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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on *in vitro* diagnostic medical devices

(Text with EEA relevance)

{SWD(2012) 273}
{SWD(2012) 274}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

The current EU regulatory framework for *in vitro* diagnostic medical devices ('IVDs') consists of Directive 98/79/EC of the European Parliament and of the Council ('the IVD Directive')[1] IVDs cover a wide range of products that can be used for population screening and disease prevention, diagnosis, monitoring of prescribed treatments and assessment of medical interventions.

Like Council Directive 90/385/EEC on active implantable medical devices (AIMDD)[2] and Council Directive 93/42/EEC on medical devices (MDD)[3] the IVD Directive is based on the 'New Approach' and aims to ensure the smooth functioning of the internal market and a high level of protection of human health and safety. IVDs are not subject to any pre-market authorisation by a regulatory authority but to a conformity assessment which, for the majority of devices, is carried out under the sole responsibility of the manufacturer. For the high-risk devices listed in Annex II and devices for self-testing, the conformity assessment involves an independent third party, known as 'notified body'. Notified bodies are designated and monitored by the Member States and act under the control of the national authorities. Once certified, devices bear the CE marking which allows them to circulate freely in the EU/EFTA countries and Turkey.

The existing regulatory framework for *in vitro* diagnostic medical devices has demonstrated its merits but has also come under criticism in recent years.

In an internal market with 32 participating countries[4] and subject to constant scientific and technological progress, substantial divergences in the interpretation and application of the rules have emerged, thus undermining the main objectives of the Directive, i.e. the safety and performance of IVDs and their free movement.

This revision aims to overcome these flaws and divergences and to further strengthen patient safety. A robust, transparent and sustainable regulatory framework for *in vitro* diagnostic medical devices that is 'fit for purpose' should be put in place. This framework should be supportive of innovation and the competitiveness of the *in vitro* diagnostic medical device industry and should allow rapid and cost-efficient market access for innovative IVDs to the benefit of patients and healthcare professionals.

This proposal is adopted alongside a proposal for a Regulation on medical devices that are currently covered by the AIMDD and the MDD. While the specific features of IVDs and of the IVD sector require the adoption of a specific legislation distinct from the legislation on other medical devices, the horizontal aspects common to both sectors have been aligned.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

In preparation for the impact assessment on this proposal and the proposal for a Regulation on medical devices, the Commission held two public consultations, the first from 8 May to 2 July 2008, and the second from 29 June to 15 September 2010. In both public consultations, the general principles and minimum standards for consultation of interested parties by the

[1] OJ L 331, 7.12.1998, p. 1.
[2] OJ L 189, 20.7.1990, p. 17.
[3] OJ L 169, 12.7.1993, p. 1.
[4] EU Member States, EFTA countries and Turkey.

Commission were applied; responses received within a reasonable period after the deadlines were taken into account. After analysing all the responses, the Commission published a summary outcome and the individual responses on its website[5].

The majority of respondents to the 2008 public consultation (in particular Member States and industry) considered the proposed revision to be premature. They pointed to Directive 2007/47/EC of the European Parliament and of the Council[6], which amended the AIMDD and the MDD and was to be implemented by 21 March 2010, and also to the New Legislative Framework for the Marketing of Products which was due to enter into force with effect from 1 January 2010, and argued that it would be advisable to wait for these changes to be implemented, in order to assess the need for further adjustments better.

The 2010 public consultation focussed on aspects related to the revision of the IVD Directive and showed wide support for this initiative.

During 2009, 2010 and 2011, the issues to be tackled in the revision of the regulatory framework for medical devices and *in vitro* diagnostic medical devices were regularly discussed at meetings of the Medical Devices Expert Group (MDEG), the Competent Authorities for Medical Devices (CAMD) and specific working groups in the fields of *in vitro* diagnostic medical devices (IVDs), notified bodies, borderline and classification, clinical investigation and evaluation, vigilance and market surveillance, and in an *ad hoc* working group on Unique Device Identification (UDI). A special meeting of the MDEG was held on 31 March and 1 April 2011 to discuss issues related to the impact assessment. Moreover, the Heads of Medicines Agencies (HMA) and the CAMD organised joint workshops on the development of the legal framework for medical devices on 27 April and 28 September 2011.

A further special meeting of the MDEG was held on 6 and 13 February 2012 to discuss issues related to the two legislative proposals, based on working documents containing initial drafting proposals. Written comments made on these working documents were taken into account, where appropriate, for the further development of the proposals.

In addition, Commission's representatives regularly participated in conferences to present ongoing work on the legislative initiative and hold discussions with stakeholders. Targeted meetings took place at senior level with representatives from associations representing industry, notified bodies, healthcare professionals and patients.

Aspects linked to the appropriate regulatory framework were also discussed in the course of the 'Exploratory Process on the Future of the Medical Device Sector' organised by the Commission from November 2009 to January 2010. On 22 March 2011, the Commission and the Hungarian Presidency organised a high-level conference on innovation in medical technology, the role of the medical device sector in addressing the healthcare challenges facing Europe and the appropriate regulatory framework for this sector to meet the needs of tomorrow. This conference was followed by Conclusions of the Council of the European Union on innovation in the medical device sector adopted on 6 June 2011[7]. In its Conclusions, the Council requested the Commission to adapt the EU medical device legislation to the needs of tomorrow so as to achieve a suitable, robust, transparent and sustainable regulatory framework, which is central to fostering the development of safe, effective and innovative medical devices for the benefit of European patients and healthcare professionals.

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5 See http://ec.europa.eu/health/medical-devices/documents/revision/index_en.htm.

6 OJ L 247, 21.9.2007, p. 21.

7 OJ C 202, 8.7.2011, p. 7.

Triggered by the PIP breast implants scandal, the European Parliament adopted on 14 June 2012 a Resolution on defective silicone gel breast implants made by the French company PIP[8] also calling on the Commission to develop an adequate legal framework to guarantee the safety of medical technology.

3. LEGAL ELEMENTS OF THE PROPOSAL

3.1. Scope and definitions (Chapter I)

To a large extent, the scope of the proposed Regulation matches the scope of Directive 98/79/EC, i.e. it covers *in vitro* diagnostic medical devices. The proposed changes clarify and extend the scope of the IVD Directive. They concern:

- high-risk devices manufactured and used within a single health institution, which are subject to most of the requirements set out in the proposal;
- tests providing information about the predisposition to a medical condition or a disease (e.g. genetic tests) and tests providing information to predict treatment response or reactions (e.g. companion diagnostics), which are considered as *in vitro* diagnostic medical devices ;
- medical software, which is explicitly mentioned in the definition of IVDs.

To support Member States and the Commission in determining the regulatory status of products, the Commission may set up, in accordance with its internal rules[9], a group of experts from various sectors (such as IVDs, medical devices, medicinal products, human tissues and cells, cosmetics and biocides).

The definitions section has been significantly extended, aligning the definitions in the field of *in vitro* diagnostic medical devices with well-established European and international practice, such as the New Legislative Framework for the Marketing of Products[10] and guidance documents produced for *in vitro* diagnostic medical devices by the Global Harmonization Task-Force (GHTF)[11] .

3.2. Making available of devices, obligations of economic operators, CE marking, free movement (Chapter II)

This chapter covers mainly horizontal issues similar for both medical devices and IVDs. It contains provisions that are typical for product-related internal market legislation and sets out the obligations of the relevant economic operators (manufacturers, authorised representatives of non-EU manufacturers, importers and distributors). It also provides clarification with regard to the adoption and the scope of common technical specifications (CTS) for *in vitro* diagnostic medical devices.

The legal obligations on manufacturers are proportionate to the risk class of the devices they produce. For example, this means that even though all manufacturers should have a quality

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8 Resolution of 14 June 2012 (2012/2621(RSP)); P7_TA-PROV(2012)0262, http://www.europarl.europa.eu/plenary/en/texts-adopted.html

9 Communication from the President to the Commission of 10.11.2010, Framework for Commission Expert Groups: Horizontal Rules and Public Registers, C(2010)7649 final.

10 Consisting of Regulation (EC) No 765/2008 of the European Parliament and of the Council setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93, OJ L 218, 13.8.2008, p. 30, and Decision No 768/2008/EC of the European Parliament and of the Council on a common framework for the marketing of products, and repealing Council Decision 93/465/EEC, OJ L 218, 13.8.2008, p. 82.

11 http://www.ghtf.org/

management system (QMS) in place to ensure that their products consistently meet the regulatory requirements, the QMS-related responsibilities are stricter for manufacturers of high-risk devices than for manufacturers of low-risk devices.

Key documents for the manufacturer to demonstrate compliance with the legal requirements are the technical documentation and the EU declaration of conformity to be drawn up in respect of the devices placed on the market. Their minimum contents are laid down in Annexes II and III.

The following concepts are new in the field of IVDs:

- A requirement has been introduced that within the manufacturer's organisation a 'qualified person' should be responsible for regulatory compliance. Similar requirements exist in EU legislation on medicinal products and in the national laws transposing the Directive on medical devices in some Member States.
- Since in the case of 'parallel trade' with *in vitro* diagnostic medical devices application of the principle of free movement of goods varies considerably from one Member State to another and, in many cases, *de facto* prohibits this practice, clear conditions are set for enterprises involved in relabelling and/or repackaging IVDs.

3.3. Identification and traceability of devices, registration of devices and of economic operators, summary of safety and performance, Eudamed (Chapter III)

This chapter addresses one of the main shortcomings of the current system: its lack of transparency. It consists of:

- a requirement that economic operators shall be able to identify who supplied them and to whom they have supplied IVDs;
- a requirement that manufacturers fit their devices with a Unique Device Identification (UDI) which allows traceability. The UDI system will be implemented gradually and proportionate to the risk class of the devices;
- a requirement that manufacturers/authorised representatives and importers shall register themselves and the devices they place on the EU market in a central European database;
- an obligation for manufacturers of high-risk devices to make publicly available a summary of safety and performance with key elements of the supporting clinical data;
- and the further development of the European databank on medical devices (Eudamed), set up by Commission Decision 2010/227/EU[12], which will contain integrated electronic systems on a European UDI, on registration of devices, relevant economic operators and certificates issued by notified bodies, on clinical performance studies, on vigilance and on market surveillance. A large part of the information in Eudamed will become publicly available in accordance with the provisions regarding each electronic system.

The establishment of a central registration database will not only provide a high level of transparency but also do away with diverging national registration requirements which have emerged over recent years and which have significantly increased compliance costs for economic operators. It will therefore also contribute to reducing the administrative burden on manufacturers.

[12] OJ L 102, 23.4.2010, p. 45.

3.4. Notified bodies (Chapter IV)

Proper functioning of notified bodies is crucial for ensuring a high level of health and safety and citizens' confidence in the system, which has come under severe criticism in recent years due to significant differences as regards, on the one hand, the designation and monitoring of notified bodies and, on the other, the quality and depth of the conformity assessment performed by them.

In line with the New Legislative Framework for the Marketing of Products, the proposal sets out requirements for national authorities responsible for notified bodies. It leaves the ultimate responsibility for designating and monitoring notified bodies, based on stricter and detailed criteria laid down in Annex VI, with the individual Member State. The proposal thus builds on existing structures already available in most Member States instead of lifting the responsibility to the Union level which might have caused concerns in terms of subsidiarity. But any new designation and, in regular intervals, the monitoring of notified bodies are made subject to 'joint assessments' with experts from other Member States and the Commission, thus ensuring an effective control at Union level.

At the same time, the position of notified bodies vis-à-vis manufacturers will be significantly strengthened, including their right and duty to carry out unannounced factory inspections and to conduct physical or laboratory tests on devices. The proposal also requires rotation of the notified body's personnel involved in the assessment of IVDs at appropriate intervals to strike a reasonable balance between the knowledge and experience required to carry out thorough assessments and the need to ensure continuous objectivity and neutrality in relation to the manufacturer subject to those assessments.

3.5. Classification and conformity assessment (Chapter V)

Annex II to the IVD Directive addresses the level of risk posed by IVD medical devices by means of a positive list system. While this system was adapted to scientific and technological development at the time the IVD Directive was written, today it can no longer keep up with the fast pace of scientific and technological progress. The proposal introduces a new risk-rule based classification system, built on GHTF principles, which replaces the current list of IVD medical devices in Annex II to Directive 98/79/EC.

In the new classification system, IVDs will be divided into four classes of risk: A (lowest risk), B, C and D (highest risk). The conformity assessment procedures have been adapted to match each of these four device classes, using the existing modules established under the 'New Approach'. The conformity assessment procedure for class A devices will be carried out, as a general rule, under the sole responsibility of the manufacturer in view of the low level of vulnerability associated with these products. However, when class A devices are intended for near-patient testing, have a measuring function or are sold sterile, a notified body shall verify respectively the aspects related to design, the measuring function or to the sterilisation process. For devices of classes B, C and D an appropriate level of involvement of a notified body is compulsory proportionate to the risk class, with devices of class D requiring explicit prior approval of the design or of the type of the device and of the quality management system before they may be placed on the market. In the case of class B and C devices, the notified body checks the quality management system and, for class C, the technical documentation of representative samples. After initial certification, notified bodies shall regularly conduct surveillance assessments in the post-market phase.

The different conformity assessment procedures during which the notified body audits the manufacturer's quality management system, checks the technical documentation, examines the design dossier or approves the type of a device are laid down in Annexes VIII to X. They

have been tightened and streamlined. One conformity assessment procedure provided for under the IVD Directive (EC verification) has been deleted as the responses to the public consultation highlighted that it was under-used. The concept of batch testing has been clarified. The proposal reinforces the powers and responsibilities of notified bodies and specifies the rules according to which notified bodies perform their assessments, both in the pre-market and the post-market phase, (e.g. documentation to be submitted, scope of the audit, unannounced factory inspections, sample checks) to ensure a level playing field and avoid notified bodies being overly lenient. Manufacturers of devices for performance evaluation continue to be subject to specific provisions.

In addition, the proposal introduces the obligation for notified bodies to notify an expert committee of new applications for conformity assessment of high-risk devices. On scientifically valid health grounds, the expert committee will have the power to request the notified body to submit a preliminary assessment on which the committee can issue comments within a deadline of 60 days[13], before the notified body can issue a certificate. This scrutiny mechanism empowers the authorities to have a 'second look' at individual assessments and make their views heard before a device is placed on the market. A similar procedure is currently already applied for medical devices manufactured utilising animal tissues (Commission Directive 2003/32/EC[14]). Its use should be the exception rather than the rule and should follow clear and transparent criteria.

3.6. Clinical evidence (Chapter VI)

The proposal spells out the requirements for clinical evidence for *in vitro* diagnostic medical devices which are proportionate to the risk class. The key obligations are set out in Chapter VI while more detailed provisions are laid down in Annex XII.

While most clinical performance studies follow an observational design and therefore the results obtained are not used for patient management and do not impact treatment decisions, specific requirements have been introduced in Annex XIII for the conduct of interventional clinical performance studies and other clinical performance studies where the conduct of the study, including specimen collection, involves invasive procedures or other risks for the subjects of the studies.

The concept of 'sponsor' is introduced and aligned with the definition used in the recent Commission's proposal for a Regulation of the European Parliament and of the Council on clinical trials on medicinal products for human use which aims at repealing Directive 2001/20/EC[15].

The sponsor can be the manufacturer, his authorised representative or another organisation, in practice often a ‘contract research organisation’ conducting clinical performance studies for the manufacturers. The scope of the proposal, however, remains restricted to clinical performance studies carried out for regulatory purposes, i.e. for obtaining or confirming regulatory approval for market access. Non-commercial clinical performance studies that do not pursue a regulatory purpose are not covered by this Regulation.

In accordance with recognised international ethical principles, every interventional clinical performance study and other clinical performance study involving risks for the subjects of the

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13 In accordance with Article 3(3) of Regulation (EEC, EURATOM) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits, (OJ L 124, 8.6.1971, p. 1) days referred to in this Regulation mean calendar days.

14 OJ L 105, 26.4.2003, p. 18. This directive will be replaced by a Commission Regulation (EU) No 722/2012 (OJ L 212, 9.8.2012, p. 3) with effect from 29 August 2013.

15 COM(2012)369.

study shall be registered in a publicly accessible electronic system which the Commission will set up. To ensure synergies with the area of clinical trials on medicinal products, the electronic system on interventional clinical performance studies and other clinical performance studies involving risks for the subjects of the studies should be interoperable with the future EU database to be set up in accordance with the future Regulation on clinical trials on medicinal products for human use.

Before commencing an interventional clinical performance study or any other clinical performance study involving risks for the subjects of the study, the sponsor shall submit an application to confirm that there are no health and safety aspects or ethical aspects which would oppose it. A new possibility will be opened up for sponsors of an interventional clinical performance study or any other clinical performance study involving risks for the subjects of the study to be conducted in more than one Member State: in future they may, if they wish, submit a single application through the electronic system to be set up by the Commission. As a consequence, the health and safety-related aspects regarding the device for performance evaluation will be assessed by the Member States concerned under the direction of a coordinating Member State. The assessment of intrinsically national, local and ethical aspects (e.g. liability, suitability of the investigators and clinical performance studies sites, informed consent), will however, need to be carried out at the level of each Member State concerned which will retain the ultimate responsibility for deciding whether the clinical performance study may be conducted on its territory. In line with the above-mentioned Commission's Proposal for a Regulation on clinical trials on medicinal products, also this proposal leaves it to the Member States to define the organisational set-up at national level for the approval of interventional clinical performance studies or any other clinical performance study involving risks for the subjects of the study. In other words, it moves away from a legally required dualism of two distinct bodies, i.e. a national competent authority and an ethics committee.

3.7. Vigilance and market surveillance (Chapter VII)

A well-functioning vigilance system is the 'backbone' of a robust regulatory framework because complications with devices may come to light only after a certain period of time. The main progress which the proposal will bring in this field is the introduction of an EU portal where manufacturers shall report serious incidents and corrective actions they have taken to reduce the risk of recurrence. The information will be automatically made available to the national authorities concerned. Where the same or similar incidents have occurred, or where a corrective action has to be taken, in more than one Member State, a coordinating authority will take the direction in coordinating the analysis of the case. The emphasis is placed on work- and expertise- sharing to avoid inefficient duplication of procedures.

