologies and methods, should be rewarded in a fair and appropriate manner. Article 13.3 of the [SPC Regulation – as recast] provides that the duration of an SPC may only be extended once. Accordingly, that one extension to be of the longer duration (12 months) in the case where the extension is based on completion of a MoA PIP rather than a standard PIP. In a situation where a company conducts both a standard and a MoA PIP there is no possibility for cumulative paediatric rewards. This is because, per the SPC Regulation, an SPC may be extended only once

The first subparagraph shall also apply where completion of the agreed paediatric investigation plan fails to lead to the authorisation of a paediatric indication, but the results of the studies conducted are reflected in the summary of product characteristics and, if appropriate, in the package leaflet of the medicinal product concerned.	~~**The first subp**~~Paragraph **1** shall also apply where completion of the agreed paediatric investigation plan fails to lead to the authorisation of a paediatric indication, but the results of the studies conducted are reflected in the summary of product characteristics and, if appropriate, in the package leaflet of the medicinal product concerned.	Consequent to the above change
2. The inclusion in a marketing authorisation of the statement referred to in Article 49(2) of this Directive or in Article 90(2) of [revised Regulation (EC) No 726/2004] shall be used for the purposes of applying paragraph 1.		
3. Where the procedures laid down in Chapter III, Sections 3 and 4, have been used, the six-month extension of the period referred to in paragraph 1 shall be granted only if the product is authorised in all Member States.		
4. In the case of an application for new **paediatric** therapeutic indications, ~~including paediatric indications, new pharmaceutical forms, new strengths and new routes of~~		

~~administration of authorised medicinal products~~ **for a medicinal product** which ~~are~~ **is** protected either by a supplementary protection certificate under [Regulation (EC) No 469/2009 - OP please replace reference by new instrument when adopted], or by a patent which qualifies for the granting of the supplementary protection certificate which leads to the authorisation of a new paediatric indication, paragraphs 1, 2 and 3 shall not apply if the applicant applies for, and obtains, a one-year extension of the period of ~~marketing~~ **data** protection for the medicinal product concerned, on the grounds that this new paediatric indication brings a significant clinical benefit in comparison with existing therapies, in accordance with Article 81(2), first subparagraph, point (d).		
Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL laying down Union procedures for the authorisation and supervision of medicinal products for		

human use and establishing rules governing the European Medicines Agency, amending Regulation (EC) No 1394/2007 and Regulation (EU) No 536/2014 and repealing Regulation (EC) No 726/2004, Regulation (EC) No 141/2000 and Regulation (EC) No 1901/2006		
ORPHAN INCENTIVES		
Chapter II **GENERAL PROVISIONS AND RULES ON APPLICATIONS**		
Section 2		
Marketing authorisation decisions		
Article 29		
Regulatory protection periods		
Without prejudice to the law on the protection of industrial and commercial property, medicinal products for human use which have been authorised in accordance with this Regulation shall benefit from the periods of		

regulatory protection set out in Chapter VII of [revised Directive 2001/83/EC].		
CHAPTER VI **ORPHAN MEDICINAL PRODUCTS**		
Article 70		
Orphan medicinal products addressing a high unmet medical need		
1. An orphan medicinal product shall be considered as addressing a high unmet medical need where it fulfils the following requirements:	~~**1. An orphan medicinal product shall be considered as addressing a high unmet medical need where it fulfils the following requirements:**~~	*When evaluating Unmet Medical Need (UMN), perspective matters, context is key, and inclusivity is crucial. For example, patients suffering from a disease may identify different individual needs than society in a broader sense. Having a distinct category of High Unmet Medical Need in orphan medicines compared to UMN is challenging for many reasons, not least because it raises ethical concerns: defining a UMN as "high" implies that other UMN are of less importance, either to patients or society, which would be inappropriate. A definition of UMN requires a holistic understanding as it can manifest in very different ways. In addition, the criteria proposed here largely overlap with those of UMN,*

		except for the potential "exceptional therapeutic advancement", which qualifies less the need than the contribution of a given medicinal product to address a specific UMN. Therefore, the criterion of "exceptional therapeutic advancement" is deleted here, but used in a different place as a differentiator for OME (Article 71 (next row). Current debates over UMN or HUMN are part of a broader set of challenges related to the availability, accessibility, and affordability of innovative medicines and the long-term sustainability of health systems. The patient perspective is lacking, as well as the acknowledgement of how new treatments are being discovered and developed with the potential to transform the lives of patients. Limiting (proper) incentives to treatments that fit a certain very narrow definition of UMN or HUMN today, risks excluding the development of important therapies for patients tomorrow. It will reduce the overall predictability for companies and disincentivize them from investing in R&D in the EU that may have addressed patients' unmet medical needs.

