Proposed Regulation on a reinforced role for the European Medicines Agency in crisis preparedness and management for medicinal products and medical devices[1]

Please see the amendments suggested by the European Association of Hospital Pharmacists (EAHP), the Access to Medicine Task Force of the Association of European Cancer Leagues (ECL), the European Public Health Alliance (EPHA) and Prescrire.

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INTRODUCTION

EAHP, ECL, EPHA and Prescrire have decided to comment jointly on this proposed regulation in the best interest of patients and public health. **Shortages of medicines and medical devices have been afflicting patients across Europe for years** and COVID-19 outbreak exacerbated well-known challenges. We therefore call on the European Institutions to align the various legislative proposals touching upon the prevention and management of shortages, putting the interest and safety of patients at the centre of any policy action.

The amendments we propose regard the following key issues:

- **The definition of shortages of medicines and medical devices,** which needs to be inclusive and should comprise shortages caused by the withdrawal of products from the market for commercial reasons.
- **The participation of patients, consumers, and healthcare professionals** in the governance and activities of the Medicines and Medical Devices Steering Groups, and their direct information.
- **Full transparency and strong conflict of interest rules**, which are key to ensure independence, impartiality, and public trust.
- The prioritization of **patients' safety** and interest.

Please note that all amendments to provisions on medicine shortages should also apply to the mirror provisions on medical devices (included in Chapter IV of the proposed Regulation), which are of equal importance.

[1] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020PC0725

Amendment 1 Art. 1 (b)	
Text proposed by the Commission	**Proposed amendment**
monitor and report on shortages of medicinal products for human use and medical devices;	**prevent,** monitor and report on shortages of medicinal products for human use and medical devices;
Justification: *A proactive policy of anticipation and prevention of manufacturing disruptions should be streamlined rather than a reactive policy based on monitoring and reporting of shortages exposing European citizens to possible negative consequences. In the recent "Report on the shortage of medicines"[2], the European Parliament itself "stresses that for patients, the consequences of drug shortages include: progression of the disease and/or worsening of symptoms due to a delay in treatment, avoidable transmission of infectious diseases, increased risk of exposure to falsified medicines, and significant psychological distress for patients and their families", echoing the conclusions of several national and European surveys reported in "EPHA position on medicines shortages in Europe"[3]*	
Amendment 2 Art. 2 (d)	
Text proposed by the Commission	**Proposed amendment**
'shortage' means that supply of a medicinal product for human use or a medical device does not meet demand for that medicinal product or medical device;	*'shortage'* means that supply of a medicinal product for human use or a medical device does not meet demand for that medicinal product or medical device, **no matter the cause**;
Justification: *Shortages of medicinal products and medical devices have several causes and all of them need to be covered by the definition of 'shortage', including the withdrawal of products from the market for commercial reasons. The shortages caused by commercial withdrawals are very frequent and can have a disproportionate impact on patients' care and public health (i.e. return of syphilis in France after Extencillline was removed from the market by Sanofi in 2014)[4]. Shortages can be extremely long and difficult to solve, especially when no adequate alternative therapy / medical device is available in due time, as other producers need to enter the market to compensate the production loss, which can take months or even years.* *In 2019, shortages caused by commercial withdrawals of medicines represented 63 % of all shortages in Romania, 47 % in Croatia and 37 % in Italy[5]. In France, it was estimated*	

[2] https://www.europarl.europa.eu/doceo/document/TA-9-2020-0228_EN.html
[3] https://epha.org/position-medicine-shortages/
[4] https://www.observatoire-sante.fr/la-syphilis-fait-son-grand-retour-en-france/
[5] https://affordablemedicines.eu/wp-content/uploads/2020/06/Position-Paper-on-Medicine-Shortages.pdf

that at least 16 % of the shortages notified to the French Medicine Agency resulted from market withdrawals[6].
Amendment 3 **Art. 2 (g)**
Text proposed by the Commission | **Proposed amendment**
‘demand’ relates to the request for a medicinal product or a medical device by a healthcare professional or patient in response to a clinical need. For demand to be satisfactorily met, the medicinal product will need to be acquired in time and sufficient quantity to allow continuity of best care of patients.
Justification: *‘Demand’ needs to be defined in the regulation as it determines the scope of shortages, which are at the core of the text. We recommend using as a basis the inclusive definition proposed in the EMA/HMA Guidance on the detection and notification of shortages of medicinal products for MHAs[7]. It acknowledges that healthcare professionals are the main prescribers of medicines and medical devices, while the ultimate objective is to guarantee the continuity of best care of patients.*
Amendment 4 **Art. 2 (h)**
Text proposed by the Commission | **Proposed amendment**
‘supply’ refers to the total volume of stock of an individual medicinal product or a medical device that is placed on the market by the Marketing Authorisation Holder or the producer, including situations in which a product is withdrawn from the market for commercial reasons.
Justification*:* *‘Supply’ needs to be defined in the regulation as it determines the scope of shortages, which are at the core of the text. We recommend using as a basis the definition proposed in the EMA/HMA Guidance on the detection and notification of shortages of medicinal products for MHAs[8], making clear that it should also cover situations in which the MAH withdraws a product from the market for commercial reasons.*

