Guideline on national exemptions according to § 16(6)/§ 17(10) AMG for nationally and decentrally authorised medicinal products (MRP/DCPs)

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2 Abbreviations

AMG Austrian Medicinal Products Act („Arzneimittelgesetz")

AT Austria

BASG Austrian Federal Office for Safety in Healthcare

CAP Centrally authorised medicinal product

CMDh Co-ordination Group for Mutual Recognition and Decentralised Procedures - Human

MRP Mutual recognition procedure

DCP Decentralised procedure

PL Package Leaflet

LAB Labelling

3 Introduction

The exemption provisions in the AMG (adopted from Article 63(3) of Directive 2001/83/EC) are exemptions from the national marketing authorisation provisions that can only be applied in duly justified individual cases.

For national exemptions according to § 16(6) and § 17(10) AMG for purely national and decentralised marketing authorisations (MRP/DCPs), the same basic principles apply as for exemptions according to Art. 63(3) of Directive 2001/83/EC for centrally authorised medicinal products (CAPs).

As with the exemptions according to Art. 63(3) for CAPs, exemptions according to § 16(6) and § 17(10) AMG are permanent exemptions with the aim of marketing the product concerned in AT with one or more packaging component(s) in English ("multi-country pack" comprising the country-specific information for AT).

The exemptions according to § 16(6) and § 17(10) AMG consist of two different legal requirements:

- Exemptions from the obligation that PL/LAB must be provided in German
- Exemptions from the obligation that PL/LAB must include certain information

3.1 Exemption provisions according to the AMG (as amended)

AMG Section II, Authorisation of proprietary medicinal products

§ 16(6) *If the medicinal product is not intended to be delivered directly to the patient or if there are severe problems in respect of the availability of the medicinal product, the Federal Office for Safety in Health Care may, at the request of the marketing authorisation holder and subject to measures it deems necessary to ensure human health, grant an exemption to the obligation that that certain particulars should*

appear in the package leaflet. The Federal Office for Safety in Health Care may also grant a full or partial exemption to the obligation that the package leaflet must be in provided in German. The application must be accompanied by all documents necessary for assessing whether the requirements are met. The Federal Office for Safety in Health Care shall decide without undue delay, but no later than 45 days after receipt of an application.

§ 17(10) *If the medicinal product is not intended to be delivered directly to the patient or if there are severe problems in respect of the availability of the medicinal product, the Federal Office for Safety in Health Care may, at the request of the marketing authorisation holder and subject to any measures it deems necessary to ensure human health, grant an exemption to the obligation that that certain particulars should appear in the labelling. The Federal Office for Safety in Health Care may also grant a full or partial exemption to the obligation that the labelling must be in provided in German. The application must be accompanied by all documents necessary for assessing whether the requirements are met. The Federal Office for Safety in Health Care shall decide without undue delay, but no later than 45 days after receipt of an application.*

Please note that this is only an excerpt and unofficial translation of the relevant legal texts.

The entire, consolidated version of the AMG and the applicable ordinances (Package Leaflet Ordinance, Labelling Ordinance) in the currently valid version can be found in the Legal Information System ("Rechtsinformationssystem", RIS) of the Federal Chancellery.

4 Scope

This Guideline describes the process and procedure for national exemption requests according to § 16(6) and § 17(10) AMG for national and decentralised marketing authorisations (MRP/DCPs) and refers exclusively to the marketing of multi-country packs in Austria with one or more packaging component(s) in English.

According to § 2(3) of the Austrian Ordinance on package leaflet of medicinal products (Package Leaflet Ordinance, "Gebrauchsinformationsverordnung") and the Ordinance on labelling of medicinal products (Labelling Ordinance, "Kennzeichnungsverordnung"), PL and LAB may also be written in several languages, provided that the same information is given in all languages used.

Therefore, the provisions of § 16(6) and § 17(10) AMG do not apply to multilingual multi-country packages (including German). These are not in the scope of this guideline.

In this regard, reference is made to the CMDh Best Practice Guide on Multilingual Packaging (CMDh/413/2019/Rev. 3).

National exemption requests according to Art. 63(3) of the Directive 2001/83/EC for CAPs are not in the scope of this guidance either. Details regarding these exemptions and the respective Guideline are published on the EMA Website (Recommendations for the

implementation of the exemptions to the labelling and package leaflet obligations in the centralised procedure, EMA/135540/2019 Rev.4*).