(a) there is no **satisfactory method of diagnosis, prevention or treatment in standard of care** ~~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;	~~**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**. The meaningful reduction in disease morbidity or mortality for the relevant patient population shall be demonstrated, where possible and appropriate, with data from clinical trials that use a relevant and evidence-based comparator in accordance with scientific advice provided by the Agency.**	~~**b. the use of the orphan medicinal product results in a meaningful reduction in disease morbidity or mortality for the relevant patient population. The meaningful reduction in disease morbidity or mortality for the relevant patient population shall be demonstrated, where possible and appropriate, with data from clinical trials that use a relevant and evidence-based comparator in accordance with scientific advice provided by the Agency.**~~	The legislation should not be mandating that comparative data from clinical trials should be needed; doing so is, in practice, very problematic and possibly unethical. It is not appropriate to require more information than is necessary to make a decision. In addition, there are situations where comparative clinical trials are not feasible or their conduct would be unethical. Such examples include rare disease populations or drugs with a high effect size. Finally, to avoid being trapped with outdated

		evidence generation methodologies, the EU legislation should not define how the evidence is to be generated.
2. A medicinal product for which an application has been submitted in accordance with Article 13 of [revised Directive 2001/83/EC] shall not be considered as addressing a high unmet medical need.	**~~2. A medicinal product for which an application has been submitted in accordance with Article 13 of [revised Directive 2001/83/EC] shall not be considered as addressing a high unmet medical need.~~**	
3. ~~Where t~~**T**he Agency **shall** adopt~~s~~ scientific guidelines for the application of this Article**. To this end**, it shall consult the Commission and the authorities or bodies referred to in Article 162.	**~~3. Where the Agency adopts scientific guidelines for the application of this Article, it shall consult the Commission and the authorities or bodies referred to in Article 162.~~**	
Article 71		
Market exclusivity		
1. Where an orphan marketing authorisation is granted and without prejudice to intellectual property law, the Union and the Member States shall not grant a marketing authorisation or extend an existing marketing authorisation, for the same therapeutic indication, in respect of a		

similar medicinal product for the duration of market exclusivity set out in paragraph 2.		
2. The duration of market exclusivity shall be as follows:		
(a) nine years for orphan medicinal products other than those referred to in points (b) and (c);	(a) ~~**nine**~~ **twelve** years for orphan medicinal products other than those referred to in points (b)	*Additional incentives to encourage further investment in areas with particularly acute scientific challenges are important. The OMP Regulation has been a success in that respect, with more than 200 medicinal products authorised over the past 20 years. Stronger incentives will further help close the competitiveness gap with other regions and ensure the EU is a leading hub to research and develop new, cutting-edge medicines in underserved areas. It is therefore suggested to condition an enhanced baseline protection to objective criteria, which would provide sponsors with sufficient certainty to undertake investments in particularly challenging and high-risk conditions, without suggesting a scale or gradation of different levels of UMN.*
(b) ten years for orphan medicinal products addressing a high unmet medical need as referred to in Article 70;	(b) ~~**ten**~~ **thirteen** years for orphan medicinal products **which fulfil one of the following**	

	requirements ~~addressing a high unmet medical need as referred to in Article 70:~~ **i.** **there is no medicinal product authorised in the Union for such condition or where** **ii.** **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 or** **iii. the condition affects not more than 0,5 in 10,000 persons in the Union when the application for an orphan designation is submitted.**	
(c) five years for orphan medicinal products which have been authorised in accordance with Article 13 of [revised Directive 2001/83/EC].	(c) **~~five~~ seven** years for orphan medicinal products which have been authorised in accordance with Article 13 of [revised Directive 2001/83/EC].	

3. Where a marketing authorisation holder holds more than one orphan marketing authorisations for the same active substance, those authorisations shall not benefit from separate market exclusivity periods. The duration of the market exclusivity shall start from the date when the first orphan marketing authorisation was granted in the Union.		
4. By way of derogation from paragraph 1, and without prejudice to intellectual property law, the marketing authorisation may be granted, for the same therapeutic indication, to a similar medicinal product if:		
(a) the marketing authorisation holder for the original orphan medicinal product has given consent to the second applicant, or		
(b) the marketing authorisation holder for the original orphan medicinal product is unable to supply sufficient quantities of the medicinal product, or		
(c) the second applicant can establish in the application that the second medicinal product, although similar to the orphan medicinal		

product already authorised, is safer, more effective or otherwise clinically superior.		
5. The submission, validation and assessment of the application for the marketing authorisation and granting the marketing authorisation for a generic or biosimilar product to the reference medicinal product for which market exclusivity has expired, shall not be prevented by the market exclusivity of a similar product to the reference medicinal product.		
6. The market exclusivity of the orphan medicinal product shall not prevent the submission, validation and assessment of an application for a marketing authorisation for a similar medicinal product, including generics and biosimilars, where the remainder of the duration of the market exclusivity is less than two years.		
7. Where the Agency adopts scientific guidelines for the application of paragraphs 1 and 4, it shall consult the Commission.		
Article 72		

