EUROPEAN GENERIC MEDICINES ASSOCIATION

EGA REPORT

INDUSTRIAL POLICY: MAKING EUROPE A HUB FOR MANUFACTURING OF GENERIC AND BIOSIMILAR MEDICINES

11 JANUARY 2013

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The EGA is the official representative body of the European generic and biosimilar pharmaceutical industry, which is at the forefront of providing high-quality affordable medicines to millions of Europeans and stimulating competitiveness and innovation in the pharmaceutical sector. Companies represented within the EGA provide over 150,000 jobs in Europe and export to more than 100 countries outside the EU. Cost-effective generic medicines save EU patients and healthcare systems over €35 billion each year, thus helping to ensure patient access to essential medicines and providing urgently needed budget headroom for the purchase of new and innovative treatments. Moreover, 7% of revenues from the generics medicine industry are spent on research and development alone*.

*Source: IMS report: "Generic Medicines: Essential contributors to the long-term health of society – Sector Sustainability Challenges in Europe" 2010, p. 1, Data from: 2007.

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Making Medicines Affordable

EGA REPORT

INDUSTRIAL POLICY: MAKING EUROPE A HUB FOR MANUFACTURING OF GENERIC AND BIOSIMILAR MEDICINES

1. EXECUTIVE SUMMARY

The economic and financial crisis in the European Union (EU) puts enormous pressure on healthcare systems and on pharmaceutical stakeholders. The constant price reduction measures across the Member States together with the increasing costs of existing and new regulation create a major threat for the economic sustainability of the European generic and biosimilar medicines industry.

At the same time some opportunities for growth are opening up for the European generic and biosimilar medicines industry. The emerging market share of the global pharmaceutical market is expected to double by 2015, the ageing of the European and global population means that larger volumes of high quality cost-effective medicines are needed, patent expiries of most blockbuster molecules by 2015 will open the way for generic medicines competition and last but not least the expected developments of the biosimilar medicines market in Europe and around the world will create new opportunities for manufacturing, therefore more jobs and growth in the EU.

These developments represent a unique opportunity for the European generic and biosimilar medicines industry in times of austerity but, if no measures are taken, the European Union will fall behind other economies such as the USA, Canada and Japan as well as India, China and South Korea that are taking significant steps to boost the competitiveness of the generic and biosimilar medicines industries within their territories in order to become important hubs for the development and manufacturing of medicines.

For the European generic and biosimilar medicines industry to be able to take advantage of this opportunity, to maintain our manufacturing base within the EU territory, and continue producing in accordance with the highest quality and environmental standards, the European Union policy makers must ensure that the regulatory and business environment within the EU is favourable. Certain measures need to be taken in order to boost manufacturing, to facilitate market access in the Internal Market and to stimulate export of European-made generic and biosimilar medicines outside the European Union. These measures will maximise the benefits we can generate to patients, to employment and more broadly to the EU economy.

In this paper the European Generic medicines Association (EGA) presents a set of policy priorities that are aimed at fostering competitiveness, generating growth and creating jobs in our sector. The priorities have been grouped under three major objectives:

1. Fostering Market Access of European Generic and Biosimilar Medicines in Third Countries and Boosting Jobs and Manufacturing in Europe
2. Improving Access of Generic and Biosimilar Medicines to the Internal Market
3. Ensuring “Better and More Consistent Regulation” to Reduce Unfair Burden on Industry

2. The Need for an Industrial Policy Strategy for the European Generic and Biosimilar Medicines Sector

The European Generic medicines Association (EGA) welcomes the European Commission's decision to focus on the elaboration and implementation of a strategy, containing a set of policy measures to increase competitiveness and improve the sustainability of the pharmaceutical industry including the European generic and biosimilar medicines industry. The latest European Commission's Communication entitled '*A Stronger European Industry for Growth and Economic Recovery*'[1] strongly resonates with the EGA's own call for a dedicated industrial policy for the European generic and biosimilar medicines industry, presented at the joint EGA and Polish Presidency Conference: "Stimulating Industrial Policy to Enhance Internal Market Manufacturing and the Export of European Generic and Biosimilar Medicines", that took place on 11 October 2011 in Warsaw.

The EGA would like to see the Commission's broad horizontal initiative to boost competitiveness, to stimulate jobs and growth, and to re-launch industrial policy in Europe, translated into concrete measures that will foster the sustainability of the European generic and biosimilar medicines industry without overwhelming it with new burdensome regulation that has the effect of tremendously increasing production costs.

European Generic and biosimilar medicines companies are making substantial investments in development and manufacturing in the EU, with 7% of revenues from the generics medicine industry spent on R&D alone[2] (See also: Annex I). However, the current environment is discouraging them to pursue that endeavour. Constructive measures would help our industry prevent the relocation of its manufacturing plants outside Europe and would ensure security of supply, while avoiding unnecessary expenses associated with the long-distance management of manufacturing operations and the need to secure safe and effective transportation to import medicinal products back to the European Union.

