



ARTICLE

A NEW TAX TO COMBAT PHARMACEUTICAL "EVERGREENING": ARTICLE L.138-10-1 OF THE SOCIAL SECURITY CODE

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A new tax was included in the French Social Security Financing Act for 2026 (Law No. 2025-1403 of December 30, 2025)[1], specifically in Article 29, which creates Article L. 138-10-1 of the French Social Security Code[2] reproduced below.

This new article imposes on pharmaceutical companies a 3% tax (increased to 5% in the event of a repeat offense) on the revenue generated from a pharmaceutical product when the commercial exclusivity of that product is maintained “artificially”:

“I. — A tax is hereby imposed on companies marketing the pharmaceutical products referred to in Article L. 5121-8 of the Public Health Code when the maintenance of the exclusivity of these products under the conditions set forth in II of this article unjustifiably delays the effective entry into the market of a generic drug for more than one year after the expiration date of the initial patent or the supplementary protection certificate.

II. - The following practices shall be deemed to constitute an unjustified delay, within the meaning of I:

1° The filing of one or more patents relating to dosage forms, dosages, combinations of active ingredients, or processes that do not improve the Actual Benefit;

2° Or any manifestly dilatory judicial or administrative action aimed at preventing or delaying the marketing authorization of an equivalent generic drug.

(...)”.

A turbulent legislative history

This provision stems from Amendment No. 1694, introduced by Senator Serge Mérimou and members of the Socialist, Ecologist, and Republican Group[3]. The stated objective was to combat so-called “evergreening” practices, whereby certain pharmaceutical companies artificially extend their commercial monopoly for more than a year after the expiration date of the “initial patent” or the supplementary protection certificate, thereby depriving the health insurance system of the savings associated with the arrival of generic drugs—a loss of revenue estimated at over 500 million euros per year according to the amendment’s authors[4]. The amendment was adopted despite negative opinions from the Senate Social Affairs Committee, the Government, and the National Assembly Social Affairs Committee[5]. The general rapporteur of the Senate Social Affairs Committee, Ms. Élisabeth Doineau, believed that these practices should be addressed through existing competition law rules rather than through a new tax[6]. The general rapporteur of the National Assembly Social Affairs Committee even tabled an amendment to delete this provision [7]. However, this amendment to delete the provision was rejected[8], and the text was indeed included in the final version of the law adopted on December 16, 2025[9].

The Social Security Financing Act for 2026 was submitted to the Constitutional Council, which issued its Decision No. 2025-899 DC on December 30, 2025[10]. However, Article 29 was not challenged by the petitioning deputies, and the Constitutional Council did not take up this provision on its own initiative, despite the external submission received from the LEEM pointing out several possible grounds for unconstitutionality regarding this provision[11].



Practical Application

At first glance, one might legitimately question the effectiveness of this new measure. Indeed, during the parliamentary debates, the National Assembly's general rapporteur, Mr. Thibault Bazin, emphasized that the tax authorities and URSSAF “*simply do not have the human or legal resources*” to rule “*on the ‘manifestly dilatory’ nature of patent registrations, on the abuse of a dominant position, on anti-competitive practices, etc.*”[12]. This criticism, which led to the temporary removal of the article in committee[13], casts doubt on the administration's ability to implement this tax independently. In particular, the question of whether or not there is an improvement in Actual Benefit (“ASMR”) does not fall within the jurisdiction of these agencies. The ASMR (I to V) is an evaluation criterion currently assigned exclusively by the Transparency Commission of the French National Authority for Health (HAS) to assess whether a given drug represents an improvement over other available treatments[14]. This commission is a scientific body composed of physicians, pharmacists, specialists in methodology and epidemiology, as well as patients, which evaluates drugs that have obtained marketing authorization when the manufacturer seeks to have them included on the list of reimbursable drugs. It is clear from the new text that the criterion of the absence of an ASMR will now be used to determine whether the tax provided for in Article L. 138-10-1 is applicable. In practical terms, one may wonder how the tax authorities will apply this: will they simply note the absence of an ASMR assigned by the HAS?