[6] https://www.quechoisir.org/action-ufc-que-choisir-penuries-de-medicaments-devant-la-responsabilite-criante-des-laboratoires-les-pouvoirs-publics-doivent-sortir-de-leur-complaisance-n84943/

[7] https://www.ema.europa.eu/en/documents/regulatory-procedural-guideline/guidance-detection-notification-shortages-medicinal-products-marketing-authorisation-holders-mahs_en.pdf

[8] https://www.ema.europa.eu/en/documents/regulatory-procedural-guideline/guidance-detection-notification-shortages-medicinal-products-marketing-authorisation-holders-mahs_en.pdf

Amendment 5 **Art. 3.2**	
Text proposed by the Commission	**Proposed amendment**
The Medicines Steering Group shall be composed of a representative of the Agency, a representative of the Commission and one senior representative per Member State. Each Member State shall appoint their representative. Members may be accompanied by experts in specific scientific or technical fields.	The Medicines Steering Group shall be composed of a representative of the Agency, a representative of the Commission, **a representative of the Patients' and Consumers' Working Party, a representative of the Healthcare Professionals' Working Party** and one senior representative per Member State. Each Member State shall appoint their representative. Members may be accompanied by experts in specific scientific or technical fields. **The list of the members of the Steering Group shall be made public on the EMA web-portal.**
Justification*:* *Patients, consumers and healthcare professionals need to be part of the Medicines Steering Group as medicine shortages primarily impact patients' health and care. Their experience as end-users or healthcare professionals/providers is especially needed to identify medicines considered as critical for public health and/or patients' best care in crisis situations, and to provide adequate recommendations and guidelines to prevent or mitigate shortages.* *The participation of a representative of patients and consumers, and a representative of healthcare professionals would be in line with the EMA long-lasting commitment to openness and engagement with civil society. It would also help improve the transparency and communication on the Medicines Steering Group activities, as the two representatives would report to the EMA Patients' and Consumers' Working Party, and to the Healthcare Professionals' Working Party.* *The list of the members of the Steering Group should be made public as transparency is key for public trust.*	

Amendment 6 **Art. 3.3**	
Text proposed by the Commission	**Proposed amendment**
The Medicines Steering Group shall be chaired by the Agency. The Chair may invite third parties, including representatives of medicinal product interest groups and marketing authorisation holders to attend its meetings.	The Medicines Steering Group shall be chaired by the Agency. **All members of the Medicines Steering Group** may **propose to** the Chair **to** invite third parties, including representatives of medicinal product interest groups, **representatives of healthcare professionals, patients and consumers,** and marketing authorisation holders to attend its meetings **when their contribution may inform the discussions of the Steering Group**.

***Justification**:* *All members of the Medicines Steering Group should be allowed to propose inviting third parties which have information, experience or expertise that could help the discussions and decisions of the Steering Group.* *Healthcare professionals, patients and consumers have a first-hand experience and invaluable insight into medicine shortages, which may however differ according to their position, country, profession (for healthcare professionals), disease area (for patient organisations), etc. The invitation of single organisations based on their specific expertise is thus complementary to the participation of representatives of Patients' and Consumers' Working Party, and of the Healthcare Professionals' Working Party as members of the Medicines Steering Group.*

Amendment 7 **Art. 3.4**	
Text proposed by the Commission	**Proposed amendment**
The Medicines Steering Group shall establish its rules of procedure including procedures relating to the working party referred to the paragraph 5 and on the adoption of lists, sets of information, and recommendations. The rules of procedure shall enter into force after receiving a favourable opinion from the Commission and the Management Board of the Agency.	The Medicines Steering Group shall establish its rules of procedure including procedures relating to the working party referred to the paragraph 5 and on the adoption of lists, sets of information, and recommendations. The rules of procedure shall enter into force after receiving a favourable opinion from the Commission and the Management Board of the Agency. **The agenda and minutes of the Steering Group as well as the rules of procedure and recommendations should be made available to the public via the EMA web-portal.**
***Justification**:* *Transparency is key for public trust.*	