Furthermore, developing a strong manufacturing in Europe is essential for maintaining Europe's independence on pharmaceuticals' supply. Moving the industry to countries where there is no political stability creates a situation in which we do not have control over the political decisions that might affect the supply of medicines to Europe.

Policy makers are often faced with the trade-off with respect to security of supply, quality and price of generic medicines, as stated in the Study: 'Advancing the responsible use of medicines' by the IMS Institute for Healthcare Informatics (Oct 2012)[3] presented at the Health Ministers Summit on 3 October 2012, but only by taking concrete steps towards stimulating productivity growth and innovation can the EU improve the competitiveness of its industry and retain manufacturing in its territory.

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[1] COM(2012) 582 final: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0582:FIN:EN:PDF

[2] Source: IMS report: "Generic Medicines: Essential contributors to the long-term health of society – Sector Sustainability Challenges in Europe" 2010, p. 1, Data from: 2007.

[3] "There are a number of policy tools that can drive generic promotion and higher use of lower-cost generic medicines. However, there is no set guidance on how to achieve optimal use of lower-cost generics through prices and volumes. To identify which tools are most appropriate, policymakers must consider trade-offs with respect to security of supply (e.g., ensuring shortages do not occur), quality, and price. These trade-offs are underpinned by larger, macroeconomic dynamics such as competition and interests of the domestic industry, affordability of medicines in the population, and regulatory mechanisms to ensure medicine registration, tracking of use, and quality oversight."

The EGA's proposal for an Industrial Policy Strategy for the European Generic and Biosimilar Medicines Sector outlines a number of policy measures that provide a strong basis and we belief that will contribute to achieving better results and improving the competitiveness of our industry.

The proposed policy measures are grouped under three major objectives:

1	**Improving Access of Generic and Biosimilar Medicines to the Internal Market**
2	**Fostering Market Access of European Generic and Biosimilar Medicines in Third Countries and Boosting Jobs and Manufacturing in Europe**
3	**Ensuring "Better and More Consistent Regulation" to Reduce Unfair Burden on Industry**

If the existing European regulatory environment is optimised, it will be possible to fully exploit the advantages offered by generic and biosimilar medicines for the sake of the sustainability of healthcare systems and economic growth in Europe.

The following opportunities for the generic and biosimilar medicines industry are opening up in the years to come:

- The emerging market share of the global pharmaceutical market is expected to double by 2015 compared to 2010 figures[4].
- With the ageing of the European and world population, there is a possibility for European generic medicines companies to provide large volumes of high quality, cost-effective treatments, in order to assist governments in the difficult task of controlling the increasing healthcare budgets.
- Patent expiries will reduce the global spending on originator medicines by €96 billion between 2011 and 2015. This spending will be redeemed partially by €17 billion of generic spending on the same medicines, which would allow governments to redirect the remaining resources to other immediate needs within their healthcare systems[5].
- It is even more critical not to lose the potential of developments in the biosimilar medicines sector. The new European approval guidelines are expected to boost biosimilar medicines uptake from €249 million in 2010 to up to €2 billion in 2015 as they start to offer alternative therapeutic choices in a wider range of indications[6].

However, in order for the European generic and biosimilar medicines industry to be in a position to capitalise on these developments, certain structural and regulatory changes need to take place in Europe. If not, other more competitive and forward-looking economies will take advantage of the developing market share.

[4] Source: Emerging markets share of global drugs market will double by 2015, Scrip, 19 May 2011 (Data: IMS Health)
[5] Source: Emerging markets share of global drugs market will double by 2015, Scrip, 19 May 2011 (Data: IMS Health)
[6] Source: Emerging markets share of global drugs market will double by 2015, Scrip, 19 May 2011 (Data: IMS Health)

3. Fostering Market Access of European Generic and Biosimilar Medicines in Third Countries and Boosting Jobs and Manufacturing in Europe

The European pharmaceutical industry is a leading sector in the EU with regard to trade surplus (€48.3bn in 2011). A steady growth in exports since 2001 and an ability to adapt to and enter new and growing markets has been demonstrated. The European generic medicines industry has a significant share in the trade surplus and is ever more oriented towards third country markets. However, the European generic medicines industry faces strong competition from traditional producers such as the US and Japan, along with growing competition from fast developing emerging market economies from the BRICK[7] countries.

a. Introducing an EU Regulation on 'Advanced Manufacturing' of Generic and Biosimilar Medicines for Export

The so called 'Bolar Provision' in EU legislation[8] allows generic and biosimilar medicines producers to carry out the development, testing and experimental work required for the registration of a generic or biosimilar medicine during the patent period of the reference product. However, generic and biosimilar medicine producers are not allowed, during the patent or Supplementary Protection Certificate (SPC)[9] to manufacture for export to countries where no patent or SPC is in place. Due to the lack of such an 'advanced manufacturing' provision for generic and biosimilar medicines, many European companies either outsource their manufacturing of generic medicines outside the EU, relocate their plants or decide not to produce for third country markets at all. This endangers the level playing field with third country companies and puts the European industry in an uncompetitive position.

