Answers to European Parliamentary Questions Given by Commissioner John Dalli on 16th August and 8th September 2011, Cross-Referenced to the Corresponding Questions

Main answer from Mr Dalli

The Commission would refer the Honourable Members to its answer to written questions E-008614/10 and E-010808/10.

As regards the possible promotion of health remedies by the Commission, Member States are fully responsible for the definition of their health policy. This includes the management of health services and medical care and decisions on reimbursement of medicinal products. The Commission does not have a role as regards the promotion of medicinal products.

In addition, the retail sale of medicinal products is also outside the scope of the EU pharmaceutical legislation. It is the responsibility of each Member State to decide whether any restriction (such as sale in pharmacies) should apply in their territory. The operation of the internal market is promoted through the application of the same quality, safety and efficacy requirements throughout the EU, in the interest of public health.
The above two paragraphs refer to questions asked by other MEPs and are not covered in our response.

As regards the limited number of registered products from non-EU traditions, the Commission would first like to recall that the simplified registration is a national procedure handled by the national competent authorities. It is up to the applicant to submit to the competent authorities of the Member States the corresponding application for the traditional herbal medicinal products they intend to place in the EU market. The European Medicines Agency has prepared a report on herbal medicinal products with the information provided by the Member States including the number of applications for registration received, the number of products registered or authorised and the number of applications rejected. From the report, it can be concluded that the percentage of applications rejected is very limited and in several Member States no applications have been rejected.
Questions 2 and 20

As regards the classification of herbal products, the fact that a product containing herbals has physiological effects does not per se entail that it is a medicinal product under the scope of Directive 2001/83/EC. The following criteria have been identified by the Court of Justice of the European Union as relevant for the classification of a product as medicinal by function: the pharmacological properties of the product to the extent to which they have been established in the present state of scientific knowledge, its composition, the way in which it is used, the risks which may be associated with consumption, the extent to which it is sold and the consumers familiarity with it.
Question 19

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According to the Court of Justice, the definition of medicinal product by function is designed to cover products whose pharmacological (or metabolic or immunological) properties have been scientifically observed or to restore, correct or modify physiological functions. It does not serve to include substances which, while having an effect on the human body, do not significantly affect the metabolism and thus do not strictly modify the way in which it functions. Moreover the Court of Justice has clarified that it is not sufficient that the product has properties beneficial to health in general, but it must strictly speaking have the function of treating or preventing disease; a product which does not have any additional effects compared to those of a foodstuff consumed in a reasonable quantity may not be classified as a medicinal product as established in Directive 2001/83/EC.

Questions 15 and 16

EU pharmaceutical legislation does not foresee a responsibility of the European Medicines Agency in the classification of medicinal products. It is the competence of the Members States to decide on a case-by-case basis which products fulfil the definition of medicinal products.

Questions 15 and 16

As regards Article 1(2) of Directive 2001/83/EC, the definition of medicinal products was not changed but clarified by Directive 2004/27/EC as indicated in recital 7 of this Directive. According to this recital, as a result of scientific and technical progress, the definitions and scope of Directive 2001/83/EC should be clarified and the definition should specify the type of action that the medicinal product may exert on physiological functions. This enumeration of actions (pharmacological, metabolic or immunological) was intended to make it possible to cover medicinal products such as gene therapy, radiopharmaceutical products as well as certain medicinal products for topical use.

Question 17

As regards the report submitted by the Commission to the European Parliament and the Council in September 2008, it was indicated that the rationale behind the current simplified registration procedure is to enable products that have been in long-standing traditional medicinal use to be registered under a simplified procedure because their safety and efficacy can be deduced from their long-standing use under the specified conditions of use. The vast majority of medicinal products with a sufficiently long tradition are based on herbal substances. It therefore seemed appropriate to limit the scope of the simplified registration to traditional herbal medicinal products.

Question 16

In addition, the Commission report emphasised that EU legislation on medicinal products, in particular Directive 2001/83/EC laying down the procedures for placing products on the market, follows a product-specific approach and does not provide a framework for the regulation of traditions of medical practice. The set of requirements for the simplified registration procedure for medicinal products under Directive 2004/24/EC was therefore not appropriate for a global regulation of medical traditions based on a holistic approach. The regulation of such traditions would demand a different approach from that introduced by Directive 2004/24/EC. Therefore, the Commission does not envisage extending the scope of the simplified registration procedure to cover traditional medical systems as such.