Prolongation of market exclusivity		
1. The periods of market exclusivity referred to in Article 71, paragraph 2, points (a) and (b), shall be prolonged by 12 months, where the orphan marketing authorisation holder can demonstrate that the conditions referred to in Article 81(2), point (a), and Article 82(1**a**) [of revised Directive 2001/83/EC] are fulfilled.	~~**1. The periods of market exclusivity referred to in Article 71, paragraph 2, points (a) and (b), shall be prolonged by 12 months, where the orphan marketing authorisation holder can demonstrate that the conditions referred to in Article 81(2), point (a), and Article 82(1a) [of revised Directive 2001/83/EC] are fulfilled.**~~	*Orphan market exclusivity periods should not be linked to access conditions in Member States. The linkage to "release and continuous supply" in 27 Member States means that incentives for R&D become dependent on conditions that are to a large extent outside of the control of medicine developers. Even in the best of circumstances, concluding pricing and reimbursement negotiations with 27 Member States within two years would be an almost impossible condition to fulfill for most companies, and particularly unrealistic for SMEs (even if the time-limit is extended to three years). This effectively deprives the industry of existing levels of OME protection and fails to serve as a true incentive.*
The procedures set out in Articles 82(2) to (5) [of revised Directive 2001/83/EC] shall accordingly apply to the prolongation of market exclusivity.	~~**The procedures set out in Articles 82(2) to (5) [of revised Directive 2001/83/EC] shall accordingly apply to the prolongation of market exclusivity.**~~	*Fundamentally, OME conditionality does not address the underlying reasons explaining unequal access across the EU. As proposed, it will have little meaningful impact on access and affordability in practice. Industry has already taken concrete actions to contribute to more equitable system to improve patient access in Member*

		States. This is best done in collaboration, outside of the legislation.
2. The period of market exclusivity shall be prolonged by an additional 12 months for orphan medicinal products referred to in Article 71(2), points (a) and (b), if at least two years before the end of the exclusivity period, the orphan marketing authorisation holder obtains a marketing authorisation for one or more new therapeutic indications for a different orphan condition.	[New indications] **~~2.~~1.** The period of market exclusivity shall be prolonged by an additional **~~12~~ 24** months for orphan medicinal products referred to in Article 71(2), points (a) and (b), if at least two years before the end of the exclusivity period, the orphan marketing authorisation holder obtains a marketing authorisation for one or more new therapeutic indications for a different orphan condition. **If the newly approved therapeutic indication meets one of the requirements listed in Article 71(2) point (b), and where the first orphan marketing authorisation was not granted a period of market exclusivity as referred in Article 71(2) point (b), the period of market exclusivity shall be prolonged by 36 months in total.**	*[New indications]* *The development and approval of additional therapeutic indications should be encouraged, not penalized. These can provide important treatment opportunities to additional patients living with a rare condition and require significant additional development, especially in different orphan conditions. As a result, no limitation should be placed on the number of OME extensions as long as new indications are each time for a different orphan condition.*
Such a prolongation may be granted twice, if the new therapeutic indications are each time for different orphan conditions.	**~~Such a prolongation may be granted twice, if the new therapeutic indications are each time for different orphan conditions.~~**	

	[Cap] **2. The holder of an orphan marketing authorisation shall be entitled to a total maximum period of [15] years of orphan marketing exclusivity from the time the orphan medicinal product in question first obtains an authorization as defined in Article 69.** **[Paediatric extension]** **3. As an alternative to the reward foreseen under Article 86 [of revised Directive] and upon request from the applicant, the period of market exclusivity for orphan medicinal products referred to in Article 71(2), points (a) and (b) shall be prolonged by an additional 24 months where an application for orphan marketing authorisation is submitted in respect of a designated orphan medicinal product pursuant to [Revised Regulation] and that application includes the results of all studies conducted in compliance**	*[Cap]* *A maximum period of exclusivity is proposed to provide certainty to other stakeholders. This is at par with the maximum protection provided by SPC.* *[Paediatric extension]* *Although not commonly used to date, the +2 years extension of OME as a reward for PIP completion is an important option – possibly the only opportunity to gain an effective exclusivity extension – for some orphan products which may not benefit from SPC. Provided this possibility is mutually exclusive with the SPC extension reward, it is fair and appropriate to maintain it in the revised legislation.*

	with an agreed paediatric investigation plan. The first subparagraph shall also apply where completion of the agreed paediatric investigation plan fails to lead to the authorisation of a paediatric indication, but the results of the studies conducted are reflected in the summary of product characteristics and, if appropriate, in the package leaflet of the medicinal product concerned. The 24-month extension of the period of market exclusivity will be reflected in the marketing authorisation. **4. An orphan medicinal product which benefits from the prolongation of market exclusivity as referred to in paragraph 4, shall not benefit from the rewards referred to in Article 86 [of revised Directive].** **5. The limitation referred to in paragraph 3 shall not apply where the period of**	

	orphan marketing exclusivity is extended in accordance with paragraph 4 in relation to such extension	
3. The orphan medicinal products which benefit from the prolongation of market exclusivity referred to in the paragraph 2 shall not benefit from the additional period of ~~data~~ **market** protection referred to in Article 8**0**~~1~~(2)~~, point (d),~~ of [revised Directive 2001/83/EC].	3. The orphan medicinal products which benefit from the prolongation of market exclusivity referred to in the paragraph 2 shall not benefit from the additional period of data protection referred to in Article 81(2), point (d), of [revised Directive 2001/83/EC].	
4. Article 71(3) equally applies to the prolongations of market exclusivity referred to in paragraphs 1 and 2.		
REPURPOSING BY ANOTHOR ACTOR ('CHAMPION')		
CHAPTER IV POST-MARKETING AUTHORISATION MEASURES		

