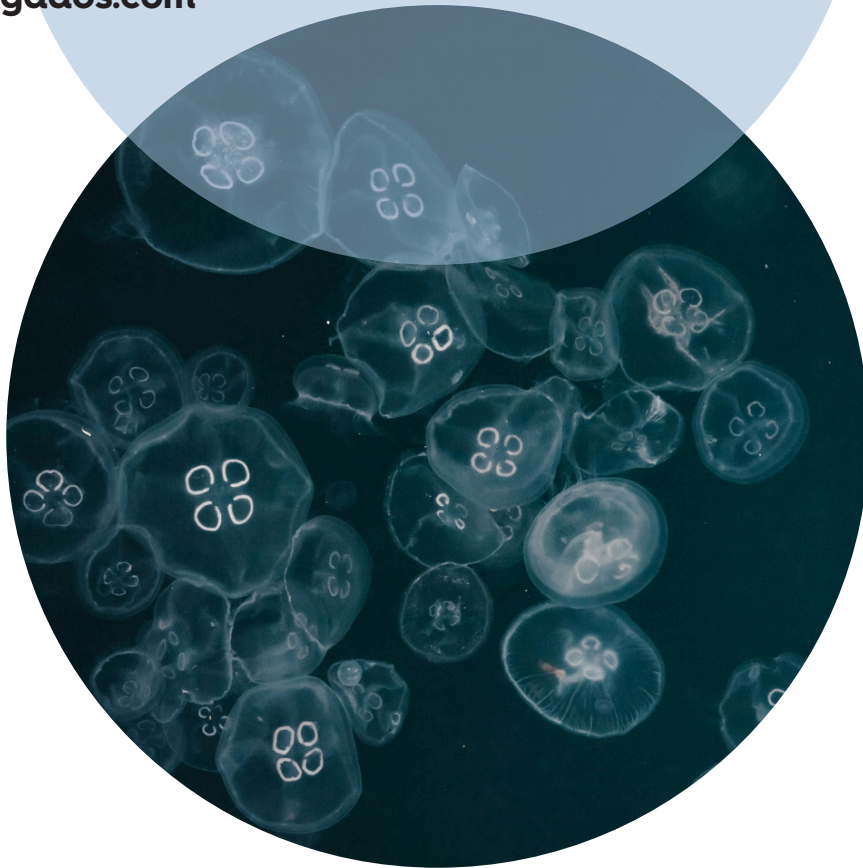


The Antimicrobial Voucher: A Regulatory Incentive for the Development of Priority Antimicrobials in the European Union

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1. Introduction

Antimicrobial resistance (“AMR”) is a growing public health concern, as it progressively undermines the effectiveness of available treatments, while the development of new antimicrobials fails to keep pace with the evolution and spread of resistant microorganisms.

This imbalance stems, in part, from a significant market failure: the high costs and risks associated with the research and development of new antimicrobials contrast with the limited prospects of economic returns, discouraging investment in medicinal products intended to address unmet medical needs.

Against this background, the text of the proposed Regulation forming part of the EU Pharma Package provides for the introduction of a transferable data exclusivity voucher designed to incentivise the development of priority antimicrobials.

2. Market Failure and the Economic Rationale of the Voucher

Traditional research funding mechanisms, commonly referred to as “push incentives”, help reduce the costs incurred during the early stages of research and development. However, in the field of antimicrobials, these instruments do not overcome the limited commercial attractiveness of the product following the granting of its marketing authorisation.

The prudent use of antimicrobials, which is essential to preserving their effectiveness, limits their volume of use and, consequently, the revenues that may be generated from their commercialisation. The short duration of treatments and the need to reserve certain medicinal products for specific infections further exacerbate this discrepancy between the social value of an antimicrobial and the economic return expected by its developer.

The voucher is therefore based on a “pull incentive” approach. Rather than directly funding research, it rewards the successful development of a priority antimicrobial by granting an additional period of regulatory data protection. Its economic value derives primarily from the possibility of applying it to another medicinal product or transferring it to a third party.

According to recital 97 of the text of the provisional agreement, limiting the number of vouchers and imposing strict conditions on their granting, transfer and use are intended to ensure that the financial benefit is predominantly captured by the antimicrobial developer rather than by the purchaser of the voucher, taking into account that the associated cost will be borne by healthcare systems.