As regards market surveillance, the main objectives of the proposal are to reinforce the rights and obligations of the national competent authorities, to ensure effective coordination of their market surveillance activities and to clarify the applicable procedures.

3.8. Governance (Chapters VIII and IX)

The Member States will be responsible for implementation of the future Regulation. A central role in achieving harmonised interpretation and practice will be assigned to an expert committee (the Medical Device Coordination Group or MDCG) made up of members appointed by the Member States due to their role and experience in the fields of medical devices and *in vitro* diagnostic medical devices and set up by Regulation (EU) [Ref. of future Regulation on medical devices] on medical devices[16]. The MDCG and its subgroups will allow to build a forum for discussions with stakeholders. The proposal creates the legal basis

[16] OJ L […], […], p. […]

that for specific hazards or technologies or for verifying compliance with common technical specifications by devices posing the highest risk, EU reference laboratories, a concept that has proven successful in the food sector, may in the future be designated by the Commission.

As regards the management at EU level, the impact assessment identified as preferred option either the extension of the responsibility of the European Medicines Agency (EMA) to *in vitro* diagnostic medical devices or the management of the *in vitro* diagnostic medical devices regulatory system by the Commission. Taking into account the clear preference expressed by stakeholders, including many Member States, the proposal mandates the Commission to provide technical, scientific and logistic support to the MDCG.

3.9. Final provisions (Chapter X)

The proposal empowers the Commission to adopt, where appropriate, either implementing acts to ensure uniform application of this Regulation, or delegated acts to complement the regulatory framework for *in vitro* diagnostic medical devices over time.

The new Regulation will become applicable five years after its entry into force in order to take into account the significant changes to the classification system for IVDs and to the conformity assessment procedures. This will, on the one hand, allow time to set up a sufficient number of notified bodies, and, on the other hand, mitigate the economic impact on manufacturers. The Commission needs also time to put in place the IT infrastructure and the organisational arrangements necessary for the functioning of the new regulatory system. The designation of notified bodies pursuant to the new requirements and process needs to start shortly after the entry into force of this Regulation in order to ensure that by the date of its application, sufficient notified bodies are designated in accordance with the new rules to avoid any shortage of *in vitro* diagnostic medical devices on the market. Special transitional provisions are foreseen for the registration of *in vitro* diagnostic medical devices, relevant economic operators and certificates issued by notified bodies to allow for a smooth transition from registration requirements at national level to a central registration at EU level.

The future Regulation will replace and repeal Directive 98/79/EC of the European Parliament and of the Council.

3.10. Union competence, subsidiarity and legal form

The proposal has a 'double legal basis', i.e. Article 114 and Article 168(4)(c) of the Treaty on the Functioning of the European Union. With the entry into force of the Lisbon Treaty, the legal basis for the establishment and functioning of the internal market, on which the current Medical Devices Directives were adopted, has been complemented by a specific legal basis to set high standards for the quality and safety of devices for medical use. In regulating IVDs, the Union is exercising its shared power under Article 4(2) of the Treaty on the Functioning of the European Union.

Under the current IVD Directive, IVDs that bear the CE marking can, in principle, move freely within the EU. The proposed revision of the existing directive, which will integrate the changes introduced by the Lisbon Treaty regarding public health, can be achieved only at Union level. This is necessary in order to improve the level of protection of public health for all European patients and users, and also to prevent Member States from adopting diverging product regulations which would result in further fragmentation of the internal market. Harmonised rules and procedures allow manufacturers, especially SMEs which make up more than 90% of the IVD sector, to reduce costs related to national regulatory differences, while ensuring a high and equal level of safety throughout the Union. In accordance with the principles of proportionality and subsidiarity, as set out in Article 5 of the Treaty on European

Union, this proposal does not go beyond what is necessary in order to achieve those objectives.

The proposal takes the form of a Regulation. This is the appropriate legal instrument as it imposes clear and detailed rules which will become applicable in a uniform manner and at the same time throughout the Union. Diverging transposition of the IVD Directive by Member States has led to different levels of health and safety protection and created obstacles to the internal market which only a Regulation can avoid. Replacing the national transposition measures also has a strong simplification effect since it allows economic operators to conduct their business on the basis of a single regulatory framework, rather than a 'patchwork' of 27 national laws.

The choice of a Regulation, however, does not mean that decision-making is centralised. Member States retain their competence for implementing the harmonised rules, *e.g.* as regards approval of clinical performance studies, the designation of notified bodies, the assessment of vigilance cases, the conduct of market surveillance and enforcement action (*e.g.* penalties).

3.11. Fundamental Rights

In line with the Charter of Fundamental Rights of the EU, this proposal seeks to ensure a high level of human health protection (Article 35 of the Charter) and consumer protection (Article 38) by assuring a high level of safety of *in vitro* diagnostic medical devices made available on the Union market. The proposal affects the freedom of economic operators to conduct business (Article 16) but the obligations imposed on manufacturers, authorised representatives, importers and distributors of *in vitro* diagnostic medical devices are necessary to guarantee a high level of safety of those products.

The proposal sets guarantees for the protection of personal data. In respect to medical research, the proposal requires that any clinical performance study with participation of human subjects is conducted respecting the human dignity, the right to physical and mental integrity of the persons concerned and the principle of free and informed consent, as required by Articles 1, 3(1) and 3(2)(a) of the Charter.

4. BUDGETARY IMPLICATION

This proposal does not have any additional direct budgetary implication because the cost-relevant arrangements are already covered by the proposal for a Regulation on medical devices. The financial statement of that proposal lists the details of the costs related to the implementation of both Regulations. A thorough discussion on the costs is contained in the impact assessment report.

2012/0267 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on *in vitro* diagnostic medical devices

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 and Article 168(4)(c) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee[17],

Having regard to the opinion of the Committee of the Regions[18],

After consulting the European Data Protection Supervisor[19],

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) Directive 98/79/EC of the European Parliament and of the Council of 27 October 1998 on *in vitro* diagnostic medical devices[20] constitutes the Union regulatory framework for *in vitro* diagnostic medical devices. However, a fundamental revision of that Directive is needed to establish a robust, transparent, predictable and sustainable regulatory framework for devices which ensures a high level of safety and health whilst supporting innovation.

(2) This Regulation aims to ensure the functioning of the internal market as regards *in vitro* diagnostic medical devices, taking as a base a high level of protection of health. At the same time, this Regulation sets high standards of quality and safety for devices to meet common safety concerns as regards those products. Both objectives are being pursued simultaneously and are inseparably linked whilst one not being secondary to the other. As regards Article 114 of the Treaty on the Functioning of the European Union, this Regulation harmonises the rules for the placing on the market and putting into service of *in vitro* diagnostic medical devices and their accessories on the Union market which may then benefit from the principle of free movement of goods. As regards Article 168(4)(c) of the Treaty on the Functioning of the European Union, this Regulation sets high standards of quality and safety for those devices by ensuring, among other things, that data generated in clinical performance studies is reliable and

17 OJ C […], […], p. […].
18 OJ C […], […], p. […].
19 OJ C […], […], p. […].
20 OJ L 331, 7.12.1998, p.1

robust and that the safety of subjects participating in clinical performance studies is protected.

(3) Key elements of the existing regulatory approach, such as the supervision of notified bodies, risk classification, conformity assessment procedures, clinical evidence, vigilance and market surveillance should be significantly reinforced, whilst provisions ensuring transparency and traceability regarding *in vitro* diagnostic medical devices should be introduced to improve health and safety.

(4) To the extent possible, guidance developed for *in vitro* diagnostic medical devices at international level, in particular in the context of the Global Harmonization Task Force (GHTF) and its follow-up initiative the International Medical Devices Regulators Forum, should be taken into account to promote the global convergence of regulations which contributes to a high level of safety worldwide and to facilitate trade, in particular in the provisions on Unique Device Identification, general safety and performance requirements, technical documentation, classification criteria, conformity assessment procedures and clinical evidence.

(5) There are specific features of *in vitro* diagnostic medical devices, in particular in terms of risk classification, conformity assessment procedures and clinical evidence, and of the *in vitro* diagnostic medical device sector which require the adoption of a specific legislation, distinct from the legislation on other medical devices, whereas the horizontal aspects common to both sectors should be aligned.

(6) A Regulation is the appropriate legal instrument as it imposes clear and detailed rules which do not give room for divergent transposition by Member States. Moreover, a Regulation ensures that legal requirements are implemented at the same time throughout the Union.

(7) The scope of application of this Regulation should be clearly delimited from other legislation concerning products such as medical devices, general laboratory products and products for research use only.

(8) It should be the responsibility of the Member States to decide on a case-by-case basis whether or not a product falls within the scope of this Regulation. If necessary, the Commission may decide, on a case-by-case basis, whether or not a product falls within the definition of an *in vitro* diagnostic medical device or of an accessory to an *in vitro* diagnostic medical device.

(9) To ensure the highest level of health protection, the rules governing *in vitro* diagnostic medical devices manufactured and used, including measurement and delivery of results, only within a single health institution should be clarified and strengthened.

(10) It should be clarified that software specifically intended by the manufacturer to be used for one or more of the medical purposes set out in the definition of an *in vitro* diagnostic medical device is qualified as an *in vitro* diagnostic medical device, while software for general purposes, even when used in a healthcare setting, or software intended for well-being applications is not qualified as an *in vitro* diagnostic medical device.

(11) It should be made clear that all tests that provide information on the predisposition to a medical condition or a disease (e.g. genetic tests) and tests that provide information to predict treatment response or reactions, such as companion diagnostics, are *in vitro* diagnostic medical devices.

(12) Aspects addressed by Directive 2004/108/EC of the European Parliament and of the Council of 15 December 2004 on the approximation of the laws of the Member States relating to electromagnetic compatibility and repealing Directive 89/336/EEC[21] and aspects addressed by Directive 2006/42/EC of the European Parliament and of the Council of 17 May 2006 on machinery and amending Directive 95/16/EC[22] are an integral part of the general safety and performance requirements for *in vitro* diagnostic medical devices. Consequently, this Regulation should be considered a *lex specialis* in relation to those Directives.

(13) This Regulation should include requirements regarding the design and manufacture of *in vitro* diagnostic medical devices emitting ionising radiation without affecting the application of Council Directive 96/29/Euratom of 13 May 1996 laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation[23], nor of Council Directive 97/43/Euratom of 30 June 1997 on health protection of individuals against the dangers of ionising radiation in relation to medical exposure and repealing Directive 84/466/Euratom[24] which pursue other objectives.

(14) It should be made clear that the requirements of this Regulation also apply to the countries that have entered into international agreements with the Union which confer on that country the same status as a Member State for the purpose of application of this Regulation, as it is currently the case with the Agreement on the European Economic Area[25], the Agreement between the European Community and the Swiss Confederation on mutual recognition in relation to conformity assessment[26] and the Agreement of 12 September 1963 establishing an association between the European Economic Community and Turkey[27].

(15) It should be made clear that *in vitro* diagnostic medical devices offered to persons in the Union by means of information society services within the meaning of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations[28] as well as devices used in the context of a commercial activity to provide a diagnostic or therapeutic service to persons within the Union must comply with the requirements of this Regulation at the latest when the product is placed on the market or the service is provided in the Union.

(16) To recognise the important role of standardisation in the field of *in vitro* diagnostic medical devices, compliance with harmonised standards as defined in Regulation (EU) No [Ref. of future Regulation on European standardisation] on European standardisation[29] should be a means for manufacturers to demonstrate conformity with the general safety and performance requirements and other legal requirements, such as quality and risk management.

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21 OJ L 390, 31.12.2004, p. 24

22 OJ L 157, 9.6.2006, p. 24.

23 OJ L 159, 29.6.1996, p. 1.

24 OJ L 180, 9.7.1997, p. 22.

25 OJ L 1, 3.1.1994, p. 3.

26 OJ L 114, 30.4.2002, p. 369.

27 OJ 217, 29.12.1964, p. 3687

28 OJ L 204, 21.7.1998, p. 37, as amended by Directive 98/48/EC of the European Parliament and of the Council of 20 July 1998, OJ L 217, 5.8.1998, p. 18.

29 OJ C […], […], p. […].

(17) The definitions in the field of *in vitro* diagnostic medical devices, for example, regarding economic operators, clinical evidence and vigilance, should be aligned with well-established practice at Union and international level in order to enhance legal certainty.

(18) The rules applicable to *in vitro* diagnostic medical devices should be aligned, where appropriate, with the New Legislative Framework for the Marketing of Products, which consists of Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93[30] and Decision No 768/2008/EC of the European Parliament and of the Council of 9 July 2008 on a common framework for the marketing of products, and repealing Council Decision 93/465/EEC[31].

(19) The rules on Union market surveillance and control of products entering the Union market provided for in Regulation (EC) No 765/2008 apply to *in vitro* diagnostic medical devices and their accessories covered by this Regulation which does not prevent Member States from choosing the competent authorities to carry out those tasks.

(20) It is appropriate to set out clearly the general obligations of the different economic operators, including importers and distributors, as laid down in the New Legislative Framework for the Marketing of Products, without prejudice to the specific obligations laid down in the different parts of this Regulation, to enhance understanding of the legal requirements and thus to improve regulatory compliance by the relevant operators.

(21) To ensure that *in vitro* diagnostic medical devices manufactured in series production continue to be in conformity with the requirements of this Regulation and that experience from the use of their *in vitro* diagnostic medical devices is taken into account for the production process, all manufacturers should have a quality management system and a post-market surveillance plan in place which should be proportionate to the risk class and the type of the *in vitro* diagnostic medical device.

(22) It should be ensured that supervision and control of the manufacture of *in vitro* diagnostic medical devices is carried out within the manufacturer's organisation by a person who fulfils minimum conditions of qualification.

(23) For manufacturers who are not established in the Union, the authorised representative plays a pivotal role in ensuring the compliance of the *in vitro* diagnostic medical devices produced by those manufacturers and in serving as their contact person established in the Union. The tasks of an authorised representative should be defined in a written mandate with the manufacturer which for example may allow the authorised representative to lodge an application for a conformity assessment procedure, to report events under the vigilance system or to register devices placed on the Union market. The mandate should empower the authorised representative to duly fulfil certain defined tasks. Considering the role of authorised representatives, the minimum requirements to be met by them should be clearly defined, including the requirement of having available a person who fulfils minimum conditions of qualification which should be similar to those for a manufacturer's qualified person

[30] OJ L 218, 13.8.2008, p.30.
[31] OJ L 218, 13.8.2008, p. 82.

but, with a view to the authorised representative's tasks, could also be satisfied by a person with qualification in law.

(24) To ensure legal certainty in respect of the obligations incumbent on economic operators, it is necessary to clarify when a distributor, importer or other person is to be considered the manufacturer of an *in vitro* diagnostic medical device.

(25) Parallel trade in products already placed on the market is a lawful form of trade within the internal market on the basis of Article 34 of the Treaty on the Functioning of the European Union subject to the limitations set by the protection of health and safety and by the protection of intellectual property rights provided by Article 36 of the Treaty on the Functioning of the European Union. Application of this principle is, however, subject to different interpretations in the Member States. The conditions, in particular the requirements for relabelling and repackaging, should therefore be specified in this Regulation, taking into account the case-law of the European Court of Justice[32] in other relevant sectors and existing good practices in the field of *in vitro* diagnostic medical devices.

(26) *In vitro* diagnostic medical devices should, as a general rule, bear the CE marking to indicate their conformity with this Regulation so that they can move freely within the Union and be put into service in accordance with their intended purpose. Member States should not create obstacles to their placing on the market or putting into service for reasons related to the requirements laid down in this Regulation.

(27) The traceability of *in vitro* diagnostic medical devices by means of a Unique Device Identification (UDI) system based on international guidance should significantly enhance the effectiveness of the post-market safety of *in vitro* diagnostic medical devices due to improved incident reporting, targeted field safety corrective actions and better monitoring by competent authorities. It should also help to reduce medical errors and to fight against counterfeit devices. Use of the UDI system should also improve purchase-policy and stock-management by hospitals.

(28) Transparency and better information are essential to empower patients and healthcare professionals and to enable them to make informed decisions, to provide a sound basis for regulatory decision-making and to build confidence in the regulatory system.

(29) One key aspect is the creation of a central database that should integrate different electronic systems, with the UDI as an integral part of it, to collate and process information regarding *in vitro* diagnostic medical devices on the market and the relevant economic operators, certificates, interventional clinical performance studies and other clinical performance studies involving risks for the subjects of the studies, vigilance and market surveillance. The objectives of the database are to enhance overall transparency, to streamline and facilitate the flow of information between economic operators, notified bodies or sponsors and Member States as well as between Member States among themselves and with the Commission, to avoid multiple reporting requirements and to enhance the coordination between Member States. Within an internal market, this can be ensured effectively only at Union level and the Commission should therefore further develop and manage the European databank on medical devices (Eudamed) by further developing the databank set up by

[32] Judgment of the Court of 28 July 2011 in joined cases C-400/09 and C-207/10

Commission Decision 2010/227/EU of 19 April 2010 on the European Databank for Medical Devices[33].

(30) Eudamed's electronic systems regarding devices on the market, the relevant economic operators and certificates should enable the public to be adequately informed about devices on the Union market. The electronic system on clinical performance studies should serve as tool for the cooperation between Member States and for enabling sponsors to submit, on a voluntary basis, a single application for several Member States and, in this case, to report serious adverse events. The electronic system on vigilance should enable manufacturers to report serious incidents and other reportable events and to support the coordination of their assessment by national competent authorities. The electronic system regarding market surveillance should be a tool for the exchange of information between competent authorities.

(31) In respect of data collated and processed through the electronic systems of Eudamed, Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data[34] applies to the processing of personal data carried out in the Member States, under the supervision of the Member States competent authorities, in particular the public independent authorities designated by the Member States. Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data[35], applies to the processing of personal data carried out by the Commission within the framework of this Regulation, under the supervision of the European Data Protection Supervisor. In accordance with Article 2(d) of Regulation (EC) No 45/2001, the Commission should be designated as the controller of Eudamed and its electronic systems.

(32) For high-risk *in vitro* diagnostic medical devices, manufacturers should summarise the main safety and performance aspects of the device and the outcome of the clinical evaluation in a document that should be publicly available.

(33) The proper functioning of notified bodies is crucial for ensuring a high level of health and safety and citizens' confidence in the system. Designation and monitoring of notified bodies by the Member States, in accordance with detailed and strict criteria, should therefore be subject to controls at Union level.