Article 48		
Scientific opinion on data submitted from not-for-profit entities for repurposing of authorised medicinal products		
1. ~~An entity not engaged in an economic activity (~~**A ‘**~~not~~-for-profit entity~~’)~~ may submit to the Agency or to a competent authority of the Member State substantive non-clinical or clinical evidence for a new therapeutic indication ~~that is expected to fulfil an unmet medical need~~.	(1) A‘not-for-profit entity’ may submit to the Agency or to a competent authority of the Member State substantive non-clinical or clinical evidence for a new therapeutic indication **that is expected to fulfil an unmet medical need**.	*It is extremely worrying that while elsewhere in legislation the need to fulfil unmet medical need is reinforced, in the case of repurposing it is proposed that a reference to unmet medical need is to be deleted. Repurposing is resource-intensive for all parties – academics/non-profit entities, regulators and companies, so efforts should be prioritised towards addressing unmet medical needs. It will be important to maintain the reference to unmet medical needs because repurposing should focus and be encouraged in areas where no treatments are available, or research gaps exist, thus benefitting patients affected by conditions for which limited,*

		or no therapeutic options are approved and/or development is economically challenging.
The Agency may, at the request of a Member State, the Commission, or on its own initiative and on the basis of all available evidence make a scientific evaluation of the benefit-risk of the use of a medicinal product with a new therapeutic indication ~~that concerns an unmet medical need~~.	The Agency may, at the request of a Member State, the Commission, or on its own initiative and on the basis of all available evidence, **including any additional evidence that may be submitted by the marketing authorisation holders of the medicinal products concerned,** make a scientific evaluation of the benefit-risk of the use of a medicinal product with a new therapeutic indication **that concerns an unmet medical need. The evaluation shall consider the position of the marketing authorisation holders on the totality of evidence submitted.**	*It is necessary to ensure the MAH is consulted and that a decision is made on all relevant evidence that is available on the product. Proposed changes would allow an inclusive way to take into account the evidence where MAH plays a crucial role.* *See the comment above about maintaining the reference on unmet medical need.* *For further reference: EFPIA Repurposing position paper*
The opinion of the Agency shall be made publicly available and the competent	The opinion of the Agency shall be made publicly available and the competent authorities of the Member States **and the**	

authorities of the Member States shall be informed.	**marketing authorisation holders** shall be informed.	
2. In cases where the opinion is favourable, marketing authorisation holders of the medicinal products concerned shall submit a variation to update the product information with the new therapeutic indication.	(2) In cases where the opinion is favourable, marketing authorisation holders of the medicinal products ~~shall~~ **may** submit a variation to update the product information with the new therapeutic indication.	*We have significant concerns that if the repurposing assessment is favourable, the MAH is obliged to submit a variation to add the new indication to the label. MAH has the deepest knowledge of the product and all its data, and addition of a new indication involves significant additional liabilities and responsibilities (including for safety, manufacturing, pricing and reimbursement). Therefore, it is essential that the MAH, is both consulted and willing to submit a variation. Thus, requiring that the MAH shall submit a variation to add a new indication will not serve patients in the end.* *The proposed amendment is not either taking into account all the learnings from the current on-going EMA-HMA*

		pilot framework for repurposing, which is based on the collaboration and inclusion of the MAH. The pilot framework should be modelled in the future legislation, whereby the lessons learned can also be best leveraged. The aim of the pilot is to support not-for-profit organisations and academia to gather sufficient evidence on the use of an established medicine in a new indication to have this new use formally authorised (through a relevant MAH) by a regulatory authority, thus making new treatment options available to patients. EMA and the national medicines agencies are providing regulatory support via Scientific Advice, to help clarify with these stakeholders the data requirements to generate a data package robust enough to support a future regulatory application. In the framework, the approached MAHs can

		decide whether to take the application forward or not.
3. Article 8**0**~~1~~(2), **2nd subparagraph** ~~point (d~~ **c**~~)~~ of [revised Directive 2001/83/EC] shall not apply for variations under this Article.		
Article 4 (Directive)		
Definitions		
~~(52) 'entity not engaged in an economic activity' means any legal or natural person that is not engaged in an economic activity and that:~~		
~~(a) is not an undertaking or controlled by an undertaking; and,~~		
~~(b) has not concluded any agreements with any undertaking concerning sponsorship or participation to the medicinal product development;~~		
PRE-AUTHORISATION REGULATORY SUPPORT		

