SECOND COUNCIL DIRECTIVE

of 20 May 1975

on the approximation of provisions laid down by law, regulation or administrative action relating to proprietary medicinal products

(75/319/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100 thereof;

Having regard to the proposal from the Commission;

Having regard to the Opinion of the European Parliament (1);

Having regard to the Opinion of the Economic and Social Committee (2);

Whereas the approximation begun by Council Directive 65/65/EEC (3) of 26 January 1965 on the approximation of provisions laid down by law, regulation or administrative action relating to proprietary medicinal products should be continued and the implementation of the principles laid down in that Directive should be ensured;

Whereas in order to reduce the disparities which remain, rules should be laid down on the control of proprietary medicinal products and the duties incumbent upon the Member States' competent authorities should be specified with a view to ensuring compliance with legal requirements;

Whereas, in order to progress towards free movement of proprietary medicinal products, the issue of authorizations to place one and the same proprietary medicinal product on the market in two or more Member States should be facilitated;

Whereas, for this purpose, a Committee for Proprietary Medicinal Products should be set up, consisting of representatives of the Member States and of the Commission, responsible for giving an opinion as to whether a particular proprietary medicinal product complies with the requirements set out in Directive 65/65/EEC;

Whereas this Directive represents merely one step towards achievement of the objective of the free movement of proprietary medicinal products; whereas, therefore, further measures with a view to abolishing any remaining barriers to the free movement of proprietary medicinal products will be necessary in the light of experience gained, particularly in the abovementioned Committee;

Whereas in order to facilitate the movement of proprietary medicinal products and to prevent the controls carried out in one Member State from being repeated in another, minimum requirements should be laid down for manufacture and imports coming from third countries and for the grant of the authorization relating thereto;

Whereas it should be ensured that, in the Member States, the supervision and control of the manufacture of proprietary medicinal products is carried out by a person who fulfils minimum conditions of qualification;

Whereas, moreover, the provisions of this Directive and of that of Directive 65/65/EEC which relate to proprietary medicinal products, although appropriate, are inadequate for vaccines, toxins and serums, proprietary medicinal products based on human blood or blood constituents, proprietary medicinal products based on radio-active isotopes and homeopathic proprietary medicinal products; whereas the application thereof should consequently not be imposed at the present time in respect of such proprietary medicinal products;

Whereas certain rules in this Directive entail amendments to various provisions of Directive 65/65/EEC,

HAS ADOPTED THIS DIRECTIVE :

CHAPTER I

Application for authorization to place proprietary medicinal products on the market

Article 1

Member States shall take all appropriate measures to ensure that the documents and particulars listed

(1) OJ No 96, 2. 6. 1965, p. 1677/65.
(2) OJ No 107, 19. 6. 1965, p. 1825/65.
(3) OJ No 22, 9. 2. 1965, p. 369/65.

in points 7 and 8 of Article 4, second paragraph, of Directive 65/65/EEC are drawn up by experts with the necessary technical or professional qualifications before they are submitted to the competent authorities. These documents and particulars shall be signed by the experts.

Article 2

The duties of the experts according to their respective qualifications shall be:

(a) to perform tasks falling within their respective disciplines (analysis, pharmacology and similar experimental sciences, clinical trials) and to describe objectively the results obtained (qualitatively and quantitatively);

(b) to describe their observations in accordance with Council Directive 75/318/EEC (1) of 20 May 1975, on the approximation of the laws of the Member States relating to analytical, pharmaco-toxicological and clinical standards and protocols in respect of the testing of proprietary medicinal products, and to state, in particular:

— in the case of the analyst, whether the product is consistent with the declared composition, giving any substantiation of the control methods employed by the manufacturer;

— in the case of the pharmacologist or the specialist with similar experimental competence, the toxicity of the product and the pharmacological properties observed;

— in the case of the clinician, whether he has been able to ascertain effects on persons treated with the product which correspond to the particulars given by the applicant in accordance with Article 4 of Directive 65/65/EEC, whether the patient tolerates the product well, the posology the clinician advises and any contra-indications and side-effects;

(c) where applicable, to state the grounds for using the published references mentioned in point 8 (a) and (b) of Article 4, second paragraph, of Directive 65/65/EEC under the conditions set out in Directive 75/318/EEC.

Detailed reports by the experts shall form part of the particulars accompanying the application which the applicant submits to the competent authorities.

(1) See page 1 of this Official Journal.

Article 3

In the event of Article 2 of this Directive not being complied with, Article 5, second paragraph, of Directive 65/65/EEC shall apply.