The mechanism does not constitute an extension of a patent or a supplementary protection certificate, but relates exclusively to regulatory data protection. The voucher grants an additional 12 months during which another applicant may not rely on the data relating to the beneficiary medicinal product to support a subsequent application for marketing authorisation (“MA”).

3. Qualification and Granting of the Voucher

The granting of the voucher first requires the medicinal product to qualify as a priority antimicrobial. This qualification is subject to the cumulative fulfilment of three requirements:

- a. the medicinal product must act against a multidrug-resistant organism;
- b. preclinical and clinical data must demonstrate a significant clinical benefit in the context of AMR; and
- c. the medicinal product must have at least one of the following characteristics:
 - a mechanism of action clearly distinct from that of any antimicrobial authorised in the Union; or
 - an active substance which, whether used alone or in combination with other active substances, acts against a multidrug-resistant organism and is intended to treat a serious or life-threatening infection.

In the case of antibiotics, the European Medicines Agency ("EMA") must take into account, in its scientific assessment of these criteria, the World Health Organization's Bacterial Priority Pathogens List for the research and development of new antibiotics, or an equivalent list adopted at Union level.

However, scientific qualification does not, in itself, result in the granting of the voucher. The applicant must request the voucher when submitting the MA application. The European Commission may grant it by means of an implementing act, on the basis of an EMA scientific assessment and provided that the applicable requirements are met.

To benefit from the incentive, the applicant must also:

- demonstrate its capacity to supply the antimicrobial in sufficient quantities to meet the foreseeable needs of the Union market;
- provide information on all direct financial support received for research related to the development of the medicinal product; and
- demonstrate that the MA application was first submitted to the EMA or, at the latest, within 180 days of the submission of the first marketing authorisation application outside the Union.

Within 30 days of the granting of the MA, the marketing authorisation holder ("MAH") must make information concerning the funding received publicly available on a dedicated webpage and provide the EMA with the relevant link in a timely manner. This obligation is intended to enable a more transparent assessment of the economic impact of the voucher and the potential risk of overcompensation for the investment made.

4. Transfer, Use and Safeguards

The voucher may be used to add 12 months to the regulatory data protection period of the priority antimicrobial itself or of another medicinal product authorised through the centralised procedure provided for under the future Regulation. Each voucher may only be used once and in respect of a single medicinal product.

Where the voucher is used for a medicinal product other than the priority antimicrobial for which it was granted, it may only be exercised during the fifth or sixth year of that medicinal product's regulatory data protection period, provided that its annual gross sales in the Union have not exceeded EUR 490 million in any of the first four years following the granting of the MA.

The MAH of the beneficiary medicinal product must demonstrate that the sales data submitted are complete and accurate and have been audited by an independent external auditor. This sales threshold is intended to reduce the potential impact of the voucher on national healthcare systems by preventing its use for medicinal products with particularly high sales volumes. At the same time, it restricts the range of medicinal products for which the voucher may generate a significant economic return, a factor that should be taken into account when determining its market value.

The use of the voucher is also conditional upon the continued validity of the MA for the priority antimicrobial that justified its granting. For the additional protection period to apply, the MAH must apply for a variation to the MA of the beneficiary medicinal product.

The voucher may be transferred to another MAH but may not be subject to successive transfers. The purchaser must notify the EMA of the transaction within 30 days, specifying its value, and the Agency must publish that information.

The prohibition of successive transfers reduces the possibility of the voucher being used as a purely speculative asset. In turn, the disclosure of the transfer and the transaction value enhances the transparency of a mechanism capable of affecting healthcare system expenditure and the timing of market entry of generic and biosimilar medicinal products.

5. Validity, Limitations of the Regime and Prospects for Implementation

The voucher ceases to be valid when the Commission adopts the decision applying the additional protection period to the beneficiary medicinal product or when it has not been used within five years of its granting.

Before its transfer, the Commission may also revoke the voucher if a request for the supply, public procurement or purchase of the priority antimicrobial submitted by a Member State or by the Commission itself is not fulfilled. This possibility links the continued availability of the incentive to the effective availability of the medicinal product on the Union market.

Where the priority antimicrobial is withdrawn from the Union market before the expiry of its regulatory data protection and market protection periods, those periods may no longer prevent the validation, authorisation and placing on the market of medicinal products relying on it as a reference medicinal product, without prejudice to the protection afforded by patents and supplementary protection certificates.