Amendment 8 **Art. 8.3**	
Text proposed by the Commission	**Proposed amendment**
As part of that reporting, the Medicines Steering Group may also provide recommendations on measures, which may be taken by the Commission, Member States, marketing authorisation holders and other entities to prevent or mitigate potential or actual shortages. […]	As part of that reporting, the Medicines Steering Group may also provide recommendations on measures, which may be taken by the Commission, Member States, marketing authorisation holders and other entities, **including healthcare professionals and patients**, to prevent or mitigate potential or actual shortages. […]

***Justification**:* *Concrete mitigation measures for potential and actual shortages should be shared directly with healthcare professionals and patients, using for example the network that EMA has established via its Healthcare Professional Working Party (HCPWP) and the Patients' and Consumers' Working Party (PCWP). By sharing recommendations on measures directly with healthcare professionals and patient organisations it can be ensured that these are taken into account as soon as the measures become known.*

Amendment 9 **Art. 8.5**	
Text proposed by the Commission	**Proposed amendment**
The Medicines Steering Group may upon request from the Commission coordinate measures, where relevant, between the national competent authorities, the marketing authorisation holders and other entities to prevent or mitigate potential or actual shortages in the context of a major event or public health emergency.	The Medicines Steering Group may upon request from the Commission coordinate measures, where relevant, between the national competent authorities, the marketing authorisation holders and other entities, **including healthcare professionals**, to prevent or mitigate potential or actual shortages in the context of a major event or public health emergency.
***Justification**:* *For the successful implementation of coordinated measures, it is crucial that also healthcare professionals and patients are involved. Thus, the Medicines Steering Group should not only communicate with competent authorities, MAHs and other entities but also with healthcare professionals and patients. Contact to these groups could be established by means of EMA's Healthcare Professional Working Party (HCPWP) in which different types of professionals, including but not limited to doctors, nurses and pharmacists, are represented, and the Patients' and Consumers' Working Party (PCWP)*	

Amendment 10 **Art. 9 (1) (g)**	
Text proposed by the Commission	**Proposed amendment**
	The Agency shall publish information referred to in paragraph (1) (a), (b), (f) on its web-portal.
***Justification**:* *Transparency is key for public trust.*	

Amendment 11 **Art. 9 (3) (g)**	
Text proposed by the Commission	**Proposed amendment**
mitigation plans including production and supply capacity;	**prevention and** mitigation plans including **information on** production and supply capacity; **production sites of the finished**

	pharmaceutical product and of active pharmaceutical ingredients, potential alternative production sites, minimum stock levels, etc.;
***Justification**:* *There should be a strong commitment from all stakeholders to prevent medicine shortages along with plans to mitigate the disruption when this occurs. Prevention and mitigation plans are excellent tools that help with understanding and proactively limiting risks, so that these can be addressed before they occur.* *To prevent and mitigate shortages, and to organize alternative supply more information on the supply chain is needed, including where medicinal products are produced, the origin of raw materials, as well as possible alternative suppliers of raw materials, API and alternative places of production of finished products if needed.*	
Amendment 12 **Art. 10 (5)**	
Text proposed by the Commission	**Proposed amendment**
Where marketing authorisation holders for medicinal products included on the critical medicines lists are in possession of any additional information, which provides evidence of a potential or actual shortage they shall immediately provide such information to the Agency.	Where marketing authorisation holders for medicinal products included on the critical medicines lists are in possession of any additional information, which provides evidence of a potential or actual shortage they shall immediately provide such information to the Agency. **In the absence of notification of essential information, the EMA, the Commission and Member States should enact sanctions, e.g. financial penalities, extending compulsory license or removing intellectual property rights to allow that other actors can minimise the shortage.**
***Justification**:* *Sanctions should be foreseen in case of non-respect of provision of essential information. The sanctions and/or removal of intellectual property rights aim to enable the production of essential health products by other producers.*	
Amendment 13 **Art. 12 (b)**	
Text proposed by the Commission	**Proposed amendment**
consider the need for guidelines addressed to Member States, marketing authorisation holders, and other entities;	consider the need for guidelines addressed to Member States, marketing authorisation holders, and other entities**, including healthcare professionals to support them in their work and in the communication with patients**;

***Justification**:* *For the monitoring and mitigation of shortages of medicinal products during a public health emergency or a major event, guidelines should also be considered for healthcare professionals. These should support the monitoring and shortage mitigation work of healthcare professionals and their communication with patients. The guidelines should be published via the official channels of the European Commission and ideally on the national authorities' websites.*