(34) The position of notified bodies vis-à-vis manufacturers should be strengthened, including their right and duty to carry out unannounced factory inspections and to conduct physical or laboratory tests on *in vitro* diagnostic medical devices to ensure continuous compliance by manufacturers after receipt of the original certification.

(35) For high risk *in vitro* diagnostic medical devices, authorities should be informed at an early stage about devices which are subject to conformity assessment and be given the right, on scientifically valid grounds, to scrutinise the preliminary assessment conducted by notified bodies, in particular regarding devices for which no common technical specifications exist, devices which are novel or for which a novel technology is being used, devices belonging to a category of devices with increased serious incident rates, or devices for which significant discrepancies in the conformity

33 OJ L 102, 23.4.2010, p. 45.
34 OJ L 281, 23.11.1995, p. 31.
35 OJ L 8, 12.1.2001, p. 1.

assessments by different notified bodies have been identified in respect of substantially similar devices. The process foreseen in this Regulation does not prevent a manufacturer from informing voluntarily a competent authority of his intention to file an application for conformity assessment for a high risk *in vitro* diagnostic medical device before submitting the application to the notified body.

(36) To enhance patient safety and to take due account of technological progress, the risk classification system for *in vitro* diagnostic medical devices set out in Directive 98/79/EC should be fundamentally changed, in line with international practice, and the corresponding conformity assessment procedures should be accordingly adapted.

(37) It is necessary, in particular for the purpose of the conformity assessment procedures, to classify *in vitro* diagnostic medical devices into four risk classes and to establish a set of robust risk-based classification rules, in line with international practice.

(38) The conformity assessment procedure for class A *in vitro* diagnostic medical devices should be carried out, as a general rule, under the sole responsibility of the manufacturers, since such devices pose a low risk to patients. For *in vitro* diagnostic medical devices in classes B, C and D, the involvement of a notified body should be compulsory to the appropriate degree.

(39) The conformity assessment procedures should be further developed whilst the requirements for notified bodies as regards the performance of their assessments should be clearly specified to ensure a level playing field.

(40) It is necessary to clarify the requirements regarding batch release verification for the highest risk *in vitro* diagnostic medical devices.

(41) European Union reference laboratories should be enabled to verify compliance of such devices with the applicable common technical specifications, when such common technical specifications are available, or with other solutions chosen by the manufacturer to ensure a level of safety and performance that is at least equivalent.

(42) To ensure a high level of safety and performance, demonstration of compliance with the general safety and performance requirements should be based on clinical evidence. It is necessary to clarify the requirements for such clinical evidence. As a general rule, clinical evidence should be sourced from clinical performance studies to be carried out under the responsibility of a sponsor who can be the manufacturer or another legal or natural person taking responsibility for the clinical performance study.

(43) The rules on clinical performance studies should be in line with major international guidance, such as the international standard ISO 14155:2011 on good clinical practice for clinical investigations of medical devices for human subjects and the most recent (2008) version of the World Medical Association Declaration of Helsinki on Ethical Principles for Medical Research Involving Human Subjects to ensure that clinical performance studies conducted in the Union are accepted elsewhere and that clinical performance studies conducted outside the Union in accordance with international guidelines can be accepted under this Regulation.

(44) An electronic system should be set up at Union level to ensure that every interventional clinical performance studies and other clinical performance studies involving risks for the subjects of the studies are registered in a publicly accessible database. To protect the right to protection of personal data, recognised by Article 8 of the Charter of Fundamental Rights of the European Union, no personal data of subjects participating in a clinical performance studies should be recorded in the

electronic system. To ensure synergies with the area of clinical trials on medicinal products, the electronic system on clinical performance studies on *in vitro* diagnostic medical devices should be interoperable with the EU database to be set up for clinical trials on medicinal products for human use.

(45) Sponsors of interventional clinical performance studies and other clinical performance studies involving risks for the subjects to be conducted in more than one Member State should be given the possibility to submit a single application in order to reduce administrative burden. In order to allow for resource-sharing and to ensure consistency regarding the assessment of the health and safety related aspects of the device for performance evaluation and of the scientific design of the clinical performance study to be conducted in several Member Stats, such single application should facilitate the coordination between the Member States under the direction of a coordinating Member State. The coordinated assessment should not include the assessment of intrinsically national, local and ethical aspects of a clinical performance study, including informed consent. Each Member State should retain the ultimate responsibility for deciding whether the clinical performance study may be conducted on its territory.

(46) Sponsors should report certain adverse events occurring during interventional clinical performance studies and other clinical performance studies involving risks for the subjects to the Member States concerned which should have the possibility to terminate or suspend these studies if considered necessary to ensure a high level of protection of the subjects enrolled in such studies. Such information should be communicated to the other Member States.

(47) This Regulation should only cover clinical performance studies which pursue regulatory purposes laid down in this Regulation.

(48) In order to better protect health and safety regarding devices on the market, the vigilance system for *in vitro* diagnostic medical devices should be made more effective by creating a central portal at Union level for reporting serious incidents and field safety corrective actions.

(49) Healthcare professionals and patients should be empowered to report suspected serious incidents at national level using harmonised formats. The national competent authorities should inform manufacturers and share the information with their peers when they confirm that a serious incident has occurred in order to minimise recurrence of those incidents.

(50) The assessment of reported serious incidents and field safety corrective actions should be conducted at national level but coordination should be ensured where similar incidents have occurred or field safety corrective actions have to be carried out in more than one Member State, with the objective of sharing resources and ensuring consistency regarding the corrective action.

(51) The reporting of serious adverse events during interventional clinical performance studies and other clinical performance studies involving risks for the subjects, and the reporting of serious incidents occurring after an *in vitro* diagnostic medical device has been placed on the market should be clearly distinguished to avoid double reporting.

(52) Rules on market surveillance should be included in this Regulation to reinforce the rights and obligations of the national competent authorities, to ensure effective coordination of their market surveillance activities and to clarify the applicable procedures.

(53) The Member States shall levy fees for the designation and monitoring of notified bodies to ensure sustainability of the monitoring of those bodies by Member States and to establish a level playing field for notified bodies.

(54) Whilst this Regulation should not affect the right of the Member States to levy fees for activities at national level, Member States should inform the Commission and the other Member States before they adopt the level and structure of the fees to ensure transparency.

(55) An expert committee, the Medical Device Coordination Group (MDCG), composed of persons designated by the Member States, based on their role and expertise in the field of medical devices and *in vitro* diagnostic medical devices, should be established in accordance with the conditions and modalities defined in Article 78 of Regulation (EU) [Ref. of future Regulation on medical devices] on medical devices[36] to fulfil the tasks conferred on it by this Regulation and by Regulation (EU) [Ref. of future Regulation on medical devices] on medical devices, to provide advice to the Commission and to assist the Commission and the Member States in ensuring a harmonised implementation of this Regulation.

(56) Closer coordination between national competent authorities through information exchange and coordinated assessments under the direction of a coordinating authority is fundamental for ensuring a uniform high level of health and safety within the internal market, in particular in the areas of clinical performance studies and vigilance. This should also lead to more efficient use of scarce resources at national level.

(57) The Commission should provide scientific, technical and corresponding logistic support to the coordinating national authority and ensure that the regulatory system for *in vitro* diagnostic medical devices is effectively implemented at Union level based on sound scientific evidence.

(58) The Union should actively participate in international regulatory cooperation in the field of *in vitro* diagnostic medical devices to facilitate the exchange of safety-related information regarding *in vitro* diagnostic medical devices and foster the further development of international regulatory guidelines promoting the adoption of regulations in other jurisdictions with a level of health and safety protection equivalent to that set by this Regulation.

(59) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union and notably human dignity, the integrity of the person, the protection of personal data, the freedom of art and science, the freedom to conduct business and the right to property. This Regulation should be applied by the Member States in accordance with those rights and principles.

(60) In order to maintain a high level of health and safety, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of the adaptation to technical progress of the general safety and performance requirements, of the elements to be addressed in the technical documentation, of the minimum content of the EU declaration of conformity and of the certificates issued by notified bodies, of the minimum requirements to be met by notified bodies, of the classification rules, of the conformity assessment procedures, and of the documentation to be submitted for the

[36] OJ L […], […], p. […]

approval of clinical performance studies; the establishment of the UDI system; the information to be submitted for the registration of *in vitro* diagnostic medical devices and certain economic operators; the level and structure of fees for the designation and monitoring of notified bodies; the publicly available information in respect of clinical performance studies; the adoption of preventive health protection measures at EU level; and the tasks of and criteria for European Union reference laboratories and the level and structure of fees for scientific opinions delivered by them.

It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

(61) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers[37].

(62) The advisory procedure should be used for the adoption of the form and presentation of the data elements of the manufacturers' summary of safety and performance, of the codes defining the notified bodies' scopes of designation and of the model for certificates of free sale, given that those acts have a procedural character and do not directly impact the health and safety at Union level.

(63) The Commission should adopt immediately applicable implementing acts where, in duly justified cases relating to the extension to the territory of the Union of a national derogation from the applicable conformity assessment procedures in exceptional cases; relating to the Commission's position whether a provisional national measure against an *in vitro* diagnostic medical device presenting a risk or a provisional national preventive health protection measure is justified or not; and relating to the adoption of a Union measure against an *in vitro* diagnostic medical device presenting a risk, imperative grounds of urgency so require.

(64) To allow economic operators, notified bodies, Member States and the Commission to adapt to the changes introduced by this Regulation, it is appropriate to provide for a sufficient transitional period for that adaptation and for the organisational arrangements to be taken for its proper application. It is particularly important that by the date of application, a sufficient number of notified bodies are designated in accordance with the new requirements to avoid any shortage of *in vitro* diagnostic medical devices on the market.

(65) In order to ensure a smooth transition to the registration of *in vitro* diagnostic medical devices, of relevant economic operators and of certificates, the obligation to submit the relevant information to the electronic systems put in place by this Regulation at Union level should become fully effective only 18 months after the date of application of this Regulation. During this transitional period, Article 10 and points (a) and (b) of Article 12(1) of Directive 98/79/EC should remain in force. However, economic operators and notified bodies who register in the relevant electronic systems provided for at Union level should be considered in compliance with the registration requirements adopted

[37] OJ L 55, 28.2.2011, p. 13.

by the Member States pursuant to those provisions of the Directive to avoid multiple registrations.

(66) Directive 98/79/EC should be repealed to ensure that only one set of rules applies to the placing of *in vitro* diagnostic medical devices on the market and the related aspects covered by this Regulation.

(67) Since the objective of this Regulation, namely to ensure high standards of quality and safety for *in vitro* diagnostic medical devices, thus ensuring a high level of protection of health and safety of patients, users and other persons, cannot sufficiently be achieved by the Member States and can, by reason of the scale of the measure, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

HAVE ADOPTED THIS REGULATION:

Chapter I
Scope and definitions

Article 1

Scope

1. This Regulation establishes rules to be complied with by in vitro diagnostic medical devices and accessories to in vitro diagnostic medical devices that are placed on the market or put into service in the Union for human use.

   For the purposes of this Regulation, *in vitro* diagnostic medical devices and accessories to *in vitro* diagnostic medical devices shall hereinafter be referred to as 'devices'.

2. This Regulation shall not apply to:

   (a) products for general laboratory use, unless such products, in view of their characteristics, are specifically intended by their manufacturer to be used for *in vitro* diagnostic examination;

   (b) invasive sampling devices or those which are directly applied to the human body for the purpose of obtaining a specimen;

   (c) higher metrological order reference materials.

3. Any device which, when placed on the market or used in accordance with the manufacturer's instructions, incorporates as an integral part a medical device as defined in Article 2 of Regulation (EU) [Ref. of future Regulation on medical devices] on medical devices without being an *in vitro* diagnostic medical device, shall be governed by this Regulation, provided that the principal intended purpose of the combination is that of an *in vitro* diagnostic medical device referred to in Article 2(2) of this Regulation. The relevant general safety and performance requirements set out in Annex I to Regulation (EU) [Ref. of future Regulation on medical devices] shall apply as far as the safety and performance of the medical device part that is not an *in vitro* diagnostic medical device are concerned.

4. This Regulation is a specific Union legislation within the meaning of Article 1(4) of Directive 2004/108/EC and within the meaning of Article 3 of Directive 2006/42/EC.

5. This Regulation shall not affect the application of Council Directive 96/29/Euratom, nor of Council Directive 97/43/Euratom.

6. This Regulation shall not affect national laws which require that certain devices may only be supplied on a medical prescription.

7. References to a Member State in this Regulation shall be understood as including any other country with which the Union has concluded an agreement which confers on that country the same status as a Member State for the purpose of application of this Regulation.

Article 2

Definitions

For the purposes of this Regulation, the following definitions shall apply:

Definitions related to devices:

(1) ‘medical device’ means any instrument, apparatus, appliance, software, implant, reagent, material or other article, intended by the manufacturer to be used, alone or in combination, for human beings for one or more of the specific medical purposes of:

- diagnosis, prevention, monitoring, treatment or alleviation of disease,
- diagnosis, monitoring, treatment, alleviation of or compensation for an injury or disability,
- investigation, replacement or modification of the anatomy or of a physiological process or state,
- control or support of conception,
- disinfection or sterilisation of any of the above-mentioned products,

and which does not achieve its principal intended action by pharmacological, immunological or metabolic means, in or on the human body, but which may be assisted in its intended function by such means.

(2) '*in vitro* diagnostic medical device’ means any medical device which is a reagent, reagent product, calibrator, control material, kit, instrument, apparatus, equipment, software or system, whether used alone or in combination, intended by the manufacturer to be used *in vitro* for the examination of specimens, including blood and tissue donations, derived from the human body, solely or principally for the purpose of providing information:

- concerning a physiological or pathological state;
- concerning a congenital abnormality;
- concerning the predisposition to a medical condition or a disease;
- to determine the safety and compatibility with potential recipients;
- to predict treatment response or reactions;
- to define or monitor therapeutic measures.

Specimen receptacles are considered to be *in vitro* diagnostic medical devices. For the purposes of this Regulation, ‘specimen receptacle’ means devices, whether vacuum-type or not, specifically intended by their manufacturers for the primary containment and preservation of specimens derived from the human body for the purpose of *in vitro* diagnostic examination.

(3) 'accessory to an *in vitro* diagnostic medical device' means an article which, whilst not being an *in vitro* diagnostic medical device, is intended by its manufacturer to be used together with one or several particular *in vitro* diagnostic medical device(s) to specifically enable or assist the *in vitro* diagnostic medical device(s) to be used in accordance with its/their intended purpose(s);

(4) 'device for self-testing' means any device intended by the manufacturer to be used by lay persons;

(5) 'device for near-patient testing' means any device that is not intended for self-testing but is intended to perform testing outside a laboratory environment, generally near to, or at the side of, the patient;

(6) 'companion diagnostic' means a device specifically intended to select patients with a previously diagnosed condition or predisposition as eligible for a targeted therapy;

(7) 'generic device group' means a set of devices having the same or similar intended purposes or commonality of technology allowing them to be classified in a generic manner not reflecting specific characteristics;

(8) 'single-use device' means a device that is intended to be used on an individual patient during a single procedure;

The single procedure may involve several uses or prolonged use on the same patient.

(9) 'intended purpose' means the use for which the device is intended according to the data supplied by the manufacturer on the label, in the instructions for use or in promotional or sales materials or statements;

(10) 'label' means the written, printed, or graphic information appearing either on the device itself, or on the packaging of each unit, or on the packaging of multiple devices;

(11) 'instructions for use' means the information provided by the manufacturer to inform the user of the device’s intended purpose and proper use and of any precautions to be taken;

(12) 'Unique Device Identification' ('UDI') means a series of numeric or alphanumeric characters that is created through internationally accepted device identification and coding standards and that allows unambiguous identification of specific devices on the market;

Definitions related to the making available of devices:

(13) 'making available on the market' means any supply of a device, other than a device for performance evaluation, for distribution, consumption or use on the Union market in the course of a commercial activity, whether in return for payment or free of charge;

(14) 'placing on the market' means the first making available of a device, other than a device for performance evaluation, on the Union market;

(15) 'putting into service' means the stage at which a device, other than a device for performance evaluation, has been made available to the final user as being ready for use on the Union market for the first time for its intended purpose;

Definitions related to economic operators, users and specific processes:

(16) 'manufacturer' means the natural or legal person who manufactures or fully refurbishes a device or has a device designed, manufactured or fully refurbished, and markets that device under his name or trademark.