The application of the regime is subject to temporal and quantitative limits. The section governing vouchers will apply for 15 years following the entry into force of the Regulation or until five vouchers have been granted, whichever occurs first.

The provisions concerning the voucher will apply from the entry into force of the Regulation, although most of the new regulatory framework will only become applicable at a later stage. The granting of each voucher will be formalised by a Commission implementing act, based on the EMA's scientific assessment. The implementation of the mechanism may also be supported by scientific and regulatory guidance issued by the EMA concerning the assessment of the qualification criteria.

The Commission will be required to carry out an initial evaluation of the regime following the use of the first two vouchers or five years after the date of application of the Regulation, whichever occurs first, and every five years thereafter. That evaluation must address the effectiveness of the incentive, its actual and expected costs, the potential adjustment of the sales threshold and the possibility of increasing the maximum number of available vouchers.

6. Practical Implications for Market Operators

From a practical perspective, the regime requires antimicrobial developers to adopt an integrated approach to scientific, regulatory, financial and Union market supply considerations.

For potential purchasers, the economic value of the voucher will depend, among other factors, on the timing of its use, the eligibility of the beneficiary medicinal product and the impact of the extension of regulatory data protection.

For manufacturers of generic and biosimilar medicinal products, the mechanism may influence the anticipated timetable for market entry, making the publication of information concerning granted vouchers, their transfers and the beneficiary medicinal products particularly relevant.

Ultimately, the effectiveness of the mechanism will depend on its ability to provide a sufficiently attractive economic incentive for the development of priority antimicrobials without imposing disproportionate costs on healthcare systems or unduly delaying the market entry of generic and biosimilar medicinal products. The voucher seeks to strike this balance, but only its practical implementation will make it possible to determine whether the safeguards provided for are indeed sufficient.

Thinking about tomorrow? Let's talk today.



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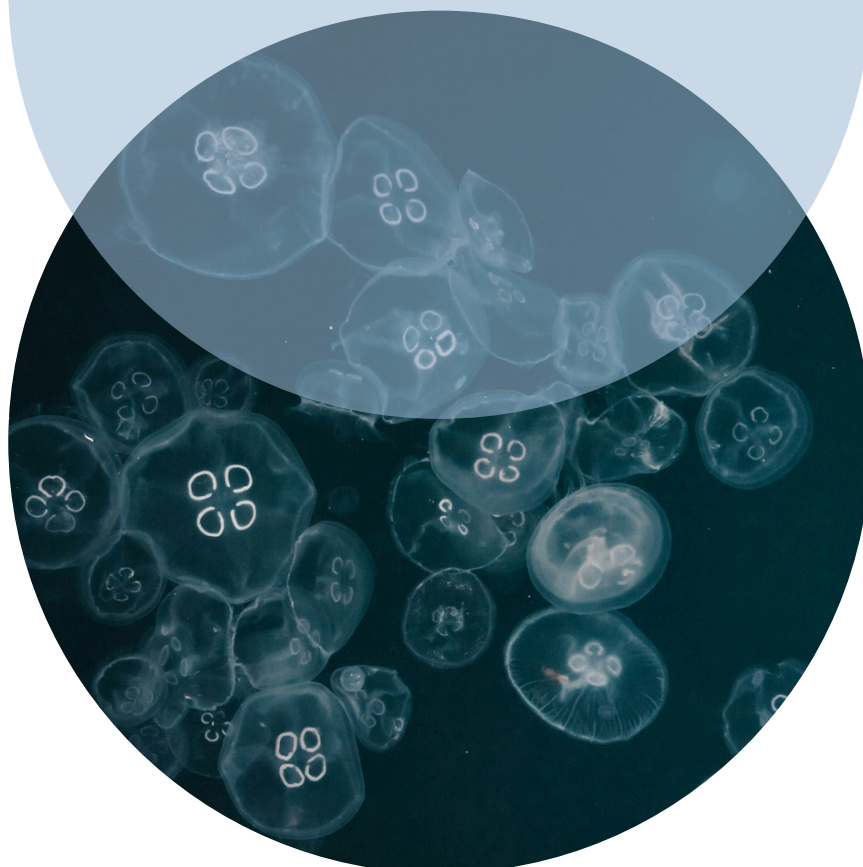
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