CHAPTER V **PRE-AUTHORISATION REGULATORY SUPPORT**		
Article 58		
Scientific advice		
1. Undertakings or, as relevant, not-for-profit entities may request scientific advice as referred to in Article 138(1), second subparagraph, point (p) , from the Agency.		
Such advice can also be requested for medicinal products referred to in Articles 83 and 84 of [revised Directive 2001/83/EC].	Such advice can also be requested for medicinal products referred to in **Article 59(2) of this Regulatio**n and Articles 83 and 84 of [revised Directive 2001/83/EC].	*Need to ensure that scientific advice is available for medicinal products used with all types of medical devices and IVDs (including CDx), and not only in parallel with expert panel consultations (which are for high-risk medical devices and IVDs – not CDx – only):* *Articles 58-59 do not include an express reference to medicinal products used with IVDs (including CDx). An express reference to IVDs is necessary to ensure that scientific advice will be available to developers of medicinal products to be*

		used with all types of IVDs (including CDx), in particular because the references to "medical device" and "expert panels" could be interpreted as limiting scientific advice to high-risk medical devices and IVDs only (and the latter would not include CDx).
2. In the preparation of the scientific advice referred to in paragraph 1 and upon request by undertakings or, as relevant, not-for-profit entities that requested the scientific advice, the Agency may consult experts of the Member States with clinical trial or medical device expertise or the expert panels designated in accordance with Article 106(1) of Regulation (EU) 2017/745.	(2) In the preparation of the scientific advice referred to in paragraph 1 and upon request by undertakings or, as relevant, not-for-profit entities that requested the scientific advice, the Agency may consult experts of the Member States with clinical trial ~~or~~**,** medical device **or in vitro diagnostic medical device** expertise or the expert panels designated in accordance with Article 106(1) of Regulation (EU) 2017/745, **as applicable.**	*The same justification as above.*
3. In the preparation of the scientific advice referred to in paragraph 1 and in duly justified cases, the Agency may consult authorities	3. In the preparation of the scientific advice referred to in paragraph 1 and in duly justified cases, the Agency may consult	*Need to ensure that experts from Notified Bodies can be consulted (by*

established in other Union legal acts as relevant for the provision of the scientific advice in question or other public bodies established in the Union, as applicable.	authorities established in other Union legal acts as relevant for the provision of the scientific advice in question, ~~or~~ other ~~public~~ bodies established in the Union, ~~as applicable,~~ **in particular those listed in Article 162 of this Regulation, or in duly justified cases public bodies established in third countries.**	*EMA) in scientific advice procedures as they are important stakeholders:* *The removal of 'public' allows the EMA to consult "other bodies", as applicable, which could in principle include (private) notified bodies [based on the text of the Proposal alone; and if the Commission were to agree to a pragmatic interpretation of the restrictions in Annex VII, 1.2.3(d) MDR (which state that notified bodies shall not "offer or provide any service which may jeopardise the confidence in their independence, impartiality or objectivity, in particular […] offer or provide consultancy services to the manufacturer, its authorised representative, a supplier or a commercial competitor as regards the design, construction, marketing or maintenance of devices or processes under assessment.")*

		European Parliament proposed further flexibility to add "in duly justified cases public bodies established in third countries" can be consulted. EFPIA would be supportive, as this primarily includes possibility to consult global bodies (e.g. regulators, other bodies) if needed.
4. The Agency shall include in the European public assessment report the key areas of the scientific advice once the corresponding marketing authorisation decision has been taken in relation to the medicinal product, after deletion of any information of a commercially confidential nature.	**4. The Agency shall ensure that the scientific advice referred to in this Article is provided in accordance with Articles 146 and 147 of this Regulation as applicable.** The Agency shall include in the European public assessment report the key areas of the scientific advice once the corresponding marketing authorisation decision has been taken in relation to the medicinal product, after deletion of any information of a commercially confidential nature.	*EFPIA supports enhancing the Commission original proposal by making relevant links to Art 146-147 which for example specifies the general provision for scientific committees, and any working parties and scientific advisory groups, and experts and their respective conflicts of interest.*
Article 59		

Parallel scientific advice		
1. Undertakings or, as relevant, not-for-profit entities established in the Union may request that the scientific advice referred to in Article 58(1) takes place in parallel to the joint scientific consultation carried out by the Member State Coordination Group on Health Technology Assessment, in line with Article 16(5) of Regulation (EU) 2021/2282.		
2. In case of medicinal products involving a medical device, undertakings or, as relevant, not-for-profit entities may request scientific advice as referred to in Article 58(1) in parallel with the consultation of the expert panels referred to in Article 61(2) of Regulation (EU) 2017/745.	(2) In case of medicinal products ~~involving~~ **used with** a medical device **or an in vitro diagnostic medical device**, undertakings or, as relevant, not-for-profit entities may request scientific advice as referred to in Article 58(1), **where applicable** in parallel with the consultation of the expert panels referred to in Regulation (EU) 2017/745.	*A reference to use IVD expertise is necessary when developers are seeking scientific advice for medicinal products to be used with an in vitro diagnostic medical device (including companion diagnostics), and not only in parallel with expert panel consultations (which are for high-risk medical devices and IVDs – not CDx – only): Articles 58-59 do not include an express reference to medicinal products used with IVDs (including CDx). An express reference to IVDs is necessary to ensure that scientific advice will be available to*