Amendment 14 **Art. 13**	
Text proposed by the Commission	**Proposed amendment**
The Agency shall, via its web-portal and other appropriate means, in conjunction with national competent authorities, inform the public and interest groups with regard to the work of the Medicines Steering Group.	The Agency shall, via its web-portal and other appropriate means, in conjunction with national competent authorities, inform the public and interest groups **in a timely manner** with regard to the work of the Medicines Steering Group. **The list of the members of the Steering Committee, the rules of procedure, agendas and minutes of the meetings and recommendations shall be published on the Agency web-portal**.
***Justification**:* *All information regarding the composition, governance and activities of the Medicines Steering Group should be shared on the Agency web-portal as soon as it is available as transparency is key for public trust.*	

Amendment 15 **Art. 14.5**	
Text proposed by the Commission	**Proposed amendment**
The Chair may invite representatives of Member States, members of scientific committees of the Agency and working parties, and third parties, including representatives of medicinal product interest groups, marketing authorisation holders, developers of medicinal products, clinical trial sponsors, representatives of clinical trial networks, and interest groups representing patients and healthcare professionals to attend its meetings.	The Chair may invite representatives of Member States, members of scientific committees of the Agency and working parties, and third parties, including representatives of medicinal product interest groups, marketing authorisation holders, developers of medicinal products, clinical trial sponsors, representatives of clinical trial networks, **independent clinical trial experts and researchers**, and interest groups representing patients and healthcare professionals to attend its meetings.
***Justification**:*	

The Covid-19 pandemic has shown that independent clinical trials experts had been among the first to point out the weaknesses in clinical trial protocols. The EMA emergency Task Force should have the possibility to take the advice of independent clinical trials experts.

Amendment 16
Art. 14.6

Text proposed by the Commission	Proposed amendment
The Emergency Task Force shall establish its rules of procedure including rules on the adoption of recommendations. The rules of procedure shall enter into force after receiving a favourable opinion from the Commission and the Management Board of the Agency.	The Emergency Task Force shall establish its rules of procedure including rules on the adoption of recommendations. The rules of procedure shall enter into force after receiving a favourable opinion from the Commission and the Management Board of the Agency. **The rules of procedure including rules on the adoption of recommendations as well as the opinions should be made public on the EMA web-portal. The agenda and minutes of the Task Force shall be made public via the EMA web-portal.**

***Justification**:*
Transparency is key for public trust.

Amendment 17
Art. 25.4 (b)

Text proposed by the Commission	Proposed amendment
Following the reporting on the results of the monitoring and any recommendations on preventive or mitigating measures in accordance with Article 22, Member States shall:	4. Following the reporting on the results of the monitoring and any recommendations on preventive or mitigating measures in accordance with Article 22, Member States shall:
(b) consider the need to provide for temporary exemptions at Member State level pursuant to Article 59(1) of Regulation (EU) 2017/745 or Article 54(1) of Regulation (EU) 2017/746 with a view to mitigating potential or actual shortages of medical devices included on the public health emergency critical devices list;	(b) consider the need to provide for temporary exemptions at Member State level pursuant to Article 59(1) of Regulation (EU) 2017/745 or Article 54(1) of Regulation (EU) 2017/746 with a view to mitigating potential or actual shortages of medical devices included on the public health emergency critical devices list **while at the same time ensuring both patient and product safety**;

***Justification**:*
Temporary exemption from the conformity assessment procedure should only be considered in exceptional circumstances. Before allowing for such a derogation the

considerations should take into account both the safety of patients/citizens using the device and the safety of the product. Only if both can be ensured even without a conformity assessment procedure and the benefits for safeguarding supply outweigh the risks a temporary exemption could be offered.

Amendment 18 **Art. 26 (a)**	
Text proposed by the Commission	**Proposed amendment**
The Commission shall take into account the information from and recommendations of the Medical Devices Steering Group and shall: (a) take all necessary action within the limits of the powers conferred on it, with a view to mitigating potential or actual shortages of medical devices included on the public health emergency critical devices list, including, where necessary, granting temporary exemptions at Union level pursuant to Article 59(3) of Regulation (EU) 2017/745 or Article 54(3) of Regulation (EU) 2017/746;	The Commission shall take into account the information from and recommendations of the Medical Devices Steering Group and shall: (a) take all necessary action within the limits of the powers conferred on it, with a view to mitigating potential or actual shortages of medical devices included on the public health emergency critical devices list, including, where necessary, granting temporary exemptions at Union level pursuant to Article 59(3) of Regulation (EU) 2017/745 or Article 54(3) of Regulation (EU) 2017/746 **while at the same time ensuring both patient and product safety**;
Justification*:* *Extensions of the temporary exemption from the conformity assessment procedure should only be considered in exceptional circumstances. Before allowing for such a derogation the considerations should take into account both the safety of patients/citizens using the device and the safety of the product. Only if both can be ensured even without a conformity assessment procedure and the benefits for safeguarding supply outweigh the risks a temporary exemption could be offered.*	