For the purposes of the definition of manufacturer, fully refurbishing is defined as the complete rebuilding of a device already placed on the market or put into service, or the making of a new device from used devices, to bring it in conformity with this Regulation, combined with the assignment of a new lifetime to the refurbished device;

(17) 'authorised representative' means any natural or legal person established within the Union who has received and accepted a written mandate from a manufacturer to act on his behalf in relation to specified tasks with regard to the latter's obligations under this Regulation;

(18) 'importer' means any natural or legal person established within the Union who places a device from a third country on the Union market;

(19) 'distributor' means any natural or legal person in the supply chain, other than the manufacturer or the importer, who makes a device available on the market;

(20) 'economic operators' means the manufacturer, the authorised representative, the importer and the distributor;

(21) 'health institution' means an organisation whose primary purpose is the care or treatment of patients or the promotion of public health;

(22) 'user' means any healthcare professional or lay person who uses a device;

(23) 'lay person' means an individual who does not have formal education in a relevant field of healthcare or medical discipline;

Definitions related to conformity assessment:

(24) 'conformity assessment' means the process demonstrating whether the requirements of this Regulation relating to a device have been fulfilled;

(25) 'conformity assessment body' means a body that performs third-party conformity assessment activities including calibration, testing, certification and inspection;

(26) 'notified body' means a conformity assessment body designated in accordance with this Regulation;

(27) 'CE marking of conformity' or 'CE marking' means a marking by which the manufacturer indicates that the device is in conformity with the applicable requirements set out in this Regulation and other applicable Union harmonisation legislation providing for its affixing;

Definitions related to clinical evidence:

(28) 'clinical evidence' means the information that supports the scientific validity and performance for the use of a device as intended by the manufacturer;

(29) 'scientific validity of an analyte' means the association of an analyte to a clinical condition or a physiological state;

(30) 'performance of a device' means the ability of a device to achieve its intended purpose as claimed by the manufacturer. It consists of the analytical and, where applicable, the clinical performance supporting the intended purpose of the device;

(31) 'analytical performance' means the ability of a device to correctly detect or measure a particular analyte;

(32) 'clinical performance' means the ability of a device to yield results that are correlated with a particular clinical condition or a physiological state in accordance with the target population and intended user;

(33) 'clinical performance study’ means a study undertaken to establish or confirm the clinical performance of a device;

(34) 'clinical performance study protocol' means the document(s) setting out the rationale, objectives, design and proposed analysis, methodology, monitoring, conduct and record-keeping of the clinical performance study;

(35) 'performance evaluation' means the assessment and analysis of data to establish or verify the analytical and, where applicable, the clinical performance of a device;

(36) 'device for performance evaluation' means a device intended by the manufacturer to be subject to one or more performance evaluation studies in laboratories for medical analyses or in other appropriate environments outside the manufacturer's own premises. Devices intended to be used for research purposes, without any medical objective, are not regarded as devices for performance evaluation;

(37) 'interventional clinical performance study' means a clinical performance study where the test results may influence patient management decisions and/or may be used to guide treatment;

(38) 'diagnostic specificity' means the ability of a device to recognize the absence of a target marker associated with a particular disease or condition;

(39) 'diagnostic sensitivity' means the ability of a device to identify the presence of a target marker associated with a particular disease or condition;

(40) 'predictive value' means the probability that a person with a positive device test result has a given condition under investigation, or that a person with a negative device test result does not have a given condition;

(41) 'positive predictive value' means the ability of a device to separate true positive results from false positive results for a given attribute in a given population;

(42) 'negative predictive value' means the ability of a device to separate true negative results from false negative results for a given attribute in a given population;

(43) 'likelihood ratio' means the likelihood that a given result would be expected in an individual with the target clinical condition or physiological state compared to the likelihood that the same result would be expected in an individual without that clinical condition or physiological state;

(44) 'calibrators and control materials' means any substance, material or article intended by the manufacturer either to establish measurement relationships or to verify the performance characteristics of a device in conjunction with the intended purpose of that device;

(45) 'sponsor' means any individual, company, institution or organisation which takes responsibility for the initiation and management of a clinical performance study;

(46) 'adverse event' means any untoward medical occurrence, unintended disease or injury or any untoward clinical signs, including an abnormal laboratory finding, in subjects, users or other persons in the context of a clinical performance study, whether or not related to the device for performance evaluation;

(47) 'serious adverse event' means any adverse event that led to any of the following:

– death,

– serious deterioration in the health of the subject, that resulted in any of the following:

(i) life-threatening illness or injury,

(ii) permanent impairment of a body structure or a body function,

(iii) hospitalisation or extending the duration of hospitalisation,

(iv) medical or surgical intervention to prevent life-threatening illness or injury or permanent impairment to a body structure or a body function,

– foetal distress, foetal death or a congenital abnormality or birth defect.

(48) 'device deficiency' means any inadequacy in the identity, quality, durability, reliability, safety or performance of a device for performance evaluation, including malfunction, use errors or inadequacy in the information supplied by the manufacturer;

Definitions related to vigilance and market surveillance:

(49) 'recall' means any measure aimed at achieving the return of a device that has already been made available to the end user;

(50) 'withdrawal' means any measure aimed at preventing a device in the supply chain from further being made available on the market;

(51) 'incident' means any malfunction or deterioration in the characteristics or performance of a device made available on the market, any inadequacy in the information supplied by the manufacturer and any unexpected undesirable effect;

(52) 'serious incident' means any incident that directly or indirectly led, might have led or might lead to any of the following:

– death of a patient, user or other person,

– temporary or permanent serious deterioration of the patient's, user's or other person's state of health,

– serious public health threat;

(53) 'corrective action' means action taken to eliminate the cause of a potential or real non-conformity or other undesirable situation;

(54) 'field safety corrective action' means corrective action taken by the manufacturer for technical or medical reasons to prevent or reduce the risk of a serious incident in relation to a device made available on the market;

(55) 'field safety notice' means the communication sent by the manufacturer to users or customers in relation to a field safety corrective action;

(56) 'market surveillance' means the activities carried out and measures taken by public authorities to ensure that products comply with the requirements set out in the relevant Union harmonisation legislation and do not endanger health, safety or any other aspect of public interest protection;

Definitions related to standards and other technical specifications:

(57) ‘harmonised standard’ means a European standard as defined in Article 2(1)(c) of Regulation (EU) No [Ref. of future Regulation on European standardisation];

(58) 'common technical specifications’ means a document other than a standard that prescribes technical requirements that provide a means to comply with the legal obligations applicable to a device, process or system.

Article 3

Regulatory status of products

1. The Commission may, at the request of a Member State or on its own initiative, by means of implementing acts, determine whether or not a specific product, or category or group of products, falls within the definitions of an *in vitro* diagnostic medical

devices or of an accessory to an *in vitro* diagnostic medical device. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 84(3).

2. The Commission shall ensure the sharing of expertise between Member States in the fields of *in vitro* diagnostic medical devices, medical devices, medicinal products, human tissues and cells, cosmetics, biocides, food and, if necessary, other products in order to determine the appropriate regulatory status of a product, or category or group of products.

Chapter II
Making available of devices, obligations of economic operators, CE marking, free movement

Article 4

Placing on the market and putting into service

1. A device may be placed on the market or put into service only if it complies with this Regulation when duly supplied and properly installed, maintained and used in accordance with its intended purpose.

2. A device shall meet the general safety and performance requirements which apply to it, taking into account its intended purpose. General safety and performance requirements are set out in Annex I.

3. Demonstration of conformity with the general safety and performance requirements shall be based on clinical evidence in accordance with Article 47.

4. Devices that are manufactured and used within a single health institution shall be considered as being put into service.

5. With the exception of Article 59(4), the requirements of this Regulation shall not apply to devices classified as class A, B and C, in accordance with the rules set out in Annex VII, and manufactured and used only within a single health institution, provided manufacture and use occur solely under the health institution's single quality management system, and the health institution is compliant with standard EN ISO 15189 or any other equivalent recognised standard. Member States may require that the health institutions submit to the competent authority a list of such devices which have been manufactured and used on their territory and may make the manufacture and use of the devices concerned subject to further safety requirements.

   Devices classified as class D in accordance with the rules set out in Annex VII, even if manufactured and used within a single health institution, shall comply with the requirements of this Regulation. However, the provisions regarding CE marking set out in Article 16 and the obligations referred to in Articles 21 to 25 shall not apply to those devices.

6. The Commission shall be empowered to adopt delegated acts in accordance with Article 85, amending or supplementing, in the light of technical progress and considering the intended users or patients, the general safety and performance requirements set out in Annex I, including the information supplied by the manufacturer.

Article 5

Distance sales

1. A device offered by means of information society services as defined in Article 1(2) of Directive 98/34/EC to a natural or legal person established in the Union shall comply with this Regulation at the latest when the device is placed on the market.

2. Without prejudice to national legislation regarding the exercise of the medical profession, a device that is not placed on the market but is used in the context of a commercial activity for the provision of a diagnostic or therapeutic service offered by means of information society services as defined in Article 1(2) of Directive 98/34/EC or by other means of communication to a natural or legal person established in the Union shall comply with this Regulation.

Article 6

Harmonised standards

1. Devices which are in conformity with the relevant harmonised standards, or parts thereof, the references of which have been published in the *Official Journal of the European Union* shall be presumed to be in conformity with the requirements of this Regulation covered by those standards or parts thereof.

   The first subparagraph shall also apply to system or process requirements to be fulfilled by economic operators or sponsors in accordance with this Regulation, including those related to the quality management system, risk management, the post-market surveillance plan, clinical performance studies, clinical evidence or post-market follow-up.

2. Reference to harmonised standards also includes the monographs of the European Pharmacopoeia adopted in accordance with the Convention on the Elaboration of a European Pharmacopoeia.

Article 7

Common technical specifications

1. Where no harmonised standards exist or where relevant harmonised standards are not sufficient, the Commission shall be empowered to adopt common technical specifications (CTS) in respect of the general safety and performance requirements set out in Annex I, the technical documentation set out in Annex II or the clinical evidence and post-market follow-up set out in Annex XII. The CTS shall be adopted by means of implementing acts in accordance with the examination procedure referred to in Article 84(3).

2. Devices which are in conformity with the CTS referred to in paragraph 1 shall be presumed to be in conformity with the requirements of this Regulation covered by those CTS or parts thereof.

3. Manufacturers shall comply with the CTS unless they can duly justify that they have adopted solutions ensuring a level of safety and performance that is at least equivalent thereto.

Article 8

General obligations of the manufacturer

1. When placing their devices on the market or putting them into service, manufacturers shall ensure that they have been designed and manufactured in accordance with the requirements of this Regulation.

2. Manufacturers shall draw up the technical documentation which shall allow assessment of the conformity of the device with the requirements of this Regulation. The technical documentation shall include the elements set out in Annex II.

   The Commission shall be empowered to adopt delegated acts in accordance with Article 85 amending or supplementing, in the light of technical progress, the elements in the technical documentation set out in Annex II.

3. Where compliance of a device with the applicable requirements has been demonstrated following the applicable conformity assessment procedure, manufacturers of devices, other than devices for performance evaluation, shall draw up an EU declaration of conformity in accordance with Article 15 and affix the CE marking of conformity in accordance with Article 16.

4. Manufacturers shall keep the technical documentation, the EU declaration of conformity and, if applicable, a copy of the relevant certificate including any supplement, issued in accordance with Article 43, available to the competent authorities for a period of at least five years after the last device covered by the declaration of conformity has been placed on the market.

   Where the technical documentation is voluminous or held in different locations, the manufacturer shall provide, upon request by a competent authority, a summary technical documentation (STED) and grant access to the full technical documentation upon request.

5. Manufacturers shall ensure that procedures are in place to keep series production in conformity with the requirements of this Regulation. Changes in product design or characteristics and changes in the harmonised standards or CTS by reference to which conformity of a product is declared shall be adequately taken into account. Proportionate to the risk class and the type of device, manufacturers of devices, other than devices for performance evaluation, shall institute and keep up to date a quality management system that shall address at least the following aspects:

   (a) the responsibility of the management;

   (b) resource management, including selection and control of suppliers and sub-contractors;

   (c) product realisation;

   (d) processes for monitoring and measurement of output, data analysis and product improvement.

6. Proportionate to the risk class and the type of device, manufacturers of devices shall institute and keep up to date a systematic procedure to collect and review experience gained from their devices placed on the market or put into service, and to apply any necessary corrective action, hereinafter referred to as 'post-market surveillance plan'. The post-market surveillance plan shall set out the process for collecting, recording and investigating complaints and reports from healthcare professionals, patients or users on suspected incidents related to a device, keeping a register of non-

conforming products and product recalls or withdrawals, and if deemed appropriate due to the nature of the device, sample testing of marketed devices. Part of the post-market surveillance plan shall be a plan for post-market follow-up in accordance with Part B of Annex XII. Where post-market follow-up is not deemed necessary, this shall be duly justified and documented in the post-market surveillance plan.

If in the course of the post-market surveillance a need for corrective action is identified, the manufacturer shall implement the appropriate measures.

7. Manufacturers shall ensure that the device is accompanied by the information to be supplied in accordance with Section 17 of Annex I in an official Union language which can be easily understood by the intended user. The language(s) of the information to be supplied by the manufacturer may be determined by the law of the Member State where the device is made available to the user.

For devices for self-testing or near-patient-testing, the information supplied in accordance with Section 17 of Annex I shall be provided in the language(s) of the Member State where the device reaches its intended user.

8. Manufacturers who consider or have reason to believe that a device which they have placed on the market is not in conformity with this Regulation shall immediately take the necessary corrective action to bring that product into conformity, withdraw it or recall it, as appropriate. They shall inform the distributors and, where applicable, the authorised representative accordingly.

9. Manufacturers shall, in response to a reasoned request from a competent authority, provide it with all the information and documentation necessary to demonstrate the conformity of the device, in an official Union language which can be easily understood by that authority. They shall cooperate with that authority, at its request, on any corrective action taken to eliminate the risks posed by devices which they have placed on the market or put into service.

10. Where manufacturers have their devices designed and manufactured by another legal or natural person, the information on the identity of that person shall be part of the information to be submitted in accordance with Article 23.

Article 9

Authorised representative

1. A manufacturer of a device that is placed on the Union market, or bears the CE marking without being placed on the Union market, who does not have a registered place of business in a Member State or does not carry out relevant activities at a registered place of business in a Member State, shall designate a single authorised representative.

2. The designation shall be valid only when accepted in writing by the authorised representative and shall be effective at least for all devices of the same generic device group.

3. The authorised representative shall perform the tasks specified in the mandate agreed between the manufacturer and the authorised representative.

The mandate shall allow and require the authorised representative to perform at least the following tasks in relation to the devices that it covers:

(a) keep the technical documentation, the EU declaration of conformity and, if applicable, a copy of the relevant certificate, including any supplement, issued in accordance with Article 43 at the disposal of competent authorities for the period referred to in Article 8(4);

(b) in response to a reasoned request from a competent authority, provide that competent authority with all the information and documentation necessary to demonstrate the conformity of a device;

(c) cooperate with the competent authorities on any corrective action taken to eliminate the risks posed by devices;

(d) immediately inform the manufacturer about complaints and reports from healthcare professionals, patients and users about suspected incidents related to a device for which they have been designated;

(e) terminate the mandate if the manufacturer acts contrary to his obligations under this Regulation.

To allow the authorised representative to fulfil the tasks mentioned in this paragraph, the manufacturer shall at least ensure that the authorised representative has permanent immediate access to the necessary documentation in one of the official Union languages.

4. The mandate referred to in paragraph 3 shall not include the delegation of the manufacturer's obligations laid down in Article 8(1), (2), (5), (6), (7) and (8).

5. An authorised representative who terminates the mandate on the grounds referred to in point (e) of paragraph 3 shall immediately inform the competent authority of the Member State in which he is established and, where applicable, the notified body that was involved in the conformity assessment for the device of the termination of the mandate and the reasons therefor.

6. Any reference in this Regulation to the competent authority of the Member State where the manufacturer has his registered place of business shall be understood as a reference to the competent authority of the Member State where the authorised representative, designated by a manufacturer referred to in paragraph 1, has his registered place of business.

Article 10

Change of authorised representative

The modalities of a change of authorised representative shall be clearly defined in an agreement between the manufacturer, the outgoing authorised representative and the incoming authorised representative. This agreement shall address at least the following aspects:

(a) the date of termination of the mandate with the outgoing authorised representative and date of beginning of the mandate with the incoming authorised representative;

(b) the date until which the outgoing authorised representative may be indicated in the information supplied by the manufacturer, including any promotional material;

(c) the transfer of documents, including confidentiality aspects and property rights;

(d) the obligation of the outgoing authorised representative after the end of the mandate to forward to the manufacturer or to the incoming authorised representative any complaints or reports from healthcare professionals, patients or users about suspected incidents related to a device for which he had been designated as authorised representative.

Article 11

General obligations of importers

1. Importers shall place on the Union market only devices that are in conformity with this Regulation.

2. Before placing a device on the market importers shall ensure the following:

(a) that the appropriate conformity assessment procedure has been carried out by the manufacturer;

(b) that an authorised representative in accordance with Article 9 has been designated by the manufacturer;

(c) that the EU declaration of conformity and the technical documentation has been drawn up by the manufacturer;

(d) that the device bears the required CE marking of conformity;

(e) that the device is labelled in accordance with this Regulation and accompanied by the required instructions for use and EU declaration of conformity;

(f) that, where applicable, a Unique Device Identification has been assigned by the manufacturer in accordance with Article 22.

Where an importer considers or has reason to believe that a device is not in conformity with the requirements of this Regulation, he shall not place the device on the market until it has been brought into conformity. Where the device presents a risk, the importer shall inform the manufacturer and his authorised representative to that effect, as well as the competent authority of the Member State in which he is established.

3. Importers shall indicate their name, registered trade name or registered trade mark and the address of their registered place of business at which they can be contacted and their location can be established on the device or on its packaging or in a document accompanying the device. They shall ensure that any additional label does not obscure any information on the label provided by the manufacturer.

4. Importers shall ensure that the device is registered in the electronic system in accordance with Article 23(2).

5. Importers shall ensure that, while a device is under their responsibility, storage or transport conditions do not jeopardise its compliance with the general safety and performance requirements set out in Annex I.

6. When deemed appropriate with regard to the risks presented by a device, importers shall, in order to protect the health and safety of patients and users, carry out sample testing of marketed products, investigate complaints and keep a register of complaints, of non-conforming products and of product recalls and withdrawals, and shall keep the manufacturer, authorised representative and distributors informed of such monitoring.

7. Importers who consider or have reason to believe that a device which they have placed on the market is not in conformity with this Regulation shall immediately inform the manufacturer and his authorised representative and, if appropriate, take the necessary corrective action to bring that device into conformity, withdraw or recall it. Where the device presents a risk, they shall also immediately inform the competent authorities of the Member States in which they made the device available and, if applicable, the notified body that issued a certificate in accordance with Article 43 for the device in question, giving details, in particular, of the non-compliance and of any corrective action taken.

8. Importers who have received complaints or reports from healthcare professionals, patients or users about suspected incidents related to a device which they have placed on the market shall immediately forward this information to the manufacturer and his authorised representative.

9. Importers shall, for the period referred to in Article 8(4), keep a copy of the EU declaration of conformity at the disposal of the market surveillance authorities and ensure that the technical documentation and, if applicable, a copy of the relevant certificate including any supplement, issued in accordance with Article 43, can be made available to those authorities, upon request. By written mandate, the importer and the authorised representative for the device in question may agree that this obligation is delegated to the authorised representative.

10. Importers shall, in response to a request from a competent national authority, provide it with all the information and documentation necessary to demonstrate the conformity of a product. This obligation shall be considered fulfilled when the authorised representative for the device in question provides the required information. Importers shall cooperate with a competent national authority, at its request, on any action taken to eliminate the risks posed by products which they have placed on the market.

Article 12

General obligations of distributors

1. When making a device available on the market, distributors shall act with due care in relation to the requirements applicable.