		developers of medicinal products to be used with all types of IVDs (including CDx), in particular because the references to "medical device" and "expert panels" could be interpreted as limiting scientific advice to high-risk medical devices and IVDs only (and the latter would not include CDx). Unambiguous definitions should be used to enhance legal certainty as to the type of products that can be subject to scientific advice.
3. In the case of paragraph 2, the scientific advice, as referred to in Article 58(1), shall involve exchanges of information between the respective authorities or bodies and, where applicable, have synchronised timing, while preserving the separation of their respective remits.		
Article 60		
Enhanced scientific and regulatory support for priority medicinal products ('PRIME')		

1. The Agency may offer enhanced scientific and regulatory support, including as applicable consultation with other bodies as referred to in Articles 58 and 59 and accelerated assessment mechanisms, for certain medicinal products that, based on preliminary evidence submitted by the developer fulfil **at least one of** the following conditions:	(1) The Agency **shall** offer enhanced scientific and regulatory support, including as applicable consultation with other bodies as referred to in Articles 58 and 59 and accelerated assessment mechanisms, for certain medicinal products **and new indications, including when grouped with an extension of the marketing authorisation,** that, based on preliminary evidence submitted by the developer fulfil at least one of the following conditions:	*Although we welcome the clarification that the eligibility for PRIME needs to be based on only one of the conditions outlined, it is also necessary to extend PRIME eligibility to new indications and extensions of marketing authorisations. PRIME is the only regulatory supportive tool for innovation and should not be limited to scientific advice but more holistically. It should connect to other expedited regulatory pathway tools (such as Accelerated Assessments and phased reviews). To accelerate the development of groundbreaking innovations worldwide and ensure European patients have timely access to them, it is important to create competitive and interconnected expedited regulatory pathways.*

(a) are likely to address an unmet medical need as referred to in Article 83(1) of [revised Directive 2001/83/EC];	(a) are likely to address an unmet medical need as referred to in Article 83(1) of [revised Directive 2001/83/EC]**, including orphan medicinal products as referred to in Article 83(2);**	*PRIME should be applicable for all products addressing an UMN. In the case of rare diseases, as all OMPs tackle an unmet medical need, they should always be eligible for PRIME designation.*
(b) are orphan medicinal products and are likely to address a high unmet medical need as referred to in Article 70(1);	~~(b) are orphan medicinal products and are likely to address a high unmet medical need as referred to in Article 70(1);~~	*All orphan medicinal products should be eligible for PRIME designation Furthermore, the notion of high unmet medical needs is further considered to be inappropriate.*
(c) are expected to be of major interest from the point of view of public health, in particular as regards therapeutic innovation, taking into account the early stage of development, or antimicrobials with any of the characteristics mentioned in Article 40(3)**;**~~.~~	~~(c)~~ **(b)** are expected **to provide an exceptional therapeutic advancement or** to be of major interest from the point of view of public health, in particular as regards therapeutic innovation, taking into account the early stage of development, or antimicrobials with any of the characteristics mentioned in Article 40(3)**;**	
(d) are likely to adress a neglected tropical disease (NTD).		
2. The Agency, at the request of the Commission and after consulting the EMA		

Emergency Task Force, may offer enhanced scientific and regulatory support to developers of a medicinal product preventing, diagnosing or treating a disease resulting from serious cross border threats to health if access to such products is considered necessary to ensure high level of Union preparedness and response to health threats.		
3. The Agency may stop the enhanced support if it is established that the medicinal product will not address the identified unmet medical need to the anticipated extent.		
4. The compliance of a medicinal product with the criteria set out in Article 83 of [revised Directive 2001/83/EC] shall be assessed on the basis of the relevant criteria, independently of whether it has received priority medicinal product support under this Article.		
REGULATORY SANDBOXES		
CHAPTER IX **REGULATORY SANDBOX**		

Article 113		
Regulatory sandbox		
1. The Commission may set up a regulatory sandbox pursuant to a specific sandbox plan, based on a recommendation of the Agency and pursuant to the procedure set out in paragraphs 4 to 7, where all the following conditions are met:		
(a) it is not possible to develop the medicinal product or category of products in compliance with the requirements applicable to medicinal products due to scientific or regulatory challenges arising from characteristics or methods related to the product;		
(b) the characteristics or methods referred to in point (a) positively and distinctively contribute to the quality, safety or efficacy of the medicinal product or category of products or provide a major ~~advantage~~ contribution to patient access to treatment.		
2. The regulatory sandbox shall set out a regulatory framework, including scientific requirements, for the development and, where	(2) A regulatory sandbox shall set out a regulatory framework, including scientific requirements, for the development and,	*Equipping the pharmaceutical legislation with a regulatory sandbox mechanism will contribute to future*