Therefore, the EGA calls on the European Commission to adopt an EU Regulation on 'advanced manufacturing' that would enable European companies to manufacture generic and biosimilar medicines in Europe during the SPC period for export to third countries- without considering this a patent infringement. Such a Regulation would contribute to improving the competitiveness of European generic and biosimilar medicines companies, specially small to medium-sized companies, fostering growth in Europe, generating up to 25 000 new jobs and saving the 150 000 existing jobs in the European generic and biosimilar medicines sector. It would enable European generic medicines companies to react quickly to public health and access to medicines needs of third countries. In our view, the revision of the SPC Regulation[10] will not be necessary, as the 'advanced manufacturing' provision can be introduced in a separate Regulation – as was the case when the Regulation (EC) No 1901/2006 on medicinal products for paediatric use was adopted. In Regulation EC No 1901/2006, Article 36 provides for a 6-month extension of the SPC term for originator companies that have performed studies for a given product in a paediatric population in accordance with an agreed paediatric investigation plan, without opening the SPC Regulation itself for revision[11].

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[7] Brazil, Russia, India, China, Korea

[8] Art.10.6 of Directive 2004/27/EC of 31 March 2004 amending Directive 2001/83/EC on the Community code relating to medicinal products for human use

[9] effectively a patent extension that can last for up to 5 years

[10] Council Regulation (EEC) No 1768/92 of 18 June 1992 concerning the creation of a supplementary protection certificate for medicinal products

[11] The EGA raises its concerns on the 6 month paediatric extension for originator products amounting to an approximate € 2, 3 billion loss of savings for EU healthcare systems. The costs are based on IMS calculations on annual brand sales on a European scale for 10 molecules out of 12 listed with a granted SPC, according to the 2012 EMA 5-year Report to the European Commission

In addition to the advanced manufacturing provision for export, it would be very valuable if manufacturing and stockpiling of generic and biosimilar medicines is allowed in the EU during the SPC period for the purposes of launching the generic and biosimilar medicinal products in the European Union on 'day one' after the SPC expires. This provision will significantly improve the competitiveness of our industry and will contribute to reduce the Members States' pharmaceutical expenses from 'day one' after the SPC period expires with medicines manufactured in the EU.

Moreover, the EU has the longest period of data exclusivity in the world (8+2+1 years). As a consequence, the late granting of a Marketing Authorisation (MA) in the European Union can have a negative impact on the issuing of a MA in third countries if the so called "Certificate of Pharmaceutical Product" (CPP) is requested in these countries for products coming from the EU. This combination of long data exclusivity in the EU with a requirement for a provision of a CPP represents a significant barrier for the competitiveness of the European generic and biosimilar medicines companies that wish to export their medicinal products to countries outside the EU.

The EGA's view is that introducing an Advanced Manufacturing regulation in the EU is a key measure to foster the European industry competiveness and should be adopted immediately.

b. Ensuring Quicker Access for EU Authorised Generic and Biosimilar Medicines in Third Countries

Ensuring quicker access for EU authorised generic and biosimilar medicines is one of our industry's priorities that can be pursued via the conclusion of Free Trade Agreements, Non-Tariff Barrier Agreements and Regulatory Harmonisation Agreements with the fastest growing economies and with economies where barriers for export are still very high. Some of the concrete measures that we propose are the establishment of regulatory frameworks allowing global development for biosimilar and generic medicines, the eradication of tariff and non-tariff barriers limiting access to third country markets, the introduction of fast track registrations in third countries for EU27/EMA approved generic and biosimilar products, the improvement of mutual recognition of inspections and harmonisation of quality standard to internationally well-known and recognised standards (e.g. The World Health Organisation (WHO), The International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH)).

- **Establishing a Regulatory Framework for Global Development for Biosimilar Medicines**

The EU is the first region in the world to have defined a policy and legal framework for the approval of biosimilar products[12]. Establishing frameworks for biosimilar medicines worldwide is expected to contribute enormously to public health and patient access to medicines, not only in developing countries but also in highly regulated markets where large disparities exist. The promotion of the EU-based biosimilar medicines industry and

(Atorvastatin, Anastrazole, Clopidogrel, Latanoprost, Losartan, Montelukast, Nevirapine, Rizatriptan, Valsartan and Zoledronic Acid). The loss is incurred because generic medicines are delayed in entering the market due to the reward of the 6 month SPC extension for originators.

[12] A total of 13 biosimilars are now approved, and they include somatropin, epoetin and filgrastim products. They have now been in use in the European Union for over four years, the first having been approved in early 2006.

the global access to high quality, comparable biosimilar products have to be tackled from 2 angles:

- Support worldwide convergence of regulatory data requirements for the approval of biosimilar medicines.