2. Before making a device available on the market distributors shall verify that the following requirements are met:

   (a) the product bears the required CE marking of conformity;

   (b) the product is accompanied by the information to be supplied by the manufacturer in accordance with Article 8(7);

   (c) the manufacturer and, where applicable, the importer have complied with the requirements set out in Article 22 and Article 11(3) respectively.

   Where a distributor considers or has reason to believe that a device is not in conformity with the requirements of this Regulation, he shall not make the device available on the market until it has been brought into conformity. Where the device presents a risk, the distributor shall inform the manufacturer and, where applicable, his authorised representative and the importer to that effect, as well as the competent authority of the Member State in which he is established.

3. Distributors shall ensure that, while a device is under their responsibility, storage or transport conditions do not jeopardise its compliance with the general safety and performance requirements set out in Annex I.

4. Distributors who consider or have reason to believe that a device which they have made available on the market is not in conformity with this Regulation shall immediately inform the manufacturer and, where applicable, his authorised representative and the importer and make sure that the necessary corrective action to bring that device into conformity, withdraw or recall it, if appropriate, is taken. Where the device presents a risk, they shall also immediately inform the competent authorities of the Member States in which they made the device available, giving details, in particular, of the non-compliance and of any corrective action taken.

5. Distributors who have received complaints or reports from healthcare professionals, patients or users about suspected incidents related to a device they have made available, shall immediately forward this information to the manufacturer and, where applicable, his authorised representative.

6. Distributors shall, in response to a request from a competent authority, provide it with all the information and documentation necessary to demonstrate the conformity of a device. This obligation shall be considered fulfilled when the authorised representative for the device in question, where applicable, provides the required information. Distributors shall cooperate with competent national authorities, at their request, on any action taken to eliminate the risks posed by devices which they have made available on the market.

Article 13

Person responsible for regulatory compliance

1. Manufacturers shall have available within their organisation at least one qualified person who possesses expert knowledge in the field of *in vitro* diagnostic medical devices. The expert knowledge shall be demonstrated by either of the following qualifications:

   (a) a diploma, certificate or other evidence of formal qualification awarded on completion of a university degree or of an equivalent course of study, in natural sciences, medicine, pharmacy, engineering or another relevant discipline, and at least two years of professional experience in regulatory affairs or in quality management systems relating to *in vitro* diagnostic medical devices;

   (b) five years of professional experience in regulatory affairs or in quality management systems relating to *in vitro* diagnostic medical devices.

2. The qualified person shall at least be responsible for ensuring the following matters:

   (a) that the conformity of the devices is appropriately assessed before a batch is released;

   (b) that the technical documentation and the declaration of conformity are drawn up and kept up-to-date;

   (c) that the reporting obligations in accordance with Articles 59 to 64 are fulfilled.

   (d) in the case of devices for performance evaluation intended to be used in the context of interventional clinical performance studies or other clinical

performance studies involving risks for the subjects, that the statement referred to in Section 4.1 of Annex XIII is issued;

3. The qualified person shall suffer no disadvantage within the manufacturer's organisation in relation to the proper fulfilment of his duties.

4. Authorised representatives shall have available within their organisation at least one qualified person who possesses expert knowledge regarding the regulatory requirements for *in vitro* diagnostic medical devices in the Union. The expert knowledge shall be demonstrated by either of the following qualifications:

   (a) a diploma, certificate or other evidence of formal qualification awarded on completion of a university degree or of an equivalent course of study, in law, natural sciences, medicine, pharmacy, engineering or another relevant discipline, and at least two years of professional experience in regulatory affairs or in quality management systems relating to *in vitro* diagnostic medical devices;

   (b) five years of professional experience in regulatory affairs or in quality management systems relating to *in vitro* diagnostic medical devices.

Article 14

Cases in which obligations of manufacturers apply to importers, distributors or other persons

1. A distributor, importer or other natural or legal person shall assume the obligations incumbent on manufacturers if he does any of the following:

   (a) makes available on the market a device under his name, registered trade name or registered trade mark;

   (b) changes the intended purpose of a device already placed on the market or put into service;

   (c) modifies a device already placed on the market or put into service in such a way that compliance with the applicable requirements may be affected.

   The first subparagraph shall not apply to any person who, while not considered a manufacturer as defined in number (16) of Article 2, assembles or adapts a device already on the market to its intended purpose for an individual patient.

2. For the purposes of point (c) of paragraph 1, the following shall not be considered to be a modification of a device that could affect its compliance with the applicable requirements:

   (a) provision, including translation, of the information supplied by the manufacturer in accordance with Section 17 of Annex I relating to a device already placed on the market and of further information which is necessary in order to market the product in the relevant Member State;

   (b) changes to the outer packaging of a device already placed on the market, including a change of pack size, if the repackaging is necessary in order to market the product in the relevant Member State and if it is carried out in such conditions that the original condition of the device cannot be affected by it. In the case of devices placed on the market in sterile condition, it shall be presumed that the original condition of the device is adversely affected if the

package that shall ensure the sterile condition is opened, damaged or otherwise negatively affected by the repackaging.

3. A distributor or importer who carries out any of the activities mentioned in points (a) and (b) of paragraph 2 shall indicate the activity carried out together with his name, registered trade name or registered trade mark and the address at which he can be contacted and his location can be established on the device or, where that is not possible, on its packaging or in a document accompanying the device.

He shall ensure that he has in place a quality management system that includes procedures which ensure that the translation of information is accurate and up-to-date, and that the activities mentioned in points (a) and (b) of paragraph 2 are performed by means and under conditions that preserve the original condition of the device and that the packaging of the repackaged device is not defective, of poor quality or untidy. Part of the quality management system shall be procedures ensuring that the distributor or importer is informed of any corrective action taken by the manufacturer in relation to the device in question in order to respond to safety issues or to bring it in conformity with this Regulation.

4. Prior to making the relabelled or repackaged device available, the distributor or importer referred to in paragraph 3 shall inform the manufacturer and the competent authority of the Member State where he plans to make the device available and, upon request, shall provide them with a sample or a mock-up of the relabelled or repackaged device, including any translated label and instructions for use. He shall submit to the competent authority a certificate, issued by a notified body referred to in Article 27, designated for the type of devices that are subject to activities mentioned in points (a) and (b) of paragraph 2, attesting that the quality management system complies with the requirements laid down in paragraph 3.

Article 15

EU declaration of conformity

1. The EU declaration of conformity shall state that fulfilment of the requirements specified in this Regulation has been demonstrated. It shall be continuously updated. The minimum content of the EU declaration of conformity is set out in Annex III. It shall be translated into the official Union language or languages required by the Member State(s) in which the device is made available.

2. Where, concerning aspects not covered by this Regulation, devices are subject to other Union legislation which also requires a declaration of conformity by the manufacturer that fulfilment of the requirements of that legislation has been demonstrated, a single EU declaration of conformity shall be drawn up in respect of all Union acts applicable to the device containing all information required for identification of the Union legislation to which the declaration relates.

3. By drawing up the EU declaration of conformity, the manufacturer shall assume responsibility for compliance with the requirements of this Regulation and all other Union legislation applicable to the device.

4. The Commission shall be empowered to adopt delegated acts in accordance with Article 85 amending or supplementing the minimum content of the EU declaration of conformity set out in Annex III in the light of technical progress.

Article 16

CE marking of conformity

1. Devices, other than devices for performance evaluation, considered to be in conformity with the requirements of this Regulation shall bear the CE marking of conformity, as presented in Annex IV.

2. The CE marking shall be subject to the general principles set out in Article 30 of Regulation (EC) No 765/2008.

3. The CE marking shall be affixed visibly, legibly and indelibly to the device or its sterile pack. Where that is not possible or not warranted on account of the nature of the device, it shall be affixed to the packaging. The CE marking shall also appear in the instructions for use and on the sales packaging where those are provided.

4. The CE marking shall be affixed before the device is placed on the market. It may be followed by a pictogram or any other mark indicating a special risk or use.

5. Where applicable, the CE marking shall be followed by the identification number of the notified body responsible for the conformity assessment procedures set out in Article 40. The identification number shall also be indicated in any promotional material which mentions that a device fulfils the legal requirements for CE marking.

6. Where devices are subject to other Union legislation concerning other aspects which also provide for the affixing of the CE marking, the CE marking shall indicate that the devices also fulfil the provisions of the other legislation.

Article 17

Devices for special purposes

1. Member States shall not create any obstacle to devices for performance evaluation which are supplied for that purpose to laboratories or other institutions, if they meet the conditions laid down in Articles 48 to 58.

2. Those devices shall not bear the CE marking, with the exception of the devices referred to in Article 52.

3. At trade fairs, exhibitions, demonstrations or similar events, Member States shall not create any obstacle to the showing of devices which do not comply with this Regulation, provided such devices are not used on specimens taken from the participants and a visible sign clearly indicates that such devices are intended for presentation or demonstration purposes only and cannot be made available until they have been made to comply with this Regulation.

Article 18

Systems and procedure packs

1. Any natural or legal person shall draw up a statement referred to in paragraph 2 if he puts devices bearing the CE marking together with the following other devices or products, in accordance with the intended purpose of the devices or other products and within the limits of use specified by their manufacturers, in order to place them on the market as a system or procedure pack:

   – other devices bearing the CE marking;

– medical devices bearing the CE marking in conformity with Regulation (EU) [Ref. of future Regulation on medical devices];

– other products which are in conformity with the legislation applicable to those products.

2. In the statement, the person referred to in paragraph 1 shall declare the following:

(a) that he verified the mutual compatibility of the devices and, if applicable other products, in accordance with the manufacturers' instructions and has carried out his operations in accordance with those instructions;

(b) that he packaged the system or procedure pack and supplied relevant information to users incorporating the information to be supplied by the manufacturers of the devices or other products which have been put together;

(c) that the activity of putting devices and, if applicable, other products together as a system or procedure pack was subject to appropriate methods of internal monitoring, verification and validation.

3. Any natural or legal person who sterilises systems or procedure packs referred to in paragraph 1 for the purpose of placing them on the market shall, at his choice, follow one of the procedures referred to in Annex VIII or in Annex X. The application of those Annexes and the involvement of the notified body shall be limited to the aspects of the procedure relating to ensuring sterility until the sterile package is opened or damaged. The person shall draw up a statement declaring that the sterilisation has been carried out in accordance with the manufacturer's instructions.

4. Where the system or procedure pack incorporate devices which do not bear the CE marking or where the chosen combination of devices is not compatible in view of their original intended purpose, the system or procedure pack shall be treated as a device in its own right and shall be subjected to the relevant conformity assessment procedure pursuant to Article 40.

5. The systems or procedure packs referred to in paragraph 1 shall not themselves bear an additional CE marking but they shall bear the name, registered trade name or registered trade mark of the person referred to in paragraph 1 as well as the address at which he can be contacted and his location can be established. Systems or procedure packs shall be accompanied by the information referred to in Section 17 of Annex I. The statement referred to in paragraph 2 of this Article shall be kept at the disposal of the competent authorities, after the system or procedure pack has been put together, for the period that is applicable to the devices put together in accordance with Article 8(4). Where these periods differ, the longest period shall apply.

Article 19

Parts and components

1. Any natural or legal person who makes available on the market an article intended specifically to replace an identical or similar integral part or component of a device that is defective or worn in order to maintain or re-establish the function of the device, without significantly changing its performance or safety characteristics, shall ensure that the article does not adversely affect the safety and performance of the device. Substantiating evidence shall be kept available to the competent authorities of the Member States.

2. An article that is intended specifically to replace a part or component of a device and that significantly changes the performance or safety characteristics of the device shall be considered a device.

Article 20

Free movement

Member States shall not refuse, prohibit or restrict the making available or putting into service within their territory of devices which comply with the requirements of this Regulation.

Chapter III
Identification and traceability of devices, registration of devices and of economic operators, summary of safety and performance, European databank on medical devices

Article 21

Identification within the supply chain

For devices, other than devices for performance evaluation, economic operators shall be able to identify the following, for the period referred to in Article 8(4):

(a) any economic operator to whom they have supplied a device;

(b) any economic operator who has supplied them with a device;

(c) any health institution or healthcare professional to whom they have supplied a device.

Upon request, they shall inform the competent authorities thereof.

Article 22

Unique device identification system

1. For devices, other than devices for performance evaluation, a system for Unique Device Identification shall be put in place in the Union. The UDI system shall allow the identification and traceability of devices and shall consist of the following:

   (a) production of a UDI that comprises the following:

      (i) a device identifier specific to a manufacturer and a device model, providing access to the information laid down in Part B of Annex V;

      (ii) a production identifier that identifies data related to the unit of device production.

   (b) placement of the UDI on the label of the device;

   (c) storage of the UDI by the economic operators and the health institutions through electronic means;

   (d) establishment of an electronic system on UDI.

2. The Commission shall designate one or several entities that operate a system for assignment of UDIs pursuant to this Regulation and that satisfy all of the following criteria:

(a) the entity is an organisation with legal personality;

(b) its system for the assignment of UDIs is adequate to identify a device through its distribution and use in accordance with the requirements of this Regulation;

(c) its system for the assignment of UDIs conforms to the relevant international standards;

(d) the entity gives access to its system for the assignment of UDIs to all interested users according to a set of predetermined and transparent terms and conditions;

(e) the entity undertakes the following:

(i) to operate its system for the assignment of UDIs for the period to be determined in the designation which shall at least be three years after its designation;

(ii) to make available to the Commission and to the Member States, upon request, information concerning its system for the assignment of UDIs and concerning manufacturers that place an UDI on the label of their device in accordance with the entity's system;

(iii) to remain in compliance with the criteria for designation and the terms of designation during the period for which it is designated.

3. Before placing a device on the market, the manufacturer shall assign to the device a UDI provided by an entity designated by the Commission in accordance with paragraph 2, if that device belongs to the devices, categories or groups of devices determined by a measure referred to in point (a) of paragraph 7.

4. The UDI shall be placed on the label of the device, in accordance with the conditions laid down by a measure referred to in point (c) of paragraph 7. It shall be used for reporting serious incidents and field safety corrective actions in accordance with Article 59. The device identifier shall appear on the EU declaration of conformity referred to in Article 15 and in the technical documentation referred to in Annex II.

5. Economic operators and health institutions shall store and keep, by electronic means, the device identifier and the production identifier of the devices which they have supplied or they have been supplied with, if they belong to the devices, categories or groups of devices determined by a measure referred to in point (a) of paragraph 7.

6. The Commission, in cooperation with the Member States, shall set up and manage an electronic system on UDI to collate and process the information mentioned in Part B of Annex V. This information shall be accessible to the public.

7. The Commission shall be empowered to adopt delegated acts in accordance with Article 85:

(a) determining the devices, categories or groups of devices, whose identification shall be based on the UDI system, as set out in paragraphs 1 to 6, and the timelines for implementing this. Following a risk-based approach, implementation of the UDI system shall be gradual, starting with devices falling in the highest risk class;

(b) specifying the data to be included in the production identifier which, following a risk-based approach, may vary depending on the risk class of the device;

(c) defining the obligations of economic operators, of health institutions and of professional users, in particular regarding allocation of the numeric or

alphanumeric characters, placement of the UDI on the label, storage of information in the electronic system on UDI, and use of the UDI in documentation and reporting related to the device provided for in this Regulation;

(d) amending or supplementing the list of information set out in Part B of Annex V in the light of technical progress.

8. When adopting the measures referred to in paragraph 7, the Commission shall take into account the following:

(a) the protection of personal data;

(b) the legitimate interest in protecting commercially sensitive information;

(c) the risk-based approach;

(d) the cost-effectiveness of the measures;

(e) the convergence of UDI systems developed at international level.

Article 23

Electronic system on registration of devices and economic operators

1. The Commission, in collaboration with the Member States, shall set up and manage an electronic system to collate and process information that is necessary and proportionate to describe and identify the device and to identify the manufacturer and, where applicable, the authorised representative and the importer. The details regarding the information to be submitted by the economic operators are laid down in Part A of Annex V.

2. Before a device, other than a device for performance evaluation, is placed on the market the manufacturer or his authorised representative shall submit to the electronic system the information referred to in paragraph 1.

3. Within one week after placing a device, other than a device for performance evaluation, on the market, importers shall submit to the electronic system the information referred to in paragraph 1.

4. Within one week of any change occurring in relation to the information referred to in paragraph 1, the relevant economic operator shall update the data in the electronic system.

5. Not later than two years after submission of the information in accordance with paragraphs 2 and 3, and then every second year, the relevant economic operator shall confirm the accuracy of the data. In the event of failure to confirm within six months of the due date, any Member State may take measures to suspend or otherwise restrict the making available of the device in question within its territory until the obligation referred to in this paragraph is complied with.

6. The data contained in the electronic system shall be accessible to the public.

7. The Commission shall be empowered to adopt delegated acts in accordance with Article 85 amending the list of information to be submitted as set out in Part A of Annex V in the light of technical progress.

Article 24

Summary of safety and performance

1. In the case of devices classified as class C and D, other than devices for performance evaluation, the manufacturer shall draw up a summary of safety and performance. It shall be written in a way that is clear to the intended user. The draft of this summary shall be part of the documentation to be submitted to the notified body involved in the conformity assessment in accordance with Article 40 and shall be validated by that body.

2. The Commission may, by means of implementing acts, set out the form and the presentation of the data elements to be included in the summary of safety and performance. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 84(2).

Article 25

European databank

The Commission shall develop and manage the European databank on medical devices (Eudamed) in accordance with the conditions and modalities established by Article 27 of Regulation (EU) [Ref. of future Regulation on medical devices].

Eudamed shall include the following as integral parts:

(a) the electronic system on UDI referred to in Article 22;

(b) the electronic system on registration of devices and economic operators referred to in Article 23;

(c) the electronic system on information on certificates referred to in Article 43(4);

(d) the electronic system on interventional clinical performance studies and clinical performance studies involving risks for the subjects set up in Article 51;

(e) the electronic system on vigilance referred to in Article 60;

(f) the electronic system on market surveillance referred to in Article 66.

Chapter IV
Notified Bodies

Article 26

National authorities responsible for notified bodies

1. A Member State that intends to designate a conformity assessment body as a notified body, or has designated a notified body, to carry out third-party conformity assessment tasks under this Regulation shall designate an authority that shall be responsible for setting up and carrying out the necessary procedures for the assessment, designation and notification of conformity assessment bodies and for the monitoring of notified bodies, including subcontractors or subsidiaries of those bodies, hereinafter referred to as the 'national authority responsible for notified bodies'.