Questions 5 and 7 – see also supplementary answer from Mr Barnier (below)

As regards the suggestion that the Directive was built around the preparation and manufacturing methods in the German tradition, and that the perspective of Asian medicine was not taken into account, the Commission would like to recall that manufacturing and quality requirements in the legislation are not specific for herbal medicinal products, and in

fact apply to all medicinal products, to guarantee quality and good manufacturing practices in the interest of public health. In terms of the traditions taken into account, it should be noted that a public consultation was carried out, in accordance with the applicable standards when the Commission adopted its proposal. Monographs and guidelines published by Committee for Herbal Medicinal Products, these are also subject to public consultation. Once Directive 2004/24/EC was adopted by the European Parliament and the Council, the Commission as guardian of the treaties is bound to ensure the application of its provisions.

Question 2

The regulatory framework for the quality of medicinal products which equally applies to traditional herbal medicinal products has evolved over decades and follows comparable Pharmacopoeia and regulatory standards worldwide. In the EU, the European Pharmacopoeia (Ph. Eur.) provides basic quality control standards used to demonstrate identity, purity and content ('assay') of a product. In addition to general principles, the Ph. Eur. has also developed a set of methods and monographs reflecting the specific characteristics of herbal substances and internationally recognised standards in their quality control. The European Medicines Agency's quality guidance for herbal medicinal products is based on these principles and helps applicants to include the appropriate information for herbal substances, herbal preparations and the final herbal medicinal products in the quality dossier.

Questions 10 and 13

Herbal quality guidance provides also some flexibility in terms of marker compounds, in particular for combination products, given the fact that many traditional herbal medicinal products are combinations. Assistance is provided in the guideline on quality of combinations and Questions & answers (Q&A) on quality of herbal medicinal products/traditional herbal medicinal products. A minimum of one fingerprint (mainly thin layer chromatography and/or HPLC) is standard for every herbal quality dossier in particular for purity and stability tests. The use of methods other than the chromatographic ones is not excluded. Applicants may replace conventional methods with own validated methods if justification/ data are provided to demonstrate identity, purity and content.

Questions 10, 11 and 12

Experts at the European Pharmacopoeia and the European Medicines Agency are in dialogue with universities and industry to update the methodology to current standards which requires to substantiate that new technologies are fit for purpose (e.g. to identify adulterations). Other methods are constantly discussed at the European Pharmacopeia and at the Committee for Herbal Medicinal Products. New methods may involve more recent, expensive equipment. Therefore, an advantage over conventional chromatographic methods, especially for small manufactures, might be questionable in some cases.

Questions 10 and 12

As regards addition of biomarkers following the extraction phase, since the herbal substance or herbal preparation in its entirety is regarded as the active substance, a mere determination of the stability of the constituents with known therapeutic activity will not be sufficient. The stability of other substances present in the herbal substance or in the herbal preparation, should, as far as possible, also be demonstrated, e.g., by means of appropriate fingerprint chromatograms. It should also be demonstrated that their proportional content remains comparable to the initial fingerprint.

Question 11

If a herbal medicinal product contains combinations of several herbal substances or herbal preparations, and if it is not possible to determine the stability of each active substance, the stability of the medicinal product should be determined by appropriate fingerprint chromatograms, appropriate overall methods of assay and physical and sensory tests or other appropriate tests. The appropriateness of the tests shall be justified by the applicant.
Questions 10 and 12

Several scientific guidelines address the principle and the extent of documentation on markers and stability testing. It should be noted that the term 'biomarkers' is not used in the context of herbal medicinal products and may be misinterpreted; instead, a differentiation is made between active markers and analytical markers, in addition to constituents with known therapeutic activity. In addition, stability tests are not reduced to single markers but include fingerprints.
Questions 11 and 12

The notion of corresponding product is clearly defined in Directive 2004/24/EC: the corresponding product has to be sufficiently similar to the product under registration to allow use of the evidence on the corresponding product.
Question 23