CHAPTER II

Examination of the application for authorization to place proprietary medical products on the market

Article 4

In order to examine the application submitted in accordance with Article 4 of Directive 65/65/EEC, the competent authorities of the Member States:

(a) must verify whether the particulars submitted in support of the application comply with the said Article 4 and examine whether the conditions for issuing an authorization to place proprietary medicinal products on the market (marketing authorization) are complied with;

(b) may submit the proprietary medicinal product for testing by a State laboratory or by a laboratory designated for that purpose in order to ensure that the control methods employed by the manufacturer and described in the particulars accompanying the application in accordance with point 7 of Article 4, second paragraph, of Directive 65/65/EEC are satisfactory;

(c) may, where appropriate, require the applicant to supplement the particulars accompanying the application in respect of the items listed in the second paragraph of Article 4 of Directive 65/65/EEC. Where the competent authorities avail themselves of this option, the time limits laid down in Article 7 of the said Directive shall be suspended until such time as the supplementary information required has been provided. Likewise, these time limits shall be suspended for the time allowed the applicant, where appropriate, for giving oral or written explanation.

Article 5

Member States shall take all appropriate measures to ensure that:

(a) the competent authorities verify that manufacturers and importers of products coming from third countries are able to carry out manufacture in compliance with the particulars supplied pursuant to point 4 of Article 4, second paragraph, of Directive 65/65/EEC and/or to carry out controls according to the methods described in the particulars accompanying the application in accordance with point 7 of Article 4, second paragraph, of that Directive;

(b) the competent authorities may allow manufacturers and importers of products coming from third countries, in exceptional and justifiable cases, to have certain stages of manufacture and/or certain of the controls referred to in (a) carried out by third parties; in such cases, the verifications by the competent authorities shall also be made in the establishment designated.

Article 6

Where a leaflet is enclosed with the packaging of a proprietary medicinal product Member States shall take all appropriate measures to ensure that it applies to the product in question only.

All the information given in the leaflet must be in accordance with the particulars and documents supplied pursuant to Article 4 of Directive 65/65/EEC and must be approved by the competent authorities.

The leaflet must include at least the following information:

(a) name and domicile or corporate name and domicile or registered place of business of the person responsible for marketing the product and, where applicable, of the manufacturer;

(b) name and qualitative and quantitative particulars of the product in terms of its active ingredients.

The international non-proprietary names recommended by the World Health Organization should be used where such names exist;

(c) in the absence of a decision to the contrary by the competent authorities:

— therapeutic indications,

— contra-indications, side effects and special precautions for use.

Information and decisions under the first and second indents shall take into account the results of the clinical trials and pharmacological tests provided for in point 8 of Article 4, second paragraph, of Directive 65/65/EEC and in the case of the information referred to under the second indent, of experience acquired in use after marketing;

(d) directions for use of the product (method of administration, duration of treatment if this should be limited, normal dosage);

(e) special storage precautions, where applicable.

Other information shall be clearly separate from that referred to above.

Member State may require that a leaflet be included with the packaging.

Article 7

Notwithstanding the provisions of Chapter IV and of Article 21 of Directive 65/65/EEC, Member States may require that the proprietary medicinal product shall be labelled so as to indicate on the container and/or outer packaging and/or on the package leaflet other requirements essential to safety or for the protection of public health, including any particular precautions to be taken in using the product and any other warnings based on the results of the clinical trials and pharmacological tests mentioned in point 8 of Article 4, second paragraph, of Directive 65/65/EEC, or resulting from experience in the course of use of the proprietary medicinal product after marketing.

CHAPTER III

Committee for Proprietary Medicinal Products

Article 8

1. In order to facilitate the adoption of a common position by the Member States regarding marketing authorizations, a Committee for Proprietary Medicinal Products, hereinafter referred to as 'the Committee', is hereby set up. The Committee shall consist of representatives of the Member States and of the Commission.

2. The responsibility of the Committee shall be to examine, in accordance with Articles 9 to 14, the questions referred to it by a Member State concerning the application of Articles 5, 11 or 20 of Directive 65/65/EEC.

3. The Committee shall draw up its own Rules of Procedure.

Article 9

1. The Member State which has issued a marketing authorization for a proprietary medicinal product shall forward to the Committee a dossier containing a copy of the authorization together with the particulars and documents specified in Article 4,

second paragraph, of Directive 65/65/EEC, if the person responsible for marketing has requested the forwarding to at least five other Member States.

2. The Committee shall forthwith forward the dossier to the competent authorities of the Member States so specified.

3. Such forwarding shall be deemed to be equivalent to submitting an application for marketing authorization, within the meaning of Article 4 of Directive 65/65/EEC, to the said authorities.

Article 10

1. If, within a period of 120 days after the date of the forwarding referred to in Article 9 (2), no objection is notified to the Committee by the competent authorities of the Member States specified, the Committee shall formally record the fact and forthwith inform the Member States concerned.

2. Where a Member State considers that it is unable to authorize the marketing of the proprietary medicinal product, it shall forward its reasoned objection, within the said period of 120 days, on the basis of Article 5 of Directive 65/65/EEC.

Article 11

1. In the cases referred to in Article 10 (2), the Committee shall consider the matter and give a reasoned opinion within not more than 60 days from the expiry of the time limit laid down in Article 10.

2. The opinion of the Committee shall deal with the compliance of the proprietary medicinal product with the conditions set out in Article 5 of Directive 65/65/EEC.

The Committee shall forthwith inform the Member States concerned of its opinion or, in the event of a divergence, of the opinions of its members.