2. The national authority responsible for notified bodies shall be established, organised and operated so as to safeguard the objectivity and impartiality of its activities and to avoid any conflicts of interest with conformity assessment bodies.

3. It shall be organised so that each decision relating to notification of a conformity assessment body is taken by personnel different from those who carried out the assessment of the conformity assessment body.

4. It shall not perform any activities that conformity assessment bodies perform nor provide consultancy services on a commercial or competitive basis.

5. The national authority responsible for notified bodies shall safeguard the confidentiality of the information it obtains. However, it shall exchange information on a notified body with other Member States and the Commission.

6. The national authority responsible for notified bodies shall have a sufficient number of competent personnel at its disposal for the proper performance of its tasks.

Without prejudice to Article 31(3), where a national authority is responsible for the designation of notified bodies in the field of products other than *in vitro* diagnostic medical devices, the competent authority for *in vitro* diagnostic medical devices shall be consulted on all aspects specifically related to such devices.

7. Member States shall provide the Commission and the other Member States with information on their procedures for the assessment, designation and notification of conformity assessment bodies and for the monitoring of notified bodies, and of any changes thereto.

8. The national authority responsible for notified bodies shall be peer-reviewed every second year. The peer-review shall include an on-site visit to a conformity assessment body or a notified body under the responsibility of the reviewed authority. In the case referred to in the second subparagraph of paragraph 6, the competent authority for medical devices shall participate in the peer-review.

The Member States shall draw up the annual plan for the peer-review, ensuring an appropriate rotation in respect of reviewing and reviewed authorities, and submit it to the Commission. The Commission may participate in the review. The outcome of the peer-review shall be communicated to all Member States and to the Commission and a summary of the outcome shall be made publicly available.

Article 27

Requirements relating to notified bodies

1. Notified bodies shall satisfy the organisational and general requirements and the quality management, resource and process requirements that are necessary to fulfil their tasks for which they are designated in accordance with this Regulation. Minimum requirements to be met by notified bodies are set out in Annex VI.

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 85 amending or supplementing the minimum requirements in Annex VI, in the light of technical progress and considering the minimum requirements needed for the assessment of specific devices, or categories or groups of devices

Article 28

Subsidiaries and subcontracting

1. Where a notified body subcontracts specific tasks connected with conformity assessment or has recourse to a subsidiary for specific tasks connected with conformity assessment, it shall verify that the subcontractor or the subsidiary meets the relevant requirements set out in Annex VI and shall inform the national authority responsible for notified bodies accordingly.

2. Notified bodies shall take full responsibility for the tasks performed on their behalf by subcontractors or subsidiaries.

3. Conformity assessment activities may be subcontracted or carried out by a subsidiary only with the agreement of the legal or natural person that applied for conformity assessment.

4. Notified bodies shall keep at the disposal of the national authority responsible for notified bodies the relevant documents concerning the verification of the qualifications of the subcontractor or the subsidiary and the work carried out by them under this Regulation.

Article 29

Application by a conformity assessment body for notification

1. A conformity assessment body shall submit an application for notification to the national authority responsible for notified bodies of the Member State in which it is established.

2. The application shall specify the conformity assessment activities, the conformity assessment procedures and the devices for which the body claims to be competent, supported by documentation proving compliance with all the requirements set out in Annex VI.

   In respect of the organisational and general requirements and the quality management requirements set out in Sections 1 and 2 of Annex VI, the relevant documentation may be submitted in form of a valid certificate and the corresponding evaluation report delivered by a national accreditation body in accordance with Regulation (EC) No 765/2008. The conformity assessment body shall be presumed to be in conformity with the requirements covered by the certificate delivered by such accreditation body.

3. After being designated, the notified body shall update the documentation referred to in paragraph 2 whenever relevant changes occur in order to enable the national authority responsible for notified bodies to monitor and verify continuous compliance with all the requirements set out in Annex VI.

Article 30

Assessment of the application

1. The national authority responsible for notified bodies shall check that the application referred to in Article 29 is complete and draw up a preliminary assessment report.

2. It shall submit the preliminary assessment report to the Commission which shall immediately transmit it to the Medical Device Coordination Group ('MDCG')

referred to in Article 76. Upon request by the Commission, the report shall be submitted by the authority in up to three official Union languages.

3. Within 14 days of the submission referred to in paragraph 2, the Commission shall designate a joint assessment team, made up of at least two experts chosen from a list of experts who are qualified in the assessment of conformity assessment bodies. The list shall be drawn up by the Commission in cooperation with the MDCG. At least one of these experts shall be a representative of the Commission who shall lead the joint assessment team.

4. Within 90 days after designation of the joint assessment team, the national authority responsible for notified bodies and the joint assessment team shall review the documentation submitted with the application in accordance with Article 29 and conduct an on-site assessment of the applicant conformity assessment body and, where relevant, of any subsidiary or sub-contractor, located inside or outside the Union, to be involved in the conformity assessment process. Such on-site assessment shall not cover requirements for which the applicant conformity assessment body has received a certificate delivered by the national accreditation body as referred to in Article 29(2), unless the Commission representative mentioned in Article 30(3) requests the on-site assessment.

   Findings regarding non-compliance of a body with the requirements set out in Annex VI shall be raised during the assessment process and discussed between the national authority responsible for notified bodies and the joint assessment team with a view to finding common agreement with respect to the assessment of the application. Divergent opinions shall be identified in the assessment report of the national authority responsible.

5. The national authority responsible for notified bodies shall submit its assessment report and its draft notification to the Commission which shall immediately transmit those documents to the MDCG and to the members of the joint assessment team. Upon request by the Commission, those documents shall be submitted by the authority in up to three official Union languages.

6. The joint assessment team shall provide its opinion regarding the assessment report and the draft notification within 21 days of receipt of those documents and the Commission shall immediately submit this opinion to the MDCG. Within 21 days after receipt of the opinion of the joint assessment team, the MDCG shall issue a recommendation with regard to the draft notification which the relevant national authority shall duly take into consideration for its decision on the designation of the notified body.

7. The Commission may, by means of implementing acts, adopt measures setting out the modalities for the application for notification referred to in Article 29 and the assessment of the application set out in this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 84(3).

Article 31

Notification procedure

1. Member States shall notify the Commission and the other Member States of the conformity assessment bodies they have designated, using the electronic notification tool developed and managed by the Commission.

2. Member States may notify only conformity assessment bodies which satisfy the requirements set out in Annex VI.

3. Where a national authority responsible for notified bodies is responsible for designation of notified bodies in the field of products other than *in vitro* diagnostic medical devices, the competent authority for *in vitro* diagnostic medical devices shall provide, prior to the notification, a positive opinion on the notification and its scope.

4. The notification shall clearly specify the scope of the designation indicating the conformity assessment activities, the conformity assessment procedures and the type of devices which the notified body is authorised to assess.

   The Commission may, by means of implementing acts, set up a list of codes and the corresponding types of devices to define the scope of the designation of notified bodies which the Member States shall indicate in their notification. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 84(2).

5. The notification shall be accompanied by the final assessment report of the national authority responsible for notified bodies, the opinion of the joint assessment team and the recommendation of the MDCG. Where the notifying Member State does not follow the recommendation of the MDCG, it shall provide a duly substantiated justification.

6. The notifying Member State shall provide the Commission and the other Member States with documentary evidence regarding the arrangements in place to ensure that the notified body will be monitored regularly and will continue to satisfy the requirements set out in Annex VI. It shall furthermore submit evidence of the availability of competent personnel for monitoring the notified body in accordance with Article 26(6).

7. Within 28 days of a notification, a Member State or the Commission may raise written objections, setting out its arguments, with regard either to the notified body or to its monitoring by the national authority responsible for notified bodies.

8. When a Member State or the Commission raises objections in accordance with paragraph 7, the effect of the notification shall be suspended. In this case, the Commission shall bring the matter before the MDCG within 15 days after expiry of the period referred to in paragraph 7. After consulting the parties involved, the MDCG shall give its opinion at the latest within 28 days after the matter has been brought before it. If the notifying Member State does not agree with the opinion of the MDCG, it may request the Commission to give its opinion.

9. Where no objection is raised in accordance with paragraph 7 or where the MDCG or the Commission, after having been consulted in accordance with paragraph 8, is of the opinion that the notification may be accepted fully or partially, the Commission shall publish the notification accordingly.

10. The notification shall become valid the day after its publication in the database of notified bodies developed and managed by the Commission. The published notification shall determine the scope of lawful activity of the notified body.

Article 32

Identification number and list of notified bodies

1. The Commission shall assign an identification number to each notified body for which the notification is accepted in accordance with Article 31. It shall assign a single identification number even when the body is notified under several Union acts.

2. The Commission shall make accessible to the public the list of the bodies notified under this Regulation, including the identification numbers that have been assigned to them and the activities for which they have been notified. The Commission shall ensure that the list is kept up to date.

Article 33

Monitoring of notified bodies

1. The national authority responsible for notified bodies shall continuously monitor the notified bodies to ensure ongoing compliance with the requirements set out in Annex VI. The notified bodies shall, on request, supply all relevant information and documents required to enable the authority to verify compliance with those criteria.

   Notified bodies shall, without delay, inform the national authority responsible for notified bodies of any changes, in particular regarding their personnel, facilities, subsidiaries or subcontractors, which may affect compliance with the requirements set out in Annex VI or their ability to conduct the conformity assessment procedures relating to the devices for which they have been designated.

2. Notified bodies shall respond without delay to requests relating to conformity assessments they have carried out, submitted by their or another Member State's authority or by the Commission. The national authority responsible for notified bodies of the Member State in which the body is established shall enforce requests submitted by authorities of any other Member State or by the Commission unless there is a legitimate reason for not doing so in which case both sides may consult the MDCG. The notified body or their national authority responsible for notified bodies may request that any information transmitted to the authorities of another Member State or to the Commission shall be treated as confidential.

3. At least once a year, the national authority responsible for notified bodies shall assess whether each notified body under its responsibility still satisfies the requirements set out in Annex VI. This assessment shall include an on-site visit to each notified body.

4. Three years after notification of a notified body, and again every third year thereafter, the assessment to determine whether the notified body still satisfies the requirements set out in Annex VI shall be conducted by the national authority responsible for notified bodies of the Member State in which the body is established and a joint assessment team designated in accordance with the procedure described in Article 30(3) and (4). At the request of the Commission or of a Member State, the MDCG may initiate the assessment process described in this paragraph at any time when there is reasonable concern about the ongoing compliance of a notified body with the requirements set out in Annex VI.

5. The Member States shall report to the Commission and to the other Member States, at least once a year, on their monitoring activities. This report shall contain a summary which shall be made publicly available.

Article 34

Changes to notifications

1. The Commission and the other Member States shall be notified of any subsequent relevant changes to the notification. The procedures described in Article 30(2) to (6) and in Article 31 shall apply to changes where they entail extension of the scope of the notification. In all other cases, the Commission shall immediately publish the amended notification in the electronic notification tool referred to in Article 31(10).

2. Where a national authority responsible for notified bodies has ascertained that a notified body no longer meets the requirements set out in Annex VI, or that it is failing to fulfil its obligations, the authority shall suspend, restrict, or fully or partially withdraw the notification, depending on the seriousness of the failure to meet those requirements or fulfil those obligations. A suspension shall not exceed a period of one year, renewable once for the same period. Where the notified body has ceased its activity, the national authority responsible for notified bodies shall withdraw the notification.

   The national authority responsible for notified bodies shall immediately inform the Commission and the other Member States of any suspension, restriction or withdrawal of a notification.

3. In the event of restriction, suspension or withdrawal of a notification, the Member State shall take appropriate steps to ensure that the files of the notified body concerned are either processed by another notified body or kept available for the national authorities responsible for notified bodies and for market surveillance at their request.

4. The national authority responsible for notified bodies shall assess whether the reasons which gave rise to the change to the notification have an impact on the certificates issued by the notified body and, within three months after having notified the changes to the notification, shall submit a report on its findings to the Commission and the other Member States. Where necessary to ensure the safety of devices on the market, that authority shall instruct the notified body to suspend or withdraw, within a reasonable period of time determined by the authority, any certificates which were unduly issued. If the notified body fails to do so within the determined period of time, or has ceased its activity, the national authority responsible for notified bodies itself shall suspend or withdraw the certificates unduly issued.

5. The certificates, other than those unduly issued, which were issued by the notified body for which the notification has been suspended, restricted or withdrawn shall remain valid in the following circumstances:

   (a) in the case of suspension of a notification: on condition that, within three months of the suspension, either the competent authority for *in vitro* diagnostic medical devices of the Member State in which the manufacturer of the device covered by the certificate is established, or another notified body responsible for *in vitro* diagnostic medical devices confirms in writing that it is assuming the functions of the notified body during the period of suspension;

   (b) in the case of restriction or withdrawal of a notification: for a period of three months after the restriction or withdrawal. The competent authority for *in vitro* diagnostic medical devices of the Member State in which the manufacturer of

the device covered by the certificate is established may extend the validity of the certificates for further periods of three months, which altogether may not exceed twelve months, provided it is assuming the functions of the notified body during this period.

The authority or the notified body assuming the functions of the notified body affected by the change of notification shall immediately inform the Commission, the other Member States and the other notified bodies thereof.

Article 35

Challenge to the competence of notified bodies

1. The Commission shall investigate all cases where concerns have been brought to its attention regarding the continued fulfilment by a notified body of the requirements set out in Annex VI or the obligations to which it is subject. It may also commence such investigations on its own initiative.

2. The notifying Member State shall provide the Commission, on request, with all information regarding the notification of the notified body concerned.

3. Where the Commission ascertains that a notified body no longer meets the requirements for its notification, it shall inform the notifying Member State accordingly and request it to take the necessary corrective measures, including the suspension, restriction or withdrawal of the notification if necessary.

   Where the Member State fails to take the necessary corrective measures, the Commission may, by means of implementing acts, suspend, restrict or withdraw the notification. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 84(3). It shall notify the Member State concerned of its decision and update the database and list of notified bodies.

Article 36

Exchange of experience between national authorities responsible for notified bodies

The Commission shall provide for the organisation of exchange of experience and coordination of administrative practice between the national authorities responsible for notified bodies under this Regulation.

Article 37

Coordination of notified bodies

The Commission shall ensure that appropriate coordination and cooperation between notified bodies is put in place and operated in the form of the coordination group of notified bodies referred to in Article 39 of Regulation [Ref. of future Regulation on medical devices].

The bodies notified under this Regulation shall participate in the work of that group.

Article 38

Fees

1. The Member State where the bodies are established shall levy fees on applicant conformity assessment bodies and on notified bodies. These fees shall, wholly or

partly, cover the costs relating to the activities exercised by the national authorities responsible for notified bodies in accordance with this Regulation.

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 85 setting out the structure and the level of the fees referred to in paragraph 1, taking into account the objectives of protection of human health and safety, support of innovation and cost-effectiveness. Particular attention shall be paid to the interests of notified bodies that received a certificate delivered by the national accreditation body as referred to in Article 29(2) and notified bodies that are small and medium-sized enterprises as defined by the Commission Recommendation 2003/361/EC[38].

Chapter V
Classification and conformity assessment

SECTION 1 – CLASSIFICATION

Article 39

Classification of in vitro diagnostic medical devices

1. Devices shall be divided into class A, B, C and D, taking into account their intended purpose and inherent risks. Classification shall be carried out in accordance with the classification criteria set out in Annex VII.

2. Any dispute between the manufacturer and the notified body concerned, arising from the application of the classification criteria, shall be referred for a decision to the competent authority of the Member State where the manufacturer has his registered place of business. In cases where the manufacturer has no registered place of business in the Union and has not yet designated an authorised representative, the matter shall be referred to the competent authority of the Member State where the authorised representative referred to in the last indent of point (b) of Section 3.2. of Annex VIII has his registered place of business.

   At least 14 days prior to any decision, the competent authority shall notify the MDCG and the Commission of its envisaged decision.

3. The Commission may, at the request of a Member State or on its own initiative, by means of implementing acts, decide on the application of the classification criteria set out in Annex VII to a given device, or category or group of devices with a view to determining their classification.

   Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 84(3).

4. In the light of technical progress and any information which becomes available in the course of the vigilance and market surveillance activities described in Articles 59 to 73, the Commission shall be empowered to adopt delegated acts in accordance with Article 85 as regards the following:

   (a) deciding that a device, or category or group of devices, should, by way of derogation from the classification criteria set out in Annex VII, be classified in another class,

   (b) amending or supplementing the classification criteria set out in Annex VII.

[38] OJ L 124, 20.5.2003, p. 36

SECTION 2 – CONFORMITY ASSESSMENT

Article 40

Conformity assessment procedures

1. Prior to placing a device on the market, manufacturers shall undertake an assessment of the conformity of that device. The conformity assessment procedures are set out in Annexes VIII to X.

2. Manufacturers of devices classified as class D, other than devices for performance evaluation, shall be subject to a conformity assessment based on full quality assurance, design dossier examination and batch verification, as specified in Annex VIII. Alternatively, the manufacturer may choose to apply a conformity assessment based on type examination as specified in Annex IX, coupled with a conformity assessment based on production quality assurance including batch verification, as specified in Annex X.

   In addition, where a reference laboratory is designated in accordance with Article 78, the notified body performing the conformity assessment shall request that reference laboratory to verify compliance of the device with the applicable CTS, when available, or with other solutions chosen by the manufacturer to ensure a level of safety and performance that is at least equivalent, as specified in Section 5.4 of Annex VIII and in Section 3.5 of Annex IX.

   For companion diagnostics intended to be used to assess the patient eligibility for treatment with a specific medicinal product, the notified body shall consult one of the competent authorities designated by the Member States in accordance with Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use [39] or the European Medicines Agency (EMA) in accordance with the procedures set out in Section 6.2 of Annex VIII and in Section 3.6 of Annex IX.

3. Manufacturers of devices classified as class C, other than devices for performance evaluation, shall be subject to a conformity assessment based on full quality assurance, as specified in Annex VIII, with assessment of the design documentation within the technical documentation on a representative basis. Alternatively, the manufacturer may choose to apply a conformity assessment based on type examination, as specified in Annex IX coupled with conformity assessment based on production quality assurance, as specified in Annex X.