- Support a regulatory framework allowing a single global development programme for biosimilars, where possible, starting with supporting one comparative clinical trial for both the EU and the US. The European Medicines Agency (EMA) has recently announced that it would accept reference products sourced from outside the European Economic Area (EEA) once the so-called overarching biosimilars guideline is adopted. This aims to facilitate the global development of biosimilars and avoid the unnecessary and potentially unethical repetition of clinical trials and save huge costs.

Global development programmes for biosimilars as well as convergence of regulatory data requirements are essential prerequisites for ensuring affordability and sustainable patient access to high quality and often life-saving biopharmaceuticals.

- **Establishing a Single Development Programme for Generic Medicines between the EU and the USA**

With the globalisation of markets, an increasing number of generic medicines manufacturers are keen on introducing their products on both the EU and the US markets. A Single Development Programme for Generic Medicines, replacing the current practice where development studies are duplicated, is an area where the EGA sees great potential for cutting inefficiencies, responding to the needs of patients and gaining from larger markets. A Single Development Programme for Generic Medicines would entail three key elements:

1) More harmonised criteria that have to be met for an application to be successful;
2) A more harmonised approach with regard to which studies are requested to support generic and hybrid applications;
3) Sourcing the same reference product from the EU and the US markets for the purpose of trials and studies mutually accepted by the EU and the US.

A more harmonised approach will be particularly beneficial for more complex generic products (e.g. pre-filled syringes, inhalers, patches, modified release products) for which an abridged clinical programme is requested for marketing authorisation application in the EU and in the USA. Such a harmonised approach would:

- substantially reduce the pharmaceutical development costs and the unethical duplication of studies;
- boost industry's competitiveness;
- foster scientific and technical expertise and talent retention in Europe;
- allow increased patient access to high quality and more affordable generic medicines;
- free headroom with regulatory agencies, and
- support the sustainability of the respective healthcare systems.

Based on the experience with the USA, in the future we see potential for such collaborative initiative to be extended to other countries or regions where regulatory systems and approaches are close (e.g. ICH[13] countries).

[13] The International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH)

- **Eradicating Tariff and Non-Tariff barriers Limiting Access to Third Country Markets**

In third country markets, the generic and biosimilar medicines industry faces increasing protectionist measures intended to benefit local manufacturers at the expense of foreign (including European) companies. Some of these measures include: the continued application of tariffs and indirect taxes by some trade partners, despite the 0% import duty for raw materials and finished products by the EU, and non-tariff barriers such as regulatory barriers[14] disproportionately affecting European companies, customs procedures and border enforcement[15], Pricing and Reimbursement measures targeting European companies, barriers to direct investment, public procurement[16], competition issues[17], IP rights considerations, incentives to dispense local products, third country manufacturing of follow-on biologicals that have not been developed in a comparative manner and not according to the EU standards, but are nevertheless labeled incorrectly as "biosimilars"[18], import substitution, arbitrary use of exchange rates.

The EGA is calling on the European Commission to continuously pursue the eradication of tariff and non-tariff barriers in third countries, to ensure a coordinated approach by the European Commission, National Governments, Permanent Representations and the EU Delegations and Member State Embassies in trade partner countries.

At EU level, the EGA would like to see the effective implementation of existing EU Free Trade Agreements (FTA) provisions and progress in the conclusion of free trade and non-tariff barrier agreements with the world's most dynamic economies and with economies where barriers to business development are high. At the same time, the European Commission must ensure that "*the EU should also seek to find the correct balance in bilateral and multilateral trade agreements, in order that it does not impose TRIPS+ requirements on countries where this may have an adverse effect on their public health or the ability of the EU to import its own generic medicines.*" as stated in the European Commission Pharmaceutical Sector Fiche[19] (2011).

The EU should pursue high level regulatory dialogues between the EU and key trade partners, with involvement of the relevant authorities, such as for example, moving towards convergence of the regulatory provisions between the EU and the US, within the framework of the EU-US High Level Group for Growth and Jobs.

- **Introducing Fast Track Registrations in Third Countries for EU27/EMA Approved Generic and Biosimilar Products**

The EGA is calling on the European Union policy makers to introduce measures that will facilitate the recognition by third countries of Marketing Authorisations already granted in the European Union. The European Union standards for granting Marketing Authorisations (MA) are very stringent and there is no identified need for third countries to reassess the

[14] e.g. technical regulations, standards, conformity assessment procedures, requirement for repetition of bioequivalence studies by some third countries and the use of lists of products that are banned from importation as they will be produced locally

[15] e.g. import controls limiting market access

[16] e.g. discrimination in public tenders

[17] e.g. anti-trust, mergers, liberalisation, state aid

[18] Weise et al Nature Biotechnology : "Biosimilars – why terminology matters", Volume 29, Number 8, Aug. 2011, page 690

[19] http://trade.ec.europa.eu/doclib/docs/2012/january/tradoc_148988.pdf

files already submitted in the EU from scratch for registering the products that are already approved and present on the European Market.