Amendment 19 **Art. 30 (bis)**	
Text proposed by the Commission	**Proposed amendment**
	Transparency and publication of clinical data **1. The European Medicines Agency shall implement exceptional measures with regard to medicinal products, vaccines and medical devices falling under the scope of this Regulation, strengthening transparency measures and speeding up standard publication timelines and providing more information than is**

	usually the case. These measures include: **a) Publication of the product information with details of the conditions of use at the time of the CHMP's positive opinion on the marketing authorisation application.** **b) Expedited publication of the full European Public Assessment Reports (EPAR), within 3 days of authorisation by the European Commission. The EPARs should include a description on scientific advice.** **c) Expedited publication, within a period of 2 months-time of authorisation by the European Commission, of clinical data submitted to the Agency in support of the applications for medicines, after personal data have been anonymised and any commercially confidential information redacted. Access shall be provided to all independent individual participant level data along with protocols and analytic codes.** **d) Publication of the full risk management plan for authorised medicines.** **e) Publication of news announcements within 1 day of the start of initial rolling reviews or the evaluation of new or extension of indication applications.** **2. The Agency shall make the agendas and minutes of the meetings public, as well as the recommendations, opinions and decisions from the steering group and emergency task force by means of the web-portal.** **3. The membership of the Steering Groups and Working Parties shall be made public. Members of the steering groups and experts shall not have financial or other interests in the pharmaceutical industry which could affect their impartiality. They shall undertake to act in the public interest**

	and in an independent manner and shall make an annual declaration of their financial interests. All indirect interests which could relate to the industry shall be entered in a register held by the Agency which is accessible to the public, on request, at the Agency's offices. **Members of the Steering Groups and Working Parties, and experts who participate in meetings or working groups of the Agency shall declare, at each meeting, any specific interests which could be considered to be prejudicial to their independence with respect to the items on the agenda. These declarations shall be made available to the public.**
***Justification**:* *Public trust relies on full transparency. The Agency should therefore put in place strengthened and accelerated transparency standards and measures in relation to the working bodies and clinical data.*	
Amendment 20 **Recital 8 (bis)**	
Text proposed by the Commission	**Proposed amendment**
	Experience with clinical trials during the Covid-19 pandemic revealed a tremendous amount of duplication of investigations on the same interventions, many small trials, underrepresentation of important population groups and a lack of collaboration putting a risk of research waste. To improve the clinical research agenda, international regulators pointed out the need for robust evidence on quality, efficacy and safety of medicinal products. The main way to obtain reliable evidence is through co-ordinated, well-designed, well powered large randomised controlled trials. Clinical trial results and data shall be made public.
***Justification**:* *Experience with the Covid-19 pandemic pointed out major weaknesses related to the conduct of clinical trials. To obtain reliable evidence, well-designed large randomised controlled trials are needed.*	

Amendment 21 Recital 8 (ter)	
Text proposed by the Commission	**Proposed amendment**
	To speed up, facilitate and coordinate the development and launch of clinical trials in Europe, the Agency should make full use of existing networks like the Heads of Medicines Agencies (HMA), the Clinical Trials Facilitation and Coordination Group (CTFG), and the European Clinical Research Infrastructure Network (ECRIN).
Justification: *EMA should make full use of existing networks in Europe aiming to speed up, facilitate and coordinate clinical trials in Europe.*	
Amendment 22 Recital 27 bis	
Text proposed by the Commission	**Proposed amendment**
	Public trust relies on full transparency. Pro-active engagement with adequate communication tools with the general public should be foreseen. Strengthened and accelerated transparency standards and measures regarding the Agency working bodies and clinical data assessed for the evaluation and surveillance of medicinal products and medical devices are paramount to gain and upheld public trust. The EMA has put in place strengthened and accelerated transparency standards and measures during the Covid-19 pandemic. This Regulation establishes a framework for these strengthened transparency standards and measures.
Justification: *Public trust relies on full transparency. The Agency should therefore put in place strengthened and accelerated transparency standards and measures in relation to the working bodies and clinical data.*	