In any case, it cannot be ruled out that generic drug manufacturers will seize upon this new legal tool to assert their rights against strategies to extend exclusivity, even if the question of *how* they will actually be able to implement this provision remains.

In accordance with the enforcement clause of the law, Article L. 138-10-1 of the Social Security Code took effect immediately, on December 31, 2025, the date of the law's publication in the Official Journal[15]. It is legitimate to wonder whether this tax will still be in place next year. Indeed, it cannot be ruled out that it will be revisited as part of the discussions on the Social Security Financing Act for 2027.

New Article L. 138-10-1 of the Social Security Code

I. - A tax is hereby imposed on companies marketing the pharmaceutical products referred to in Article L. 5121-8 of the Public Health Code, when maintaining the exclusivity of these products under the conditions set forth in Section II of this article unjustifiably delays the effective market entry of a generic drug for more than one year after the expiration date of the initial patent or supplementary protection certificate.

II. - The following practices are deemed to constitute an unjustified delay, within the meaning of I:

1° The filing of one or more patents relating to dosage forms, dosages, combinations of active ingredients, or processes that do not improve the Actual Benefit;

2° Or any manifestly dilatory judicial or administrative action aimed at preventing or delaying the marketing authorization of an equivalent generic drug.

III. - The tax rate is set at 3% of the pre-tax revenue generated in France from sales of the drug in question during the fiscal year in which the delay is observed. This rate may be increased to 5% in the event of a repeat offense within five years.

IV. - The proceeds of the tax shall be collected and audited in accordance with the same rules, subject to the same guarantees, privileges, and penalties as the tax referred to in Article L. 138-10.

V. - The proceeds of the tax are allocated to the National Health Insurance Fund and recorded as revenue of the general scheme.



[1] Act No. 2025-1403 of December 30, 2025, on Social Security Funding for 2026

[2] Article L. 138-10-1 of the Social Security Code

[3] https://www.senat.fr/amendements/2025-2026/122/Amdt_1694.html

[4] https://www.senat.fr/amendements/2025-2026/122/Amdt_1694.html

[5] Legislative File: 2026 Social Security Financing Bill – Senate, Public Session

[6] <https://www.senat.fr/seances/s202511/s20251121/s20251121020.html>

[7] This concerned Article 10 bis A of the bill. The amendment to delete this text was adopted by the Social Affairs Committee at its meeting on November 29, 2025 (see the minutes of that session available at https://www.assemblee-nationale.fr/dyn/17/comptes-rendus/cion-soc/117cion-soc2526027_compte-rendu, amendment AS575).

[8] Amendment 302 rejected on December 3 by the National Assembly (see <https://www.assemblee-nationale.fr/dyn/17/amendements/2141/AN/302>).

[9] Final text adopted on December 16, 2025 ; report of this committee available here: https://www.assemblee-nationale.fr/dyn/17/rapports/cion-soc/117b2152_rapport-fond

[10] Decision No. 2025-899 DC of December 30, 2025, Constitutional Council

[11] This external contribution is available at <https://www.conseil-constitutionnel.fr/decision/2025/2025899DC.htm>

[12] Report by Mr. Thibault Bazin, General Rapporteur, National Assembly, new reading: https://www.assemblee-nationale.fr/dyn/17/rapports/cion-soc/117b2152_rapport-fond

[13] Amendment AS575 for deletion, adopted in committee by the National Assembly, see https://www.assemblee-nationale.fr/dyn/17/comptes-rendus/cion-soc/117cion-soc2526027_compte-rendu

[14] https://www.has-sante.fr/jcms/pprd_2974176/en/medicaments-une-evaluation-rigoureuse-et-scientifique-par-la-has

[15] Published in the Official Journal on December 31, 2025