The very first step in achieving this is to prevent any form of bias towards foreign applicants for Marketing Authorisation Application (e.g. extra fees, timelines or documentation requirements) in third countries' legislation.

- **Improving Mutual Recognition of Inspections / International Harmonisation of Quality Standards to Internationally Well-known and Recognised Standards**

To establish a true level playing field, particularly in the area of pharmaceutical Good Practice inspections (GxP: e.g. GMP, GCP, GLP), supporting fair global competition while overcoming the issue of limited resources in all regulatory agencies worldwide (including the EU EMA and Member States Agencies), requires the EU to consider new partners for Mutual Recognition Agreements (MRAs), the revision (e.g. extension) of the scope of MRAs, the development of alternative, less formal collaborative schemes[20] and a more centralised European and international coordination of inspections activities. As a first concrete step, the EU should consider the benefits in terms of efficiency and reduced redundancy of a well-resourced EU inspectorate to centralise and coordinate within the EU all inspections activities and act as single point of contact with international partners. The international harmonisation of quality standards to well-known and recognised international standards (e.g. WHO, ICH) is also key for establishing a level playing field with local industry established in third countries.

In conclusion, unless EU policy makers support the European generic and biosimilars medicines industry to retain its manufacturing in Europe and to access third country markets, the European Union will lose momentum to compete globally and will fall behind in its drive to deliver affordable and high quality medicines to patients, jeopardising jobs and economic growth in Europe on the way.

Some countries, such as India[21], South Korea[22] and Sri Lanka[23] but also the USA[24] have already introduced policy measures or established task forces in order to promote strategies that would see them evolve into important hubs for medicine development and manufacturing, particularly in the generic and biosimilar medicines sectors. The European Union must do the same and incentivise its industry to export, while carefully weighing

[20] E.g. FDA-EMA-TGA pilot initiative on API Inspections or FDA-EMA on GCP inspections twinning projects with other countries.

[21] "A government task force will evolve strategies for making India a hub for drug discovery … further the interests of the Indian pharma industry …and recommend strategies to capitalise on the opportunity of $60 to $80 billion drugs going off-patent over the next five years."
Source New Delhi, 15 March 2011 (IANS)

[22] "The South Korean Government has pledged to promote the biosimilars industry and plans to invest in the biosimilars industry in order to make Korea a market leader. The government will provide both financial and institutional support and is aiming to take a 22% share of the global market by 2020." Source: Korea Herald

[23] "Sri Lanka to increase local drug production with pharma hub. Sri Lanka is setting up a 48 acre pharma manufacturing industrial zone to boost local production. Creating a pharma manufacturing hub 5km from Kurunegala City in central Sri Lanka will help the government, which accounts for 35 per cent of demand, source more drugs from local suppliers." Source: In Pharma Technologist, 20 October 2011

[24] Introducing manufacturing incentives, tax incentives for returning manufacturing jobs back to the US, R&D tax credits (Source: US Capitol Capsule: Manufacturing incentives, R&D credit at heart of Obama tax fix, Scrip, Feb 2012; Obama proposes tax incentives aimed at returning manufacturing to US, Scrip, 26 Jan 2012)

the impact of new regulatory requirements in order to remain globally competitive and save jobs within its territory.

4. Improving Access of Generic and Biosimilar Medicines to the Internal Market

The EGA is a strong advocate for dynamic competition in the pharmaceutical sector. In these times of austerity and reduced growth, the pharmaceutical sector is faced with increasing pricing pressures by governments on the one hand and increasing regulatory burden on the other. However, what the generic and biosimilar medicines' sector, which can be one of the strong engines for recovering from the crisis, needs is a well-functioning Internal Market that could ensure a sustainable pricing and reimbursement environment for generic and biosimilar medicines. Only a vibrant competitive market can offer affordable prices, significant savings to payers in the short, medium and long-term as well as continuity of supply.

a. Creating a Sustainable Pricing and Reimbursement Environment for Generic and Biosimilar Medicines That Would Provide for Dynamic Competition

The economic and financial crises in Europe put enormous pressure on healthcare systems and on all pharmaceutical stakeholders. The constant measures for price reductions across the Member States together with the increasing costs of existing and new regulation create a scenario that is unsustainable for the European generic medicines industry.

This new environment requires dialogue and commitment among all relevant stakeholders. Therefore, the EGA proposes the establishment of Partnership Agreements for Competition, Employment and Savings (PACS) between the generic medicines industry and Member States that would facilitate the maintenance of sustainable pricing for generic medicines and a level playing field for all generic medicines companies.

These partnership agreements intend to bridge the gap and create a dialogue that would facilitate the search for customized better policy options for all stakeholders depending on the country and provide our companies and Member States' healthcare systems with long-term predictability and business certainty.