5 Basic principles

- **Exemptions only apply to the printed materials**
  Consistent with the current approach for Art. 63(3) exemptions for CAPs, approved exemptions according to § 16(6) and § 17(10) AMG apply exclusively to the printed materials.
  The submission and final assessment of national texts, which are published in the Austrian medicinal product index after authorisation/approval, remain unchanged.

- **No deviations in content from the approved "common" texts**
  For MRPs/DCPs, the national texts, including the printed materials, must fully comply with the content of the "common" texts as approved during the procedure. Deviations are generally only possible regarding the country-specific information/'blue-box' requirements. This also applies to purely national marketing authorisations (see section 6.3).

- **Exemptions must be sufficiently justified**
  Each exemption must be adequately justified. A justification letter must explain in detail why the product in question cannot be marketed in a compliant packaging in German-language.

- **Exemptions are evaluated separately for each affected packaging component**
  It must be clearly stated which packaging component(s) (outer LAB, inner LAB, PL) would be affected by the exemption and it must be justified for each packaging component why, from the applicant's point of view, the correct and safe use, storage and handling of the product is not impaired by the requested use of the English language.

  The assessment (including the decision) is also carried out individually for each packaging component.

- **Exemption requests are processed separately and independently from regulatory procedures**
  In order to be able to comply with the statutory deadline of 45 days and not to impede the completion of regulatory procedures, applications for exemption according to § 16(6) and § 17(10) AMG are processed independently of regulatory procedures.

- **No general exemptions regarding country-specific information/ 'Blue-box' requirements**
  Regular, permanent marketing of foreign packs in English, which only include the country-specific information of the country of origin, is not possible.

For multi-country packs in English, however, it may be necessary to apply for certain adjustments regarding the country-specific information. These deviations in content from the approved texts for AT should be kept to a minimum (see also "Country-specific information/ 'Blue-box' requirements" in section 6.3).

6 Exemptions according to § 16(6)/§ 17(10) AMG

6.1 Requirements

As these are permanent exemptions with the aim of marketing the product concerned in AT with one or more packaging component(s) in English ("multi-country pack"), certain requirements must already be met before the exemption request is submitted.

For example, the marketing of fully or partially English-language multi-country packs is only possible if the text content of the affected packaging component(s) is harmonized except for country-specific information and the medicinal product in question is authorised under the same name ([invented] name, strength, pharmaceutical form) in all countries concerned. Likewise, national differences regarding the prescription status (and associated possible differences in the content of PL and/or LAB) can be an obstacle to the marketing of multi-country packs.

It is the responsibility of the marketing authorisation holder to ensure that the necessary requirements for the marketing of a multi-country pack are met before submitting an exemption request.

In the case of product-specific problems, it is recommended to contact the BASG before submitting an exemption request. Enquiries in this regard should be sent to qrd@basg.gv.at.

6.2 Exemptions from the obligation that PL/LAB must be provided in German

According to § 16(1) and § 17(1) AMG, PL and LAB are in principle required in German for the placing on the market of medicinal products in AT. However, according to § 16(6) and § 17(10) AMG, the BASG may, under certain conditions, completely or partially waive the obligation that PL and/or LAB must be provided in German.

In this context, English is the only language accepted for permanent exemptions in AT.

It should be noted that an exemption from the obligation to provide PL/LAB in German applies only to the language used for the printed materials and not to the contents of the respective texts.

An exemption from the obligation to include certain particulars in the PL and/or LAB must be explained and justified separately in the application, if applicable (see section 6.3).

6.3 Exemptions from the obligation that PL/LAB must include certain information

The mandatory information in PL and LAB is laid down in § 16 and § 17 of the AMG. More detailed provisions are described in the respective applicable ordinances (Package Leaflet Ordinance, Labelling Ordinance).

According to § 16(6) and § 17(10) AMG, the BASG may, subject to measures deemed necessary to ensure patient health, waive the obligation that certain particulars must appear in the PL or the LAB.

With regard to the completeness of the content-related information, it should be noted that for MRP/DCPs, the national texts, including the printed materials, must fully comply with the content of the "common" texts approved during the marketing authorisation or variation procedure. Deviations are generally only possible regarding the country-specific information/'blue-box' requirements. This also applies to purely national marketing authorisations.

Exemptions regarding the approved content of PL and LAB are not acceptable. For example, it is not possible to market a product that has been authorised with full LAB information with minimum particulars on the LAB in AT.

Similarly, there is currently no legal basis for an "electronic only PL". Even the use of mobile technologies to provide information electronically cannot replace statutory information (e.g. printed PL) (see CMDh Website – CMDh position paper on the use of Mobile scanning and other technologies to be included in labelling and package leaflet (PL) in order to provide information about the medicinal product, CMDh/313/2014).