appropriate clinical trials and placing on the market of a product referred to in paragraph 1 under the conditions set out in this Chapter. The regulatory sandbox may allow targeted derogations to this Regulation, [revised Directive 2001/83/EC]**,** ~~or~~ Regulation (EC) 1394/2007 **or Regulation (EU) 536/2014** under the conditions set out in Article 114.	where appropriate clinical trials and placing on the market of a product referred to in paragraph 1 under the conditions set out in this Chapter. The regulatory sandbox may allow targeted derogations to this Regulation, [revised Directive 2001/83/EC], Regulation (EC) 1394/2007, Regulation (EU) 536/2014 **or other applicable Union legislation** under the conditions set out in Article 114.	*proofing the system in anticipating and facilitating the uptake of innovation through experimentation. A regulatory sandbox will provide a transparent and tailored path for innovative solutions to emerge even in situations where gaps in the legislation exist, as they are impossible to predict today. Therefore, it would be appropriate to widen the scope of this definition to ensure that products other than pharmaceuticals can be included in regulatory sandboxes. The purpose of the amendment is to ensure that other types of health products may benefit from regulatory sandboxes.* *The Reg Sandbox provisions should also refer to other applicable legislation such as the medical device regulation, the IVD Regulation and the SoHO Regulation (as outlined in our proposals for Article 113(4)).*

		The proposed addition of 'or other applicable Union legislation' may need to be repeated in other sub-paragraphs.
A regulatory sandbox shall take effect under direct supervision of the competent authorities of the Member States concerned with a view to ensuring compliance with the requirements of this Regulation and, where relevant, other Union and Member State legislation concerned by the sandbox. Any violation of the conditions set out in the decision referred to in paragraph 6 and the identification of any risks to health and to environment shall be immediately notified to the Commission and to the Agency.		
3. The Agency shall monitor the field of emerging medicinal products and may request information and data from **the national competent authorities of the Member States,** marketing authorisation holders, developers, independent experts and researchers, and representatives of healthcare professionals and		

of patients and may engage with them in preliminary discussions.		
4. Where the Agency considers it appropriate to set up a regulatory sandbox for medicinal products which are likely to fall under the scope of this Regulation, it shall**,** **following appropriate consultations including consultation with the competent authorities of the Member States,** provide a recommendation to the Commission. The Agency shall list eligible products or category of products in that recommendation and shall include the sandbox plan referred to in paragraph 1.	4. Where the Agency considers it appropriate to set up a regulatory sandbox for ~~**medicinal**~~ products which **might be regulated as medicinal products (including advanced therapy medicinal products), medical devices, in-vitro diagnostics, substances of human origin**, ~~**are likely to fall under the scope of this Regulation,**~~ it shall provide a recommendation to the Commission, **where relevant after invoking the mechanism of consultation of Article 162**. The Agency shall list eligible products or category of products in that recommendation and shall include the sandbox plan referred to in paragraph 1.	*It is positive that the Reg Sandbox provisions refer to the CT Regulation and that reference to the ATMP Regulation has been included throughout the Reg Sandbox provisions.* *The Reg Sandbox provisions should also refer to other applicable legislation such as the medical device regulation, the IVD Regulation and the SoHO Regulation.* *The requirement for the Commission/EMA to consult with the competent authorities of the MS is acceptable and makes sense.* *It is essential to widen the proposal with a minimum of changes but consistently across the provisions. This is based on existing EC wording allowing a broader scope than just medicinal products as in*

		art 115(1) "products that might be regulated as medicinal products". *Reference to art 162 reinforces EMA's ability to consult with any other body overseeing another regulatory framework and strengthens the proposal to enable the establishment of regulatory sandbox beyond pharmaceuticals.*
The Agency shall not recommend to set up a regulatory sandbox for a medicinal product that is already advanced in its development programme.		
5. The Agency shall be responsible for developing a sandbox plan based on data submitted by developers of eligible products and following appropriate consultations **including consultation with competent Authorities of the Member States**. The **sandbox** plan shall set out clinical, scientific and regulatory justification for a sandbox, including the identification of the requirements of this Regulation, [revised Directive		

2001/83/EC]**, Regulation (EU) 536/2014** and Regulation (EC) 1394/2007 that cannot be complied with and a proposal for alternative or mitigation measures, where appropriate. The **sandbox** plan shall also include a proposed timeline for the duration of the sandbox. Where appropriate, the Agency shall also propose measures in order to mitigate any possible distortion of market conditions as a consequence of establishing a regulatory **sandbox**.		
6. The Commission shall, by means of implementing acts, take a decision on the set up of a regulatory sandbox taking into account the recommendation of the Agency and the sandbox plan pursuant to paragraph 4. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 173(2).		
7. Decisions establishing a regulatory sandbox under paragraph 5 shall be limited in time and shall set out detailed conditions for its implementation. These Decisions shall:		