We propose that the agreements are based on the following three objectives:

- Durable competition in the pharmaceutical market
- Creation of employment and manufacturing in Europe
- Sustainable savings for patients, governments and other payers

While the agreements are intended to be between the governments and the industry, the EGA calls on the European Commission to play an active role in enhancing the understanding of the need for a sustainable generic medicines industry among the EU Member States via the restriction of measures such as price-cutting, tendering and reference pricing that have been proven to have a detrimental impact on the viability of generic medicines companies.

In our view, governments should not have as an objective to drive costs of medicines down to the marginal costs, as in the medium term these policies will limit competition (especially for SMEs), will decrease pharmaceutical investments, will slowdown the development of the generic medicine market, can create short-term absences of medicines due to logistic shortages and will jeopardize the EU Industry and jobs.

The OECD Health data from 2012 shows that for the first time since 1975 health spending has fallen in Europe, the pharmaceutical expenditure growth rate turned negative in several countries in 2010, and its average is now zero in the EU20.

Additionally, it should be noted that extreme cost-containment measures, such as price cuts, payback systems and clawback policies are being introduced by national authorities, as clearly documented by the European Commission's DG ECFIN Study on Cost-Containment Policies in Public Pharmaceutical Spending in the EU[25]. At the same time very costly regulatory procedures are being introduced by the European Commission which creates an unsustainable environment for the European generic medicines industry.

The price cuts introduced in southern European countries led the WHO to make serious statements showing its concern about the health impact of austerity in Greece and southern Europe.

Evidence from Germany and The Netherlands shows that the introduction of tendering systems creates an unsustainable market with severe consequences to the European industry, namely by driving companies out of the market, and to the European patients, namely by increasing shortages and reducing access to medicines. This evidence can be found in the recently published study: 'Tender systems for outpatient pharmaceuticals in the European Union: Evidence from the Netherlands and Germany'[26], by Panos Kanavos, London School of Economics, January 2012 and in the study "Advancing the responsible use of medicines", October 2012 by the IMS Institute for Healthcare Informatics.

Therefore, it is of utmost importance that the PACS agreements are initiated as soon as possible, due to the fact that the competitiveness of the industry is at stake[27]. Policy makers should ensure the right environment is in place by reducing the time for MA and P&R approval and by introducing measures to increase generic market volume at national and European level[28].

The swift European Commission's involvement would contribute to guaranteeing savings to payers, long-term competition and jobs in our sector.

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[25] http://ec.europa.eu/economy_finance/publications/economic_paper/2012/pdf/ecp_461_en.pdf

[26] The study was commissioned by the European Commission.

[27] The British Generic Medicines Association (BGMA) has launched such an agreement with the NHS, called 'Sustainability: generics and the NHS - Towards a refreshed compact between government and industry'.

[28] Only about half of the volume of medicines in the EU is supplied as generic medicines, which represents 18% of the value. (EGA data)

The situation is even more dangerous with regard to biosimilar medicines that some Member States treat like generic products with regard to pricing and reimbursement conditions. This is extremely damaging to this young industry, given the investments that have been made. The development of a biosimilar medicine can take up to 8 years or more, and the costs associated are in the range between €50 and 250 million, depending on the molecule. "If we want to retain sustainable biosimilar medicines manufacturing in Europe, we have to be careful to protect this industry in its infancy. Policy makers need to use all avenues possible to increase its competitiveness and not only focus on using biosimilars as a means of reducing the price of originator products"[29].

While Pricing and Reimbursement of medicines is a national competence, the European Commission can be instrumental in raising awareness among the Member States about the investments made in the biosimilar medicines sector and the need to differentiate them from the generic medicinal products in terms of price & reimbursement. Supportive measures for market uptake of biosimilars will contribute to make available very expensive treatments to more people in Europe, but also to create a more competitive biopharmaceutical industry at a worldwide level.

b. Speeding up Market Access to Generic and Biosimilar Medicines via the Adoption of the Transparency Directive

The proposal for a Directive of the European Parliament and of the Council relating to the transparency of measures regulating the prices of medicinal products for human use and their inclusion in the scope of public health insurance systems (2012/0035(COD)) was released on the 1st of March 2012 by the European Commission.

The revision of the Transparency Directive is an opportunity to implement certain key recommendations of the Pharmaceutical Sector Inquiry[30], which identified reasons why generic medicines are blocked or delayed from entering the market. The EGA therefore welcomes the European Commission's decision to take on board measures that will help guarantee that generic medicines will continue to be made available to as many patients as quickly as possible at affordable prices.

The EGA is pleased that the Members of the European Parliament during the Environment, Public Health and Food Safety Committee's vote on 18 December 2012 supported:

- The introduction of a shorter price & reimbursement approval time-limit for generic medicines as this will help to maximise potential savings to patients and the healthcare sector, whilst increasing affordability, patient access and health budget control.
- The ban of patent linkage, which links the approval of the price and reimbursement of generic and biosimilar medicines to the patent status of the originator reference product. This ban will foster a competitive market by speeding up the entry of generic and biosimilar medicines onto the market and is in line with jurisprudence in various Member States that ruled against patent linkage in the price and reimbursement process.
- The separation of competences between pricing and reimbursement and marketing authorisation authorities by not reassessing the elements on which the marketing authorisation has been granted (such as quality, safety, efficacy, bioequivalence, biosimilarity).