   In addition, for devices for self-testing and near-patient testing, the manufacturer shall fulfil the supplementary requirements set out in Section 6.1 of Annex VIII or in Section 2 of Annex IX.

   For companion diagnostic intended to be used to assess the patient eligibility to a treatment with a specific medicinal product, the notified body shall consult one of the competent authorities designated by the Member States in accordance with Directive 2001/83/EC or the European Medicines Agency (EMA) in accordance with the procedures set out in Section 6.2 of Annex VIII and in Section 3.6 of Annex IX.

[39] OJ L 311, 28.11.2001, p. 67.

4. Manufacturers of devices classified as class B, other than devices for performance evaluation, shall be subject to a conformity assessment based on full quality assurance, as specified in Annex VIII.

In addition, for devices for self-testing and near-patient testing, the manufacturer shall fulfil the supplementary requirements set out in Section 6.1 of Annex VIII.

5. Manufacturers of devices classified as class A, other than devices for performance evaluation, shall declare the conformity of their products by issuing the EU declaration of conformity referred to in Article 15, after drawing up the technical documentation set out in Annex II.

However, if the devices are intended for near-patient testing, or if they are placed on the market in sterile condition or have a measuring function, the manufacturer shall apply the procedures set out in Annex VIII or in Annex X. Involvement of the notified body shall be limited:

(a) in the case of devices for near-patient testing, to the requirements set out in Section 6.1 of Annex VIII,

(b) in the case of devices placed on the market in sterile condition, to the aspects of manufacture concerned with securing and maintaining sterile conditions,

(c) in the case of devices with a measuring function, to the aspects of manufacture concerned with the conformity of the devices with the metrological requirements.

6. Manufacturers may choose to apply a conformity assessment procedure applicable to devices of a higher class than the device in question.

7. Devices for performance evaluation shall be subject to the requirements set out in Articles 48 to 58.

8. The Member State in which the notified body is established may determine that all or certain documents, including the technical documentation, audit, assessment and inspection reports, relating to the procedures referred to in paragraphs 1 to 6 shall be available in an official Union language. Otherwise they shall be available in an official Union language acceptable to the notified body.

9. The Commission may, by means of implementing acts, specify the modalities and the procedural aspects with a view to ensuring harmonised application of the conformity assessment procedures by the notified bodies, for any of the following aspects:

– the frequency and the sampling basis of the assessment of the design documentation within the technical documentation on a representative basis as set out in Sections 3.3.(c) and 4.5 of Annex VIII, in the case of devices classified as class C;

– the minimum frequency of unannounced factory inspections and sample checks to be conducted by notified bodies in accordance with Section 4.4 of Annex VIII, taking into account the risk-class and the type of device;

– the frequency of samples of the manufactured devices or batches of devices classified as class D to be sent to a reference laboratory designated under Article 78 in accordance with Section 5.7 of Annex VIII and Section 5.1 of Annex X, or

– the physical, laboratory or other tests to be carried out by notified bodies in the context of sample checks, design dossier examination and type examination in accordance with Sections 4.4 and 5.3 of Annex VIII and Sections 3.2 and 3.3 of Annex IX.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 84(3).

10. In the light of technical progress and any information which becomes available in the course of the designation or monitoring of notified bodies set out in Articles 26 to 38, or of the vigilance and market surveillance activities described in Articles 59 to 73, the Commission shall be empowered to adopt delegated acts in accordance with Article 85 amending or supplementing the conformity assessment procedures set out in Annexes VIII to X.

Article 41

Involvement of notified bodies

1. Where the conformity assessment procedure requires the involvement of a notified body, the manufacturer may apply to a notified body of his choice, provided that the body is notified for the conformity assessment activities, the conformity assessment procedures and the devices concerned. An application may not be lodged in parallel with more than one notified body for the same conformity assessment activity.

2. The notified body concerned shall inform the other notified bodies of any manufacturer who withdraws his application prior to the notified body's decision regarding the conformity assessment.

3. The notified body may require any information or data from the manufacturer which is necessary in order to properly conduct the chosen conformity assessment procedure.

4. Notified bodies and the personnel of notified bodies shall carry out their conformity assessment activities with the highest degree of professional integrity and the requisite technical competence in the specific field and shall be free from all pressures and inducements, particularly financial, which might influence their judgment or the results of their conformity assessment activities, especially as regards persons or groups with an interest in the results of those activities.

Article 42

Mechanism for scrutiny of certain conformity assessments

1. Notified bodies shall notify the Commission of applications for conformity assessments for devices classified as class D, with the exception of applications to supplement or renew existing certificates. The notification shall be accompanied by the draft instructions for use referred to in Section 17.3 of Annex I and the draft summary of safety and performance referred to in Article 24. In its notification the notified body shall indicate the estimated date by which the conformity assessment is to be completed. The Commission shall immediately transmit the notification and the accompanying documents to the MDCG.

2. Within 28 days of receipt of the information referred to in paragraph 1, the MDCG may request the notified body to submit a summary of the preliminary conformity

assessment prior to issuing a certificate. Upon suggestion by any of its members or by the Commission, the MDCG shall decide on making such request in accordance with the procedure set out in Article 78(4) of Regulation [Ref. of future Regulation on medical devices]. In its request the MDCG shall indicate the scientifically valid health reason for having selected the specific file for submission of a summary of the preliminary conformity assessment. When selecting a specific file for submission, the principle of equal treatment shall be duly taken into account.

Within 5 days after receipt of the request by the MDCG, the notified body shall inform the manufacturer thereof.

3. The MDCG may submit comments on the summary of the preliminary conformity assessment at the latest 60 days after submission of this summary. Within that period and at the latest 30 days after submission, the MDCG may request the submission of additional information that for scientifically valid grounds are necessary for the analysis of the notified body's preliminary conformity assessment. This may include a request for samples or an on-site visit to the manufacturer's premises. Until submission of the additional information requested, the period for comments referred to in the first sentence of this subparagraph shall be suspended. Subsequent requests for additional information from the MDCG shall not suspend the period for the submission of comments.

4. The notified body shall give due consideration to any comments received in accordance with paragraph 3. It shall convey to the Commission an explanation of how they have been taken into consideration, including any due justification for not following the comments received, and its final decision regarding the conformity assessment in question. The Commission shall immediately transmit this information to the MDCG.

5. Where deemed necessary for the protection of patient safety and public health, the Commission may determine, by means of implementing acts, specific categories or groups of devices, other than devices classified as class D, to which paragraphs 1 to 4 shall apply during a predefined period of time. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 84(3).

   Measures pursuant to this paragraph may be justified only by one or more of the following criteria:

   (a) the novelty of the device or of the technology on which it is based and the significant clinical or public health impact thereof;

   (b) an adverse change in the risk-benefit profile of a specific category or group of devices due to scientifically valid health concerns in respect of components or source material or in respect of the impact on health in case of failure;

   (c) an increased rate of serious incidents reported in accordance with Article 59 in respect of a specific category or group of devices;

   (d) significant discrepancies in the conformity assessments carried out by different notified bodies on substantially similar devices;

   (e) public health concerns regarding a specific category or group of devices or the technology on which they are based.

6. The Commission shall make a summary of the comments submitted in accordance with paragraph 3 and the outcome of the conformity assessment procedure accessible

to the public. It shall not disclose any personal data or information of commercially confidential nature.

7. The Commission shall set up the technical infrastructure for the data-exchange by an electronic means between notified bodies and MDCG for the purposes of this Article.

8. The Commission, by means of implementing acts, may adopt the modalities and the procedural aspects concerning the submission and analysis of the summary of the preliminary conformity assessment in accordance with paragraphs 2 and 3. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 84(3).

Article 43

Certificates

1. The certificates issued by the notified bodies in accordance with Annexes VIII, IX and X shall be in an official Union language determined by the Member State in which the notified body is established or otherwise in an official Union language acceptable to the notified body. The minimum content of the certificates is set out in Annex XI.

2. The certificates shall be valid for the period they indicate, which shall not exceed five years. On application by the manufacturer, the validity of the certificate may be extended for further periods, each not exceeding five years, based on a re-assessment in accordance with the applicable conformity assessment procedures. Any supplement to a certificate shall remain valid as long as the certificate which it supplements is valid.

3. Where a notified body finds that requirements of this Regulation are no longer met by the manufacturer, it shall, taking account of the principle of proportionality, suspend or withdraw the certificate issued or impose any restrictions on it unless compliance with such requirements is ensured by appropriate corrective measures taken by the manufacturer within an appropriate deadline set by the notified body. The notified body shall give the reasons for its decision.

4. The Commission, in collaboration with the Member States, shall set up and manage an electronic system to collate and process information on certificates issued by notified bodies. The notified body shall enter into the electronic system information regarding certificates issued, including amendments and supplements, and information regarding suspended, reinstated, withdrawn or refused certificates and restrictions imposed on certificates. This information shall be accessible to the public.

5. In the light of technical progress, the Commission shall be empowered to adopt delegated acts in accordance with Article 85 amending or supplementing the minimum content of the certificates set out in Annex XI.

Article 44

Voluntary change of notified body

1. In cases where a manufacturer terminates his contract with a notified body and enters into a contract with another notified body in respect of the conformity assessment of the same device, the modalities of the change of notified body shall be clearly

defined in an agreement between the manufacturer, the outgoing notified body and the incoming notified body. This agreement shall address at least the following aspects:

(a) the date of invalidity of certificates issued by the outgoing notified body;

(b) the date until which the identification number of the outgoing notified body may be indicated in the information supplied by the manufacturer, including any promotional material;

(c) the transfer of documents, including confidentiality aspects and property rights;

(d) the date as of which the incoming notified body assumes full responsibility for the conformity assessment tasks.

2. On their date of invalidity, the outgoing notified body shall withdraw the certificates it has issued for the device concerned.

Article 45

Derogation from the conformity assessment procedures

1. By way of derogation from Article 40, any competent authority may authorise, on duly justified request, the placing on the market or putting into service, within the territory of the Member State concerned, of a specific device for which the procedures referred to in Article 40 have not been carried out and use of which is in the interest of public health or patient safety.

2. The Member State shall inform the Commission and the other Member States of any decision to authorise the placing on the market or putting into service of a device in accordance with paragraph 1 where such authorisation is granted for use other than for a single patient.

3. Upon request by a Member State and where this is in the interest of public health or patient safety in more than one Member State, the Commission may, by means of implementing acts, extend for a determined period of time the validity of an authorisation granted by a Member State in accordance with paragraph 1 to the territory of the Union and set the conditions under which the device may be placed on the market or put into service. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 84(3).

On duly justified imperative grounds of urgency relating to the health and safety of humans, the Commission shall adopt immediately applicable implementing acts in accordance with the procedure referred to in Article 84(4).

Article 46

Certificate of free sale

1. For the purpose of export and upon request by a manufacturer, the Member State in which the manufacturer has its registered place of business shall issue a certificate of free sale declaring that the manufacturer is properly established and that the device in question bearing the CE marking in accordance with this Regulation may be legally marketed in the Union. The certificate of free sale shall be valid for the period indicated on it which shall not exceed five years and shall not exceed the validity of the certificate referred to in Article 43 issued for the device in question.

2. The Commission may, by means of implementing acts, establish a model for certificates of free sale taking into account international practice as regards the use of certificates of free sale. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 84(2).

Chapter VI
Clinical evidence

Article 47

General requirements regarding clinical evidence

1. The demonstration of conformity with the general safety and performance requirements set out in Annex I, under normal conditions of use, shall be based on clinical evidence.

2. The clinical evidence shall support the intended purpose of the device as stated by the manufacturer.

3. The clinical evidence shall include all the information supporting the scientific validity of the analyte, the analytical performance and, where applicable, the clinical performance of the device, as described in Section 1 of Part A of Annex XII.

4. Where demonstration of conformity with the general safety and performance requirements based on clinical performance data or parts thereof is not deemed appropriate, adequate justification for any such exception shall be given based on the results of the manufacturer's risk management and on consideration of the characteristics of the device and, in particular, its intended purpose(s), the intended performance and the claims of the manufacturer. The adequacy of demonstration of conformity with the general safety and performance requirements based on the results of analytical performance evaluation alone shall be duly substantiated in the technical documentation referred to in Annex II.

5. The scientific validity data, the analytical performance data and, where applicable, the clinical performance data shall be summarised as part of a clinical evidence report referred to in Section 3 of Part A of Annex XII. The clinical evidence report shall be included or fully referenced in the technical documentation referred to in Annex II relating to the device concerned.

6. The clinical evidence and its documentation shall be updated throughout the life cycle of the device concerned with data obtained from implementation of the manufacturer's post-market surveillance plan referred to in Article 8(6).

7. The manufacturer shall ensure that the device for performance evaluation complies with the general requirements of this Regulation apart from the aspects covered by the performance evaluation and that, with regard to those aspects, every precaution has been taken to protect the health and safety of the patient, user and other persons.

   The manufacturer shall undertake to keep available to the competent authorities and the EU reference laboratories the documentation allowing an understanding of the design, manufacture and performances of the device, including its expected performance, so as to allow assessment of conformity with the requirements of this Regulation. This documentation shall be kept for at least five years after the performance evaluation of the device in question has ended.

Article 48

General requirements regarding clinical performance studies

1. Clinical performance studies shall be subject to this Regulation if they are conducted for one or more of the following purposes:

   (a) to verify that, under normal conditions of use, the devices are designed, manufactured and packaged in such a way that they are suitable for one or more of the specific purposes of an *in vitro* diagnostic medical device referred to in number (2) of Article 2, and achieve the performance intended as specified by the manufacturers;

   (b) to verify that devices achieve the intended benefits to the patient as specified by the manufacturer;

   (c) to determine any limits to the performance of the devices, under normal conditions of use.

2. Clinical performance studies shall be performed in circumstances similar to the normal conditions of use of the device.

3. Where the sponsor is not established in the Union, he shall ensure that a contact person is established in the Union. That contact person shall be the addressee for all communications with the sponsor provided for in this Regulation. Any communication to that contact person shall be considered as communication to the sponsor.

4. All clinical performance studies shall be designed and conducted in a way that the rights, safety and well-being of the subjects participating in such clinical performance studies are protected and that the clinical data generated in the clinical performance study are going to be reliable and robust.

5. All clinical performance studies shall be designed, conducted, recorded and reported in accordance with Section 2 of Annex XII.

6. For interventional clinical performance studies, as defined in number (37) of Article 2, and for other clinical performance studies, where the conduct of the study, including specimen collection, involves invasive procedures or other risks for the subjects of the studies, the requirements set out in Articles 49 to 58 and in Annex XIII shall apply, in addition to the obligations laid down in this Article.

Article 49

Application for interventional clinical performance studies and other clinical performance studies involving risks for the subjects of the studies

1. Before making the first application, the sponsor shall procure from the electronic system referred to in Article 51 a single identification number for a clinical performance study conducted in one site or multiple sites, in one or more than one Member State. The sponsor shall use this single identification number when registering the clinical performance study in accordance with Article 50.

2. The sponsor of a clinical performance study shall submit an application to the Member State(s) in which the study is to be conducted accompanied by the documentation referred to in Annex XIII. Within six days after receipt of the application, the Member State concerned shall notify the sponsor whether the clinical

performance study falls within the scope of this Regulation and whether the application is complete.

Where the Member State has not notified the sponsor within the time period referred to in the first subparagraph, the clinical performance study shall be considered as falling within the scope of this Regulation and the application shall be considered complete.

3. Where the Member State finds that the clinical performance study applied for does not fall within the scope of this Regulation or that the application is not complete, it shall inform the sponsor thereof and shall set a maximum of six days for the sponsor to comment or to complete the application.

Where the sponsor has not provided comments nor completed the application within the time-period referred to in the first subparagraph, the application shall be considered as withdrawn.

Where the Member State has not notified the sponsor according to paragraph 2 within three days following receipt of the comments or of the completed application, the clinical performance study shall be considered as falling within the scope of this Regulation and the application shall be considered complete.

4. For the purposes of this Chapter, the date on which the sponsor is notified in accordance with paragraph 2 shall be the validation date of the application. Where the sponsor is not notified, the validation date shall be the last day of the time periods referred to in paragraphs 2 and 3.

5. The sponsor may start the clinical performance study in the following circumstances:

(a) in the case of devices for performance evaluation classified as class C or D, as soon as the Member State concerned has notified the sponsor of its approval;

(b) in the case of devices for performance evaluation classified as class A or B immediately after the date of application, provided that the Member State concerned has so decided and that evidence is provided that the rights, safety and well-being of the subjects to the clinical performance study are protected;

(c) after the expiry of 35 days after the validation date referred to in paragraph 4, unless the Member State concerned has notified the sponsor within that period of its refusal based on considerations of public health, patient safety or public policy.

6. Member States shall ensure that the persons assessing the application do not have conflicts of interest and that they are independent of the sponsor, the institution of the study site(s) and the investigators involved, as well as free of any other undue influence.

Member States shall ensure that the assessment is done jointly by a reasonable number of persons who collectively have the necessary qualifications and experience. In the assessment, the view of at least one person whose primary area of interest is non-scientific shall be taken into account. The view of at least one patient shall be taken into account.

7. The Commission shall be empowered to adopt delegated acts in accordance with Article 85 amending or supplementing, in the light of technical progress and global regulatory developments, the requirements for the documentation to be submitted

with the application for the clinical performance study that is laid down in Chapter I of Annex XIII.

Article 50

Registration of interventional clinical performance studies and other clinical performance studies involving risks for the subjects of the studies

1. Before commencing the clinical performance study, the sponsor shall enter in the electronic system referred to in Article 51 the following information regarding the clinical performance study:

   (a) the single identification number of the clinical performance study;

   (b) the name and contact details of the sponsor and, if applicable, his contact person established in the Union;

   (c) the name and contact details of the natural or legal person responsible for the manufacture of the device for performance evaluation, if different from the sponsor;

   (d) the description of the device for performance evaluation;

   (e) the description of the comparator(s), if applicable;

   (f) the purpose of the clinical performance study;

   (g) the status of the clinical performance study.

2. Within one week of any change occurring in relation to the information referred to in paragraph 1, the sponsor shall update the relevant data in the electronic system referred to in Article 51.

