Advanced therapy medicinal products

2005/0227(COD) - 16/11/2005 - Document attached to the procedure

COMMISSION'S IMPACT ASSESSMENT

For further information regarding the context of this issue, please refer to the summary of the Commission's initial proposal for a Regulation on Advanced Therapy Medicinal Products - COM(2005) 0567.

1- POLICY OPTIONS AND IMPACTS: Six options were considered by the Commission.

1.1- Option 1 - Status quo – no new regulation at European level: In the absence of a clear and comprehensive regulatory framework at European level, the application of different legal requirements in the Member States results in legal uncertainty for economic operators, as well as obstacles to the free circulation of tissue engineered products (TEPs). Fragmentation of the European market may deprive patients' access to a number of innovative therapies using TEPs.

1.2- Option 2 - Extension of the Medical devices legislation to include TEPs: However, although TEPs may incorporate medical device elements, they raise inherent and specific issues due to the presence of manipulated tissues and cells and the associated risks, *e.g.* viral safety and the transmission of infectious diseases, as well as pyrogenicity.

1.3- Option 3 - "New approach" legislation: The Commission also looked into the possibility of proposing separate legislation based on the regulatory principles of the "new approach" (similar approach as the one used to regulate medical devices). Under the "new approach" concept, conformity of the product with the technical 'essential requirements' laid down in legislation is assessed by a notified body (public or private) officially designated by the Member States. However, expertise in tissue engineered products, although increasing, remains limited in Europe.

1.4- Option 4 - Semi-centralised and 2-tier authorisation procedure: This would consist in setting up a specific regulatory framework based on semi-centralised procedures. Under this framework, applications for authorisation of TEPs would be submitted to and processed by the competent authorities of the Member States, passed on to a central scientific committee for evaluation, and eventually approved by the Community. This would have introduced two layers of bureaucracy and may have been considerably time-consuming.

1.5- Option 5 - 'Third pillar' approach: The Commission services assessed the opportunity to establish a new, independent regulatory framework, which would specifically and exclusively address TEPs ('third pillar'). It implied that the European Medicines Agency (EMEA) would be responsible for assessing TEPs, through the involvement of a newly created Committee on TEPs but presented one major shortcoming, insofar as it addressed TEPs in isolation from other cell-based, advanced therapies. The common scientific and economic characteristics that TEPs, somatic cell therapy and gene therapy share were overlooked in this option.

1.6- Option 6- 'Advanced Therapies' approach: The Commission then investigated the option of a more global and integrated approach, building upon existing legislation. This approach consists in addressing all advanced therapies (gene therapy, somatic cell therapy, tissue engineering) within a single and coherent framework, taking into account their regulatory and technical specificities.

CONCLUSION: Option 6, in the form of a Regulation, is therefore considered as the most appropriate legal instrument. Such a global approach presents the advantage of meeting the main objectives of the proposal (*i.e.* it **fills the current regulatory gap** with respect to tissue engineered products in order to achieve a functioning internal market, taking as a base a high level of health protection), **while ensuring legal clarity, consistency and coherence with the existing legislative framework.** Also, in the absence of specific national legislation on TEPs in a number of Member States, a Regulation will facilitate the application of common rules without requiring any transposition measures at national level.

IMPACTS: Although the proposal addresses all advanced therapy products, the **most significant impact is in the tissue engineering sector**, which at present is not regulated at all by Community legislation. The impact on gene therapy and cell therapy sectors, which have been regulated for many years under the legislation on medicinal products, is considered to be less significant.

Legal uncertainties for manufacturers will be **reduced** by facilitating the classification of TEPs and providing transparent legislation. On the other hand, the regulatory framework for TEPs may become more stringent than some current national regimes, resulting in increased costs for some companies.

A clear improvement can be expected compared to the current situation regarding **costs related to the product classification process.** There may be increased costs in comparison to the present situation, e.g. compliance with good manufacturing practice (GMP) or the obligation to provide clinical data may require adaptations for some companies. However, the rise in costs will vary between Member States as well as between individual applicants. Implementation of the proposed Regulation is likely to demand tighter post-market surveillance and long-term traceability. Thus, costs related to the post-approval phase are likely to increase).

As the proposed approach builds on existing Community law, all incentives and competitiveness-related provisions which are already laid down would directly impact on companies developing advanced therapies. They should have a **strong positive economic impact** on the tissue engineering sector.

A **single EU market for TEPs** is likely to have positive effects on economic operators in the short term, due to reduced risks in accessing new markets, as well as less demanding procedures for marketing products in several countries. In the longer term, additional positive effects are expected due to increased trust in the products, higher demand and, consequently, higher sales. These improvements are of vital importance, in particular for the development of SMEs in this sector.

Another effect of the proposal is that the EU could become more attractive market for non-EU companies. This would increase competition in the field, which might have negative effects on companies that are less developed in terms of innovation capabilities.

In the short term, manufacturers will need to adapt to **new and tighter requirements for market authorisation**. This will bind resources and might lead to some companies exiting the market. For SMEs, the level of R&D investment and innovation activities may decline in a first phase. This may lead to concentration on fewer products, increased cooperation with larger companies for marketing products and financing R&D and vertical specialisation.

The short to mid-term impact of the proposed Regulation on **employment** will most likely be very modest due to the early development stage of the tissue engineering and advanced therapies sector.

Generally, environmental risks are considered to be low, because of the low production volume, the use of readily degradable substances, the limited survival of cells outside controlled laboratory environment and strict manufacturing conditions. The same holds true for gene and somatic cell therapy.

2- FOLLOW-UP : The draft Regulation includes a proposal for, within five years of entry into force, a general report on experience acquired as a result of the application of the Regulation. Through this report, *ex-post* evaluation is already planned. Furthermore the need for a designated independent study to support the general report might be considered. Such an independent study could include within its scope the financial and social impacts for which prospective data collection is problematic.