Consultation paper of the European Commission: Assessment of the Functioning of the "Clinical Trials Directive" 2001/20/EC

European Commission has launched a consultation paper about functioning of the Clinical Trials Directive. As a member of EUREC and a member of one ethics committee in Finland I would like to present some views of the issues presented in the consultation paper.

In general, the consultation paper takes a wide and critical view on the impact of the Directive 2001/20/EC to the field of development of new medicines, their evaluation and getting into markets. Background information has been wide, and EC has made a considerable effort to study the impact of the directive at a practical level also during and after implementation of the directive. It is most valuable for those who work in local or national organizations.

I focus only on some issues:

The Commission asked some comments on key issues, as key issue # 2: Inconsistent implementation of the Clinical Trials Directive.

Substantial amendments and reporting of SUSARs are a problematic issue not only for sponsors and researchers but only to national authorities and ethics committees. As a member and former expert of an ethics committee, reports of SUSARs were mainly papers that were given as additional information that an ethics committee cannot not comment or respond, while information that is necessary for evaluation a SUSAR report is not delivered to the ethics committee. ECs have not an access to EudraCT. Most clinical trials have a data safety monitoring boards that get all the information needed for the safety of the patients, and they have the best possibilities to make assessments of continuation of the trials as soon as possible along the trial. Their impact and responsibility, and responsibility of the sponsor should be emphasized in regulations.

The question of substantial amendment could be clarified more carefully in instructions to sponsors: very often sponsors give an EC all kinds of amendments, address changes, text corrections etc. to the EC, and the EC needs to evaluate by itself if the amendment is substantial, or if that is only information. This might not seem a big issue, but if an EC evaluates 100 – 200 research studies per year, the amount of information that is not substantial becomes a substantial workload.

Key issue # 4: Peculiarities in trial participants and trial design

The report notices that the clinical trials directive does not issue situations of emergency. According to the directive a specific, written consent is necessary for all clinical trials. Is a person him/herself is not able to give consent to the trial, it must be achieved from his/her legal representative. According to the directive "the notion of legal representative refers back to existing national law and consequently may include natural or legal persons, an authority and/or a body provided for by national law." Ten countries have started to make their own legislation, some of them have simply written a waiver to this article, some have described an outside independent group of health care professionals/doctors as a legal representative in certain circumstances. However, in the ethical point of view, this does not reflect the idea of consent.

If medical research is planned in emergency situation, it is important that it is evaluated in the view of beneficence, non-maleficence and autonomy. If the research is expected to produce substantial improvement on the health and welfare of the patient, it is even unethical not to research or develop new treatments to patients that urgently need new therapies. Regulations requiring an advance consent makes it impossible to perform research in emergency settings. In Finland where law is read strictly, after May 1st 2004 no clinical trials in emergency

settings have been approved. There have not been any research studies that have asked for an opinion in these settings, while the sponsors and researchers already know the situation. This is sad, especially while there have been approvals in other countries, although we have the same regulations in the European level. Anyway, patients in emergency are mostly vulnerable, and that's why common rules how new treatments to critical situations can be developed must be generally accepted, transparent and they need to respect autonomy of the person as much as possible.

If member states are further allowed to make their own regulation to this issue, it is possible that even more confusion and more workload for every party is produced. Therefore an amendment to is necessary to clarify the situation in the Member states.

Additional Protocol on Biomedical Research (CETS 195) of the Convention of Biomedicine (CETS 164) addresses also research in Emergency setting (http://conventions.coe.int). The wording of this article could be a base of future amendment of the directive.

Best regards

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