(a) include the proposed sandbox plan;		
(b) include the duration of the regulatory sandbox and its expiry;		
(c) include as part of the sandbox plan the requirements of this Regulation and of [revised Directive 2001/83/EC]**, Regulation (EC) 1394/2007 or Regulation (EU) 536/2014** -that cannot be complied with and shall include appropriate measures to mitigate potential risks to health and to the environment.		
8. The Commission may, by means of implementing acts, suspend or revoke a regulatory sandbox at any time. in any of the following cases:		
(a) the requirements and conditions laid down in paragraphs 6 and 7 are no longer met;		
(b) it is appropriate to protect public health.		
Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 173(2).		
Where the Agency receives information that one of the cases referred to in the first		

subparagraph may be fulfilled, it shall inform the Commission accordingly.		
9. Where after the Decision to establish the regulatory sandbox in accordance with paragraph 6, risks to health are identified but these risks can be fully mitigated by the adoption of supplementary conditions, the Commission may, after consultation of the Agency, amend its decision by means of implementing acts. The Commission may also prolong the duration of a regulatory sandbox by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 173(2).		
10. This Article shall not exclude the setting up of time limited pilot projects to test different ways of implementing the applicable legislation.		
Article 114		
Products developed under a sandbox		
1. When authorising a clinical trial application for products covered by a		

regulatory sandbox, Member States shall take the sandbox plan referred to in Article 113(1) into consideration.		
2. A medicinal product developed as part of a regulatory sandbox ~~may~~ **shall** be placed on the market only when authorised in accordance with this Regulation. The initial validity of such authorisation shall not exceed the duration of the regulatory sandbox. The authorisation may be prolonged at the request of the marketing authorisation holder.	2. A medicinal product developed as part of a regulatory sandbox **may** ~~**shall**~~ be placed on the market only when authorised in accordance with this Regulation. The initial validity of such authorisation shall not exceed the duration of the regulatory sandbox. The authorisation may be prolonged at the request of the marketing authorisation holder.	*The purpose of this wording change is unclear and could be misinterpreted as an obligation to place all products developed as part of a regulatory sandbox on the market – which we assume is not the intention. As stated in the text, an MAA procedure would need to be completed and an MA granted under the Regulation in order for such products to be marketed, and no new or additional marketing obligation is intended to be imposed compared to other (non-sandbox) medicinal products. As such, the original text, including "may", from EC should be maintained.*
3. In duly justified cases, the marketing authorisation of a medicinal product developed under the regulatory sandbox may include derogations from the requirements set out in		

this Regulation and [revised Directive 2001/83/EC]**, Regulation (EC) 1394/2007 or Regulation (EU) 536/2014**. Those derogations may entail adapted, enhanced, waived or deferred requirements. Each derogation shall be limited to what is apt and strictly necessary to attain the objectives pursued, duly justified and specified in the conditions to the marketing authorisation.		
These derogations shall not cover the ethical assessment organised pursuant to Article 8, paragraph 4 of Regulation (EU) 536/2014.		
4. For medicinal products developed as part of a regulatory sandbox for which a marketing authorisation has been granted in accordance with paragraph 2 and where appropriate paragraph 3, the summary of product characteristics and the package leaflet shall indicate that the medicinal product has been developed as part of a regulatory sandbox.		
5. Without prejudice to Article 195 of [revised Directive 2001/83/EC], the Commission shall suspend a marketing		

authorisation granted in accordance with paragraph 2, where the regulatory sandbox has been suspended or revoked in accordance with Article 113(7).		
6. The Commission shall immediately vary the marketing authorisation to take account of the mitigation measures taken in accordance with Article 115.		
Article 115		
General sandbox provisions		
1. The regulatory sandboxes shall not affect the supervisory and corrective powers of the competent authorities. In case of identification of risks to public health or safety concerns associated with the use of products covered by a sandbox, competent authorities shall take immediate and adequate temporary measures in order to suspend or restrict their use and inform the Commission in accordance with Article 113(2).		
Where such mitigation is not possible or proves to be ineffective, the development and		

testing process shall be suspended without delay until an effective mitigation takes place.		
2. Participants in the regulatory sandbox, in particular the marketing authorisation holder of the medicinal product concerned, shall remain liable under applicable Union and Member States liability legislation for any harm inflicted on third parties as a result from the testing taking place in the sandbox. They shall inform the Agency without undue delay of any information which might entail the amendment of the regulatory sandbox or concerns the quality, safety or efficacy of products developed as part of a regulatory sandbox.		
3. The modalities and the conditions of the operation of the regulatory sandboxes, including the eligibility criteria and the procedure for the application, selection, participation and exiting from the sandbox, and the rights and obligations of the participants shall be set out in implementing acts. Those implementing acts shall be adopted in		

accordance with the examination procedure referred to in Article 173(2).		
4. The Agency with input from Member States shall submit annual reports to the Commission on the results from the implementation of a regulatory sandbox, including good practices, lessons learnt and recommendations on their setup and, where relevant, on the application of this Regulation and other Union legal acts supervised within the sandbox. These reports shall be made publicly available by the Commission.		
5. The Commission shall review the reports and put forward, as appropriate, legislative proposals with a view to update the regulatory framework referred to in Article 113(2) or delegated acts in accordance with Article 28 of [revised Directive 2001/83/EC].		