[29] Statement of the EGA President Gudbjorg Edda Eggertsdottir at the 10th EGA International Symposium on Biosimilars held on 19 April 2012 in London, UK

[30] http://ec.europa.eu/competition/sectors/pharmaceuticals/inquiry/communication_en.pdf

The EGA is confident of a constructive follow-up of the legislative process at the Council and is looking forward to a fruitful dialogue with Member States.

c. Ensuring Better Information on Generic and Biosimilar Medicines

Improving the provision of information on generic and biosimilar medicines to the general public and to healthcare professionals is essential and can generate a large amount of savings to the European healthcare systems and patients. Therefore the EGA calls on the European Commission to foster information campaigns that would contribute to the wider use of generic pharmaceuticals and produce savings. The findings of the Project Group on Biosimilars as well as the conclusions on misinformation from the List of Guiding Principles Promoting Good Governance in the Pharmaceutical Sector that were both part of the Platform on Corporate Responsibility in the Field of Pharmaceuticals launched by the European Commission as well as the Pharmaceutical Sector Inquiry[31] that the European Commission undertook in 2009 should be promoted.

In more concrete terms, the EGA recommends:

- the creation of a specific subsection on the medicines agencies' websites[32] concerning generic and biosimilar medicines;
- the development of information campaigns that could help patients and healthcare professionals to understand the concept of generic and biosimilar medicines; and
- the implementation of a proactive policy to prevent and to take action against misinformation campaigns against generic and biosimilar medicines.

Similarly to the European Commission's information campaigns on smoke cessation, the development of information campaigns on the better understanding of the generic and biosimilar medicines concept, could also generate a better use of public money by increasing the use of generic and biosimilar medicines. It is not acceptable that while in countries like Germany and Poland where the generic market share is 68% and 66% respectively, in others, such as Spain and Italy, it is only 40% and 36%[33]. Better information can facilitate uptake of generic and biosimilar medicines and thereby help for the generation of savings.

5. Ensuring "Better and More Consistent Regulation" to Reduce Unfair Burden on Industry

In highly regulated industries such as the pharmaceutical industry, it is essential that the regulatory environment is predictable and provides for clear understanding on how the laws and guidelines will be applied.

a. Improving Consistency between the Impact Assessment and the Final Legislation

[31] http://ec.europa.eu/competition/sectors/pharmaceuticals/inquiry/communication_en.pdf
[32] Examples of websites operating in this spirit are the website of the European Medicines Agency: http://www.ema.europa.eu/; as well as the Portuguese Medicines Agency – INFARMED: http://www.infarmed.pt
[33] Source: IMS Health, MIDAS, Market Segmentation, MAT Mar 2012, Rx only

Impact assessments should be more rigorous and involving all relevant experts, and when decisions of the European Parliament and the Council of the European Union deviate from the European Commission's proposals or that a rather long time has elapsed since the first proposal (and changes in the environment have occurred), the impact assessment should be reviewed and updated. There needs to be greater consistency between the Impact Assessments and the final version of the legislation. New elements introduced by the European Parliament or by the Council of the European Union should be reassessed at some stage from a Better Regulation perspective.

In the pharmaceutical sector, we have had three recent pieces of legislation on falsified medicines[34] and on pharmacovigilance[35] that are creating substantial problems relating to their technical and practical implementation. The key hurdles identified are the very ambitious implementation timelines and the enormous associated operational costs, both underestimated and even unforeseen in the respective impact assessments. For the examples cited above, the current phases of transposition into national law and/or implementation and entry into force raise unprecedented challenges for industry and regulators. The lack of predicatability associated with this complex implementation environment are heavily threatening Europe-based operations (eg. ability to secure the continuity of supply) and are putting the competitiveness of the generic medicines industry in question.

The impact of costs on industry should regularly be taken into consideration. Only the planned fees for the pharmacovigilance tasks can in fact put in serious risks many of the companies in our sector.Taking into account that an average sized generic company has a portfolio of 1000 active substances, this could mean that one generic medicines company could have to pay up to € 20 million on annual pharmacovigilance fees only[36]. At the same time, the EGA has calculated that the implementation costs of safety features for the European generic medicines industry as per the new Falsified Medicines Directive could reach €1 billion. In addition to this, the costs for running repository systems in the EU for the verification of authenticity of generic medicines would be an additional: € 200 million per year[37].