Complete omission of the printed PL can therefore not be approved from the perspective of the BASG.

Country-specific information/ 'Blue-box' requirements:

In line with the current approach for Art. 63(3) exemptions for CAPs, the outer package must include all AT 'blue-box' requirements for English multi-country packs.

For the PL as well as for the LAB of the immediate packaging, any necessary deviations from the texts approved for AT must be listed in detail and justified (see section 7.2). Deviations in content are to be limited to the absolutely necessary extent.

From the point of view of the BASG, the country-specific information/ 'blue-box' requirements that serve to ensure patient safety (e.g. national details for adverse event reporting in the PL, self-adhesive labels for traceability) cannot be omitted.

7 Submission of an exemption request

Exemption requests including the required documentation (see section 7.2) are to be sent by email to grd@basg.gv.at with a meaningful subject, including the MA number(s) and, if applicable, MRP number(s) (e.g. "Request for exemption according to § 16(6) and § 17(10) AMG - product name(s), Marketing Authorisation number(s), MRP number(s)").

It is important to ensure that the application clearly states which exemptions are requested in detail for which product(s). The respective application will then be forwarded to the responsible department, and after completion of the evaluation, a corresponding decision will be issued.

According to the AMG, a decision on the requested exemption(s) must be taken within 45 days of receipt of the application. Applications for exemptions according to § 16(6) and § 17(10) AMG are therefore generally processed outside of regulatory procedures.

7.1 Submission

7.1.1 Approved marketing authorisations

For medicinal products that have already been granted a marketing authorisation in AT via national or decentralised procedure (MRP/DCP), an application for exemption can be submitted at any time. In the case of ongoing variation procedures that could have a significant impact on the affected packaging component(s), it is recommended to wait for the conclusion of the relevant variation procedure.

Depending on whether the authorisation was granted with or without a condition, the following additional points must be considered:

Marketing authorisation without a condition

In principle, an exemption request can be submitted at any time. For the overview of the deviations (see section 7.2), the product information approved for AT is to be used.

Marketing authorisation subject to conditions (without mock-ups for AT)

If, due to planned non-marketing in AT, the authorisation was granted with the condition that mock-ups of the LAB for AT have to be submitted at least 4 months before market launch, an exemption request concerning the LAB has to be submitted before fulfillment of the condition. For the overview of the deviations (see section 7.2), the product information approved for AT is to be used.

Please keep in mind that, after the completion of the procedure, the English mock-ups of the LAB approved in the procedure must also be submitted separately via CESP for the fulfillment of the condition. In case of a granted exemption, the approved English mock-ups are to be submitted via CESP, in case of a full or partial rejection of the requested exemptions, corresponding German language mock-ups are to be prepared and submitted via CESP for the fulfillment of the condition.

Marketing authorisation subject to conditions (without national texts for AT)

If a marketing authorisation subject to conditions has been applied for and granted due to planned non-marketing in AT, with the condition to submit the national product information as well as mock-ups of the LAB for AT at least 4 months before the planned market launch, the submission of an exemption request is only possible after approval of the national product information. The latter is required for the evaluation of the exemption(s).

Once the national product information has been approved, an exemption request according to § 16(6)/§ 17(10) AMG can be submitted. For the overview of the deviations (see section 7.2), the product information approved for AT is to be used.

Please keep in mind that, after the completion of the procedure, the English mock-ups of the LAB approved in the procedure must also be submitted separately via CESP for the fulfillment of the condition. In case of a granted exemption, the approved English mock-ups are to be submitted via CESP, in case of a full or partial rejection of the requested exemptions, corresponding German language mock-ups are to be prepared and submitted via CESP for the fulfillment of the condition.

7.1.2 Ongoing marketing authorisation applications

Since the product information approved for AT is required for the evaluation of an exemption request, but the marketing authorisation must not be hindered or delayed, an application for exemption according to § 16(6)/§ 17(10) AMG can only be submitted after the national marketing authorisation has been granted.

7.2 Required documents

The exemption request must include the following documents:

- **Request form**
  The Form Exemption Request §16/17 AMG (F_Z90) is available for download on our website. This form must be completed and enclosed with the application.

- **Justification letter**
  The justification letter should explain why it is not possible to market the medicinal product with PL and/or LAB in German language.
  This should include detailed information on aspects such as manufacturing, production volume/forecasts, if relevant - estimated number of patients treated per country (prevalence of the disease), details of previous supply shortages/delays, information on the language(s) to be used, the handling of the medicinal product by users, etc.