As regards bioequivalence, the eligibility for the simplified registration does not depend on the extraction solvent (including water) or for how long a substance/preparation has been historically used, as long as criteria established in Directive 2004/24/EC are fulfilled and can be documented. It has to be shown that each product with its specific active substance and a specified quality, strength and posology has been safely used in this indication. The transfer of indications to other preparations that do not fulfil these criteria is not possible. The concept of a 'corresponding product' in the legislation is for safety reasons limited to minor deviations; this does not allow to consider that equal aqueous extracts and hydroethanolic extracts are equals.
Question 9

For monograph establishment, and the decisions on the indication and inclusion of preparations, the Committee for Herbal Medicinal Products has adopted a scientific guideline. However, even if an EU monograph on a herbal substance in question does not exist or a specific preparation is not included in an existing monograph, an application under the simplified registration for a traditional medicinal product may be submitted, provided that the criteria set by Directive 2004/24/EC are fulfilled for this product.
Questions 3 and 10

The 15 years of use in the EU allow to have the necessary monitoring of the side effects to support the safety of the product in the absence of tests and trials. For those medicinal products where 15 years of use in the EU cannot be demonstrated, but are otherwise eligible for the simplified procedure, Directive 2004/24/EC allows to prove the safety of the product by other means which are to be assessed by the Committee for Herbal Medicinal Products of the European Medicines Agency.
Questions 22 and 23

In addition, where the criteria to be eligible for the simplified procedure are not met by a herbal medicinal product (e.g. indications outside the scope of the Directive, active substance not exclusively a herbal substance or preparation), the applicant may submit an application for a full marketing authorisation.
Questions 4 and 18

Finally, as regards the rationale for adopting guidelines by the European Medicines Agency after adoption of the corresponding legal text, guidelines on the application of EU legislation are developed once a final legislative text has been adopted. Otherwise, development and publication of guidelines before adoption of legislation would pre-empt the results of the legislative procedure involving the Parliament.

Question 8

Supplementary answer from Mr Dalli

It is an underlying principle of the European Union's pharmaceutical legislation that patients should have access to the medicinal products of their choice, provided that all necessary measures are taken to ensure the quality, safety and efficacy of the products. In this regards, herbal medicinal products that are not registered or authorised i.e. that have not proven their quality, safety and efficacy, may not be placed in the EU market.

As a general rule, Article 5(1) does not allow medical doctors to prescribe unregistered medicines. On the contrary, only Member States, in accordance with legislation in force and to fulfil special needs may exclude medicinal products from the provisions of Directive 2001/83/EC for use by an individual patient under the direct personal responsibility of authorised health-care professionals.

As regards the legal status of ayurveda and traditional Chinese products, where these products fulfil the definition of medicinal products as established in Article 1(2) of Directive 2001/83/EC they have to be registered or authorised as such to be placed on the EU market. On the other hand, ayurveda and traditional Chinese products may be classified and placed on the market as foods provided that they do not fulfil the definition of medicinal products; and that they comply with EU food law. In particular, herbal products marketed in the form of food supplements should comply with Directive 2002/46/EC on food supplements and Regulation (EC) No 1924/2006 on nutrition and health claims made on foods.

Question 14

Answer from Mr Barnier

Under the current legal framework, the establishment of a regulatory regime for non-medically qualified practitioners of holistic, long-standing traditions of medicine falls within the competence of individual Member States. Such national regulation must respect the principles of non-discrimination and proportionality. Member States are also free to decide whether public health considerations such as patients' safety should apply (e.g. Court of Justice of the European Union, judgment Mac Quen C-108/96).

Currently, the principle of mutual recognition established in Directive 2005/36/EC applies to the recognition of professional qualifications of non-medically qualified practitioners moving from one Member State to another. The host Member State issues a decision on the recognition of the qualifications of the practitioner within a period of four months.

Regarding future developments in the field of professional qualifications, the Commission envisages a modernisation of Directive 2005/36/EC. To this end, a Green Paper was published on 22 June 2011. The Commission intends to present a proposal revising Directive 2005/36/EC by the end of 2011, as announced in the Single Market Act, published on 13 April 2011 .