It should be borne in mind that once EU legislation is passed, it is extremely difficult to amend or change it. Moreover, the implementing measures should also be in line with the principles of Better Regulation. Flexibility in relation to timelines should be built into all legislation, so as to pre-empt any problems with implementation that were not foreseen. Decisions made in 'trialogue' should be more transparent to allow stakeholders to identify possible problems.

b. Introducing 'Competitiveness Proofing' for all New EU and Member State Legislation

[34] Directive 2011/62/EU relating to medicinal products for human use, as regards the prevention of the entry into the legal supply chain of falsified medicinal products

[35] Directive 2010/84/EU amending as regards pharmacovigilance Directive 2001/83/EC on the Community code relating to medicinal products for human use
Regulation (EU) No 1235/2010 amending, as regards pharmacovigilance of medicinal products for human use, Regulation (EC) No 726/2004.

[36] EGA'S COMMENTS ON THE CONCEPT PAPER SUBMITTED FOR EC PUBLIC CONSULTATION ON THE INTRODUCTION OF FEES TO BE CHARGED BY THE EMA FOR PHARMACOVIGILANCE, Sept 2012

[37] EGA'S COMMENTS ON THE CONCEPT PAPER SUBMITTED FOR EC PUBLIC CONSULTATION ON THE DELEGATED ACTS RELATED TO THE FALSIFIED MEDICINES DIRECTIVE AND ON A VERIFICATION SYSTEM OF PHARMACEUTICAL PRODUCTS IN EUROPE, April 2012

'Competitiveness proofing' needs to be introduced as part of the Impact Assessments of all new EU and Member State legislation. It should serve as a key tool to bring the right balance between competitiveness and sustainability and support the case of industry to retain its manufacturing in Europe. It should also take into account not only the subsector of industry that has benefited from a certain policy measure, but also the subsectors that might have been harmed or disadvantaged. This is especially important for legislation like the new Falsified Medicines[38] and the Pharmacovigilance[39] legislation.

Greater involvement of Member States and European Agencies in the legislative process is needed, as they are the ones that are finally responsible for the implementation of the laws. This is critically important in an area such as pharmaceuticals where Member States are responsible for healthcare policy-making and the Pricing and Reimbursement (P&R) of medicines.

c. Performing a 'Fitness Check' of All Old Legislation, to Assess whether It Corresponds to the Current Economic Situation

A 'fitness check' of all old legislation should be performed, to assess whether legislation corresponds to the current economic situation. If the procedure finds that certain pieces of legislation do not match the needs of the stakeholders concerned, they should be revised.

For example, the Council Regulation (EEC) No 1768/92 of 18 June 1992 concerning the creation of a supplementary protection certificate for medicinal products is already 20 years old, and according to our companies' experience, it does not reflect the current business environment in Europe.

The European generic medicines industry seeks a narrow revision of the legislation, as was the case when the paediatric extension was introduced without opening the SPC Regulation for revision itself, to introduce an Advanced Manufacturing provision. Like mentioned before, this would allow companies to manufacture during the Supplementary Protection Certificate period for export to third countries where there is no patent or SPC in place.

Another example is the current EU Directive on Clinical Trials (2001/20/EC) which dates back to 2001 and has contributed to making the authorisation and performance of clinical trials in the European Union lengthy and costly. On 17 July 2012, the European Commission published its proposal for the Regulation on the subject, which among other objectives, aims at attracting clinical trials back to Europe. We hope that with the new Regulation, including certain amendments for faster approval timelines for bioequivalence studies and therapeutical bioequivalence studies, Europe will become also a preferred region for conducting clinical trials which will significantly improve the EU's and our industry's competitiveness, contribute to pharmaceutical innovation and growth in Europe.

In our view, the perspective of new regulatory requirements should always be weighed against a more rational and improved implementation of existing provisions.

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[38] Directive 2011/62/EU relating to medicinal products for human use, as regards the prevention of the entry into the legal supply chain of falsified medicinal products

[39] Directive 2010/84/EU amending as regards pharmacovigilance Directive 2001/83/EC on the Community code relating to medicinal products for human use
Regulation (EU) No 1235/2010 amending, as regards pharmacovigilance of medicinal products for human use, Regulation (EC) No 726/2004

6. Europe Must Create a Viable Regulatory and Business Environment for its Generic and Biosimilar Medicines Industry

In the current economic climate it is of key importance to strengthen Europe's role in the global economy by enhancing the ability of European companies to sell quality products at competitive prices on the European and international markets. It is in Europe's interest to develop the right regulatory environment, which would allow generic and biosimilar medicines companies to retain their manufacturing in the EU.

Improving the competitiveness of our companies must be in the center of policy decision at the EU and Member State level. In this regard, the EGA is calling on European policy makers to support the European generic and biosimilar medicines industry, like other economies do, since access to safe, quality, effective and competitively priced medicines is essential to our daily life. It is also crucial to level the playing field in manufacturing of generic and biosimilar medicines with third country trade partners.

The EGA has put forth a set of industrial policy priorities which, if adopted, would in our view substantially improve the regulatory environment and business climate in Europe, as well as enhance the ability of European companies to internationalise their production and consequently help strengthen economic growth, create and retain jobs in the EU.

ANNEX I: European Generic Medicines Industry: Major Contributor to Employment and Development