- **Specification of the affected packaging component(s)**
  It must be clearly indicated which packaging component(s) (outer LAB, inner LAB, PL) would be affected by the exemption and it must be justified for each packaging component why, from the applicant's point of view, the correct and safe use, storage and handling of the product is not impaired by the requested use of the English language.

- **Overview of deviations from the approved texts**
  All deviations in content from the texts approved for AT must be indicated in detail. The application must be accompanied by the approved German-language product information for AT, indicating by means of grey shading which particulars

will not appear on the printed materials. The product information approved for AT is to be used for this purpose (see section 7.1).

- **Final mock-ups of the English-language print version for each packaging component concerned**
  Mock-ups of the English-language print version for each packaging component concerned must be enclosed with the application. They must fully comply in language, design and content with the printed materials intended to be used for AT. A draft version or sample view version is not sufficient.
  With regard to the requirements of the BASG concerning the mock-ups of medicinal products, please refer to the AT Guidance document - Mock-Ups.

7.3 Evaluation of the request

The assessment of the request is based on the submitted documents and is done separately for each packaging component concerned.

In general, the product-specific risk of medication errors is always assessed for English-language presentations. Especially in case of important warnings, complex storage conditions or instructions for handling/administration of the medicinal product concerned, a German-language presentation (monolingual or multilingual) is generally to be preferred. For reasons of patient safety and in terms of product liability, this applies specifically to medicinal products that are delivered directly to patients/self-administered by patients, as a particularly high standard of care must be applied to these products.

Moreover, evaluation of exemption requests is always a matter of product-specific decisions on a case-by-case basis.

8 Completion of the procedure (Legal notification)

After completion of the evaluation, the decision of the BASG ("Decision letter") is sent in advance to the applicant and the procedure is forwarded for notification. The notification is created, checked, released and delivered.

The final mock-ups and the notification can be found in the PHAROS e-service portal.

For the sake of good order, we would like to point out that an applicant can also withdraw an application during the procedure at any time.

9 Life-Cycle of granted exemptions

For decentrally authorised products (MRP/DCP), a granted exemption does not change the procedure for mock-ups; the requirements of the AT Guidance document - Mock-Ups apply.

For purely national marketing authorisations, however, there are no approved "common" texts, so the German-language product information approved for AT must be translated

accordingly to create and update the English print version. For this reason, updated English mock-ups must always be submitted for a review of the English translation in case of purely national marketing authorisations with a granted exemption for variations that affect the content of the respective packaging component(s) (PL and/or LAB).

Transfer of a marketing authorisation according to § 25 AMG

In case of a change of ownership according to § 25 AMG the granted exemption(s) is/are transferred to the future marketing authorisation holder. A new exemption request is not required, but updated mock-ups corresponding to the granted exemption(s) must be submitted in the context of the transfer.

If the future marketing authorisation holder plans to switch to German-language packs, the withdrawal of the granted exemption(s) must be declared by e-mail to qrd@basg.gv.at (see section 9.2).

9.1 Re-evaluation of granted exemptions

In principle, exemptions granted according to § 16(6) and § 17(10) AMG are permanent exemptions without a time limit.

However, if there are changes to the product during the life-cycle that also lead to a significant change in the initial basis for the decision, an application for re-evaluation of the granted exemption(s) must be submitted.

If, for example, a product was only approved for administration by healthcare professionals at the time of the exemption request but is later also approved for use by patients following the completion of a corresponding variation procedure, this would be a significant change to the basis for the decision, which in the view of the BASG would require a re-evaluation.

The decision as to whether an existing or planned change for the product in question requires a re-evaluation of the granted exemption(s) must be made on a case-by-case basis and can also be discussed in advance with the BASG by email (qrd@basg.gv.at).

If necessary, an application for re-evaluation of the granted exemption(s) must be submitted by email to qrd@basg.gv.at together with the relevant updated documentation (see section 7).

9.2 Withdrawal of a granted exemption

If the granted exemption is no longer required because a switch to German-language packs is planned, the withdrawal of the granted exemption should be declared by e-mail to qrd@basg.gv.at with a meaningful subject, including the MA number(s) and, if applicable, MRP number(s) (e.g. "Withdrawal of an exemption according to § 16(6) and § 17(10) AMG - product name(s), Marketing Authorisation number(s), MRP number(s)"). In addition, German-language mock-ups must be submitted for the packaging component(s) concerned. An application form is not required for this.