3. The Member States concerned shall reach a decision on the application for marketing authorization not more than 30 days after the date on which the information provided for in Article 10 (1) or paragraph 2 of this Article is given. They shall forthwith inform the Committee of their decision.

Article 12

1. If several applications submitted in accordance with Article 4 of Directive 65/65/EEC have been made for marketing authorization for a particular proprietary medicinal product, and one or more Member States have granted an authorization while one or more of the other Member States have refused it, one of the Member States concerned may bring the matter before the Committee.

The same shall apply where one or more Member States have suspended or revoked the marketing authorization while one or more other Member States have not done so.

2. The Committee shall consider the matter and give a reasoned opinion within 120 days at the most.

3. The opinion of the Committee shall only deal with the grounds on which authorization was refused, suspended or revoked.

The Committee shall forthwith inform the Member States concerned of its opinion or, in the event of a divergence, of the opinions of its members.

4. The Member States concerned shall give notice within 30 days of the action they intend to take following the Committee's opinion.

Article 13

The Committee may set a time limit for a fresh examination on the basis of particulars relating to the conditions laid down in Articles 5, 11 or 20 of Directive 65/65/EEC obtained in the meantime by the Member States, in particular by those which have authorized the proprietary medicinal product.

Article 14

The competent authorities of Member States may, in specific cases where the interests of the Community are involved, refer the matter to the Committee before reaching a decision on an application for a marketing authorization, its suspension or revocation.

Article 15

1. The Commission shall report to the Council annually on the operation of the procedure laid down in this Chapter and its effects on the development of intra-Community trade. It shall report for the first time two years after the entry into force of this Directive.

2. In the light of experience the Commission shall, not later than four years after the entry into force of this Directive, submit to the Council a proposal containing appropriate measures leading towards the abolition of any remaining barriers to the free movement of proprietary medicinal products. The Council shall take a decision on the Commission proposal no later than one year after its submission.

CHAPTER IV

Manufacture and imports coming from third countries

Article 16

1. Member States shall take all appropriate measures to ensure that the manufacture of the proprietary medicinal products is subject to the holding of an authorization.

2. The authorization referred to in paragraph 1 shall be required for both total and partial manufacture, and for the various processes of dividing up, packaging or presentation.

However, such authorization shall not be required for preparation, dividing up, changes in packaging or presentation where these processes are carried out, solely for retail supply, by pharmacists in dispensing pharmacies or by persons legally authorized in the Member States to carry out such processes.

3. Authorization referred to in paragraph 1 shall also be required for imports coming from third countries into a Member State; this Chapter and Article 29 shall have corresponding application to such imports as they have to manufacture.

Article 17

In order to obtain the authorization referred to in Article 16, the applicant must meet at least the following requirements:

(a) specify the proprietary medicinal products and pharmaceutical forms which are to be manufactured or imported and also the place where they are to be manufactured and/or controlled;

(b) have at his disposal, for the manufacture or import of the above, suitable and sufficient premises, technical equipment and control facilities complying with the legal requirements which the Member State concerned lays down as regards both manufacture and control and the storage of products, in accordance with Article 5 (a).

(c) have at his disposal the services of at least one qualified person within the meaning of Article 21.

The applicant must provide particulars in support of the above in his application.

Article 18

1. The competent authority of the Member State shall issue the authorization referred to in Article 16 only after having made sure of the accuracy of the particulars supplied pursuant to Article 17, by means of an inquiry carried out by its agents.

2. In order to ensure that the requirements referred to in Article 17 are complied with, authorization may be made conditional on the carrying out of certain obligations imposed either when authorization is granted or at a later date.

3. The authorization shall apply only to the premises specified in the application and to the proprietary medicinal products and pharmaceutical forms specified in that same application.

Article 19

The holder of an authorization referred to in Article 16 shall at least be obliged:

(a) to have at his disposal the services of staff who comply with the legal requirements existing in the Member State concerned both as regards manufacture and controls;

(b) to dispose of the authorized proprietary medicinal products only in accordance with the legislation of the Member States concerned;

(c) to give prior notice to the competent authority of any changes he may wish to make to any of the particulars supplied pursuant to Article 17; the competent authority shall in any event be immediately informed if the qualified person referred to in Article 21 is replaced unexpectedly;

(d) to allow the agents of the competent authority of the Member State concerned access to his premises at any time;

(e) to enable the qualified person referred to in Article 21 to carry out his duties, for example by placing at his disposal all the necessary facilities.

Article 20

1. The Member States shall take all appropriate measures to ensure that the time taken for the procedure for granting the authorization referred to in Article 16 does not exceed 90 days from the day on which the competent authority receives the application.

2. If the holder of the authorization requests a change in any of the particulars referred to in Article 17 (a) and (b), the time taken for the procedure relating to this request shall not exceed 30 days. In exceptional cases this period of time may be extended to 90 days.

3. Member States may require from the applicant further information concerning the particulars supplied pursuant to Article 17 and concerning the qualified person referred to in Article 21; where the competent authority concerned exercises this right, application of the time limits referred to in paragraphs 1 and 2 shall be suspended until the additional data required have been supplied.