3. The information shall be accessible to the public, through the electronic system referred to in Article 51, unless, for all or parts of that information, confidentiality of the information is justified on any of the following grounds:

   (a) protection of personal data in accordance with Regulation (EC) No 45/2001,

   (b) protection of commercially sensitive information,

   (c) effective supervision of the conduct of the clinical performance study by the Member State(s) concerned.

4. No personal data of subjects participating in the clinical performance study shall be accessible to the public.

Article 51

Electronic system on interventional clinical performance studies and other clinical performance studies involving risks for the subjects of the studies

1. The Commission shall, in collaboration with the Member States, set up and manage an electronic system on interventional clinical performance studies and other clinical performance studies involving risks for the subjects of the studies to create the single identification numbers for such clinical performance studies referred to in Article 49(1) and to collate and process the following information:

   (a) the registration of clinical performance studies in accordance with Article 50;

(b) the exchange of information between the Member States and between them and the Commission in accordance with Article 54;

(c) the information related to clinical performance studies conducted in more than one Member State in case of a single application in accordance with Article 56;

(d) the reports on serious adverse events and device deficiencies referred to in Article 57(2) in case of single application in accordance with Article 56.

2. When setting up the electronic system referred in paragraph 1, the Commission shall ensure that it is interoperable with the EU database for clinical trials on medicinal products for human use set up in accordance with Article […] of Regulation (EU) No [Ref. of future Regulation on clinical trials]. With the exception of the information referred to in Article 50, the information collated and processed in the electronic system shall be accessible only to the Member States and to the Commission.

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 85 determining which other information regarding clinical performance studies collated and processed in the electronic system shall be publicly accessible to allow interoperability with the EU database for clinical trials on medicinal products for human use set up by Regulation (EU) No [Ref. of future Regulation on clinical trials]. Article 50(3) and (4) shall apply.

Article 52

Interventional clinical performance studies and other clinical performance studies involving risks for the subjects of the studies with devices authorised to bear the CE marking

1. Where a clinical performance study is to be conducted to further assess devices which are authorised in accordance with Article 40 to bear the CE marking and within its intended purpose referred to in the relevant conformity assessment procedure, hereinafter referred to as 'post-market follow-up performance study', the sponsor shall notify the Member States concerned at least 30 days prior to their commencement if the study would submit subjects to additionally invasive or burdensome procedures. Articles 48(1) to (5), 50, 53, 54(1) and 55(1), the first subparagraph of Article 55(2) and the relevant provisions of Annexes XII and XIII shall apply.

2. If the aim of the clinical performance study regarding a device which is authorised in accordance with Article 40 to bear the CE marking is to assess such device for a purpose other than that referred to in the information supplied by the manufacturer in accordance with Section 17 of Annex I and in the relevant conformity assessment procedure, Articles 48 to 58 shall apply.

Article 53

Substantial modifications to interventional clinical performance studies and other clinical performance studies involving risks for the subjects of the studies

1. If the sponsor introduces modifications to a clinical performance study that are likely to have a substantial impact on the safety or rights of the subjects or on the robustness or reliability of the clinical data generated by the study, he shall notify the Member State(s) concerned of the reasons for and the content of those modifications. The notification shall be accompanied by an updated version of the relevant documentation referred to in Annex XIII.

2. The sponsor may implement the modifications referred to in paragraph 1 at the earliest 30 days after notification, unless the Member State concerned has notified the sponsor of its refusal based on considerations of public health, patient safety or public policy.

Article 54

Information exchange between Member States on interventional clinical performance studies and other clinical performance studies involving risks for the subjects of the studies

1. Where a Member State has refused, suspended or terminated a clinical performance study, or has called for a substantial modification or temporary halt of a clinical performance study, or has been notified by the sponsor of the early termination of a clinical performance study on safety grounds, that Member State shall communicate its decision and the grounds therefor to all Member States and the Commission by means of the electronic system referred to in Article 51.

2. Where an application is withdrawn by the sponsor prior to a decision by a Member State that Member State shall inform all the other Member States and the Commission of that fact, by means of the electronic system referred to in Article 51.

Article 55

Information by the sponsor in the event of temporary halt or termination of interventional clinical performance studies or of other clinical performance studies involving risks for the subjects of the studies

1. If the sponsor has temporarily halted a clinical performance study on safety grounds, he shall inform the Member States concerned within 15 days of the temporary halt.

2. The sponsor shall notify each Member State concerned of the end of a clinical performance study in relation to that Member State, providing a justification in the event of early termination. That notification shall be made within 15 days from the end of the clinical performance study in relation to that Member State.

   If the study is conducted in more than one Member State, the sponsor shall notify all Member States concerned of the overall end of the clinical performance study. That notification shall be made within 15 days from the overall end of the clinical performance study.

3. Within one year from the end of the clinical performance study, the sponsor shall submit to the Member States concerned a summary of the results of the clinical performance study in form of a clinical performance study report referred to in Section 2.3.3 of Part A of Annex XII. Where, for scientific reasons, it is not possible to submit the clinical performance study report within one year, it shall be submitted as soon as it is available. In this case, the clinical performance study protocol referred to in Section 2.3.2 of Part A of Annex XII shall specify when the results of the clinical performance study are going to be submitted, together with an explanation.

Article 56

Interventional clinical performance studies and other clinical performance studies involving risks for the subjects of the studies conducted in more than one Member State

1. By means of the electronic system referred to in Article 51, the sponsor of the clinical performance study to be conducted in more than one Member State may submit, for the purpose of Article 49, a single application that, upon receipt, is transmitted electronically to the Member States concerned.

2. In the single application, the sponsor shall propose one of the Member States concerned as coordinating Member State. If that Member State does not wish to be the coordinating Member State, it shall agree, within six days of submission of the single application, with another Member State concerned that the latter shall be the coordinating Member State. If no other Member State accepts to be the coordinating Member State, the Member State proposed by the sponsor shall be the coordinating Member State. If another Member State than the one proposed by the sponsor becomes coordinating Member State, the deadlines referred to in Article 49(2) shall start on the day following the acceptance.

3. Under the direction of the coordinating Member State referred to in paragraph 2, the Member States concerned shall coordinate their assessment of the application, in particular of the documentation submitted in accordance with Chapter I of Annex XIII, except for Sections 4.2, 4.3 and 4.4 thereof which shall be assessed separately by each Member State concerned.

   The coordinating Member State shall:

   (a) within 6 days of receipt of the single application notify the sponsor whether the clinical performance study falls within the scope of this Regulation and whether the application is complete, except for the documentation submitted in accordance with Sections 4.2, 4.3 and 4.4 of Chapter I of Annex XIII for which each Member State shall verify the completeness. Article 49(2) to (4) shall apply to the coordinating Member State in relation to the verification that the clinical performance study falls within the scope of this Regulation and that the application is complete, except for the documentation submitted in accordance with Sections 4.2, 4.3 and 4.4 of Chapter I of Annex XIII. Article 49(2) to (4) shall apply to each Member State in relation to the verification that the documentation submitted in accordance with Sections 4.2, 4.3 and 4.4 of Chapter I of Annex XIII is complete;

   (b) establish the results of the coordinated assessment in a report to be taken into account by the other Member States concerned when deciding on the sponsor's application in accordance with Article 49(5).

4. The substantial modifications referred to in Article 53 shall be notified to the Member States concerned by means of the electronic system referred to in Article 51. Any assessment as to whether there are grounds for refusal as referred to in Article 53 shall be carried out under the direction of the coordinating Member State.

5. For the purpose of Article 55(3), the sponsor shall submit the clinical performance study report to the Member States concerned by means of the electronic system referred to in Article 51.

6. The Commission shall provide secretarial support to the coordinating Member State in the accomplishment of its tasks provided for in this Chapter.

Article 57

Recording and reporting of events occurring during interventional clinical performance studies and other clinical performance studies involving risks for the subjects of the studies

1. The sponsor shall fully record any of the following:

   (a) an adverse event identified in the clinical performance study protocol as critical to the evaluation of the results of the clinical performance study in view of the purposes referred to in Article 48(1);

   (b) a serious adverse event;

   (c) a device deficiency that might have led to a serious adverse event if suitable action had not been taken, intervention had not occurred, or circumstances had been less fortunate;

   (d) new findings in relation to any event referred to in points (a) to (c).

2. The sponsor shall report to all Member States where a clinical performance study is conducted without delay any of the following:

   (a) a serious adverse event that has a causal relationship with the device for performance evaluation, the comparator or the study procedure or where such causal relationship is reasonably possible;

   (b) a device deficiency that might have led to a serious adverse event if suitable action had not been taken, intervention had not occurred, or circumstances had been less fortunate;

   (c) new findings in relation to any event referred to in points (a) to (b).

   The time period for reporting shall take account of the severity of the event. Where necessary to ensure timely reporting, the sponsor may submit an initial incomplete report followed up by a complete report.

3. The sponsor shall also report to the Member States concerned any event referred to in paragraph 2 occurring in third countries in which a clinical performance study is performed under the same clinical performance study protocol as the one applying to a clinical performance study covered by this Regulation.

4. In the case of a clinical performance study for which the sponsor has used the single application referred to in Article 56, the sponsor shall report any event as referred to in paragraph 2 by means of the electronic system referred to in Article 51. Upon receipt, this report shall be transmitted electronically to all Member States concerned.

   Under the direction of the coordinating Member State referred to in Article 56(2), the Member States shall coordinate their assessment of serious adverse events and device deficiencies to determine whether a clinical performance study needs to be terminated, suspended, temporarily halted or modified.

   This paragraph shall not affect the rights of the other Member States to perform their own evaluation and to adopt measures in accordance with this Regulation in order to ensure the protection of public health and patient safety. The coordinating Member State and the Commission shall be kept informed of the outcome of any such evaluation and the adoption of any such measures.

5. In the case of post-market follow-up performance studies referred to in Article 52(1), the provisions on vigilance contained in Articles 59 to 64 shall apply instead of this Article.

Article 58

Implementing acts

The Commission may, by means of implementing acts, adopt the modalities and procedural aspects necessary for the implementation of this Chapter, as regards the following:

(a) harmonised forms for the application for clinical performance studies and their assessment as referred to in Articles 49 and 56, taking into account specific categories or groups of devices;

(b) the functioning of the electronic system referred to in Article 51;

(c) harmonised forms for the notification of post-market follow-up performance studies as referred to in Article 52(1), and of substantial modifications as referred to in Article 53;

(d) the exchange of information between Member States as referred to in Article 54;

(e) harmonised forms for the reporting of serious adverse events and device deficiencies as referred to in Article 57;

(f) the timelines for the reporting of serious adverse events and device deficiencies, taking into account the severity of the event to be reported as referred to in Article 57.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 84(3).

Chapter VII
Vigilance and market surveillance

SECTION 1 — VIGILANCE

Article 59

Reporting of incidents and field safety corrective actions

1. Manufacturers of devices, other than devices for performance evaluation, shall report through the electronic system referred to in Article 60 the following:

(a) any serious incident in respect of devices made available on the Union market;

(b) any field safety corrective action in respect of devices made available on the Union market, including any field safety corrective action undertaken in a third country in relation to a device which is also legally made available on the Union market if the reason for the field safety corrective action is not limited to the device made available in the third country.

Manufacturers shall make the report referred to in the first subparagraph without delay, and no later than 15 days after they have become aware of the event and the causal relationship with their device or that such causal relationship is reasonably

possible. The time period for reporting shall take account of the severity of the incident. Where necessary to ensure timely reporting, the manufacturer may submit an initial incomplete report followed up by a complete report..

2. For similar serious incidents occurring with the same device or device type and for which the root cause has been identified or the field safety corrective action implemented, manufacturers may provide periodic summary reports instead of individual incident reports, on condition that the competent authorities referred to in points (a), (b) and (c) of Article 60(5) have agreed with the manufacturer on the format, content and frequency of the periodic summary reporting.

3. The Member States shall take all appropriate measures to encourage healthcare professionals, users and patients to report to their competent authorities suspected serious incidents referred to in point (a) of paragraph 1. They shall record such reports centrally at national level. Where a competent authority of a Member State obtains such reports, it shall take the necessary steps to ensure that the manufacturer of the device concerned is informed of the incident. The manufacturer shall ensure the appropriate follow-up.

   The Member States shall coordinate between them the development of standard web-based structured forms for reporting of serious incidents by healthcare professionals, users and patients.

4. Health institutions manufacturing and using devices referred to in Article 4(4) shall report any serious incidents and field safety corrective actions referred to in paragraph 1 to the competent authority of the Member State in which the health institution is located.

Article 60

Electronic system on vigilance

1. The Commission shall, in collaboration with the Member States, set up and manage an electronic system to collate and process the following information:

   (a) the reports by manufacturers on serious incidents and field safety corrective actions referred to in Article 59(1);

   (b) the periodic summary reports by manufacturers referred to in Article 59(2);

   (c) the reports by competent authorities on serious incidents referred to in the second subparagraph of Article 61(1);

   (d) the reports by manufacturers on trends referred to in Article 62;

   (e) the field safety notices by manufacturers referred to in Article 61(4);

   (f) the information to be exchanged between the competent authorities of the Member States and between them and the Commission in accordance with Article 61(3) and (6).

2. The information collated and processed by the electronic system shall be accessible to the competent authorities of the Member States, to the Commission and to the notified bodies.

3. The Commission shall ensure that healthcare professionals and the public have appropriate levels of access to the electronic system.

4. On the basis of arrangements between the Commission and competent authorities of third countries or international organisations, the Commission may grant those competent authorities or international organisations access to the database at the appropriate level. Those arrangements shall be based on reciprocity and make provision for confidentiality and data protection equivalent to those applicable in the Union.

5. The reports on serious incidents and field safety corrective actions referred to in points (a) and (b) of Article 59(1), the periodic summary reports referred to in Article 59(2), the reports on serious incidents referred to in the second subparagraph of Article 61(1) and the trend reports referred to in Article 62 shall be automatically transmitted upon receipt via the electronic system to the competent authorities of the following Member States

   (a) the Member State where the incident occurred;

   (b) the Member State where the field safety corrective action is being or is to be undertaken;

   (c) the Member State where the manufacturer has his registered place of business;

   (d) where applicable, the Member State where the notified body, that issued a certificate in accordance with Article 43 for the device in question, is established.

Article 61

Analysis of serious incidents and field safety corrective action

1. Member States shall take the necessary steps to ensure that any information regarding a serious incident that has occurred within their territory or a field safety corrective action that has been or is to be undertaken within their territory, and that is brought to their knowledge in accordance with Article 59 is, at national level, evaluated centrally by their competent authority, if possible together with the manufacturer.

   If in the case of reports received in accordance with Article 59(3) the competent authority ascertains that the reports relate to a serious incident it shall notify without delay those reports to the electronic system referred to in Article 60, unless the same incident has already been reported by the manufacturer.

2. The national competent authorities shall carry out a risk assessment with regard to reported serious incidents or field safety corrective actions, taking into account criteria such as causality, detectability and probability of recurrence of the problem, frequency of use of the device, probability of occurrence of harm and severity of harm, clinical benefit of the device, intended and potential users, and population affected. They shall also evaluate the adequacy of the field safety corrective action envisaged or undertaken by the manufacturer and the need for and kind of any other corrective action. They shall monitor the manufacturer's investigation of the incident.

3. After carrying out the assessment, the evaluating competent authority shall, through the electronic system referred to in Article 60, inform without delay the other competent authorities of the corrective action taken or envisaged by the manufacturer or imposed on him to minimise the risk of recurrence of a serious incident, including information on the underlying events and the outcome of its assessment.

4. The manufacturer shall ensure that the users of the device in question are informed without delay of the corrective action taken by means of a field safety notice. Except in case of urgency, the content of the draft field safety notice shall be submitted to the evaluating competent authority or, in cases referred to in paragraph 5 of this Article, the coordinating competent authority to allow them to make comments. Unless duly justified by the situation of the individual Member State, the content of the field safety notice shall be consistent in all Member States.

The manufacturer shall enter the field safety notice in the electronic system referred to in Article 60 through which that notice shall be accessible to the public.

5. The competent authorities shall designate a coordinating competent authority to coordinate their assessments referred to in paragraph 2 in the following cases:

(a) where similar serious incidents related to the same device or type of device of the same manufacturer occur in more than one Member State;

(b) where the field safety corrective action is being or is to be undertaken in more than one Member State.

Unless otherwise agreed between the competent authorities, the coordinating competent authority shall be the one of the Member State where the manufacturer has his registered place of business.

The coordinating competent authority shall inform the manufacturer, the other competent authorities and the Commission that it has assumed the role of coordinating authority.

6. The coordinating competent authority shall carry out the following tasks:

(a) to monitor the investigation of the serious incident by the manufacturer and the corrective action to be taken;

(b) to consult with the notified body that issued a certificate in accordance with Article 43 for the device in question regarding the impact of the serious incident on the certificate;

(c) to agree with the manufacturer and the other competent authorities referred to in points (a) to (c) of Article 60(5) on the format, content and frequency of periodic summary reports in accordance with Article 59(2);

(d) to agree with the manufacturer and other competent authorities concerned on the implementation of the appropriate field safety corrective action;

(e) to inform the other competent authorities and the Commission, through the electronic system referred to in Article 60, of the progress in and the outcome of its assessment.

The designation of a coordinating competent authority shall not affect the rights of the other competent authorities to perform their own assessment and to adopt measures in accordance with this Regulation in order to ensure the protection of public health and patient safety. The coordinating competent authority and the Commission shall be kept informed of the outcome of any such assessment and the adoption of any such measures.

7. The Commission shall provide secretarial support to the coordinating competent authority in the accomplishment of its tasks under this Chapter.

Article 62

Trend reporting

Manufacturers of devices classified in class C or D shall report to the electronic system referred to in Article 60 any statistically significant increase in the frequency or severity of incidents that are not serious incidents or of expected undesirable effects that have a significant impact on the risk-benefit analysis referred to in Sections 1 and 5 of Annex I and which have led or may lead to unacceptable risks to the health or safety of patients, users or other persons when weighted against the intended benefits. The significant increase shall be established in comparison to the foreseeable frequency or severity of such incidents or expected undesirable effects in respect of the device, or category or group of devices, in question during a specific time period as established in the manufacturer's conformity assessment. Article 61 shall apply.

Article 63

Documentation of vigilance data

Manufacturers shall update their technical documentation with information on incidents received from healthcare professionals, patients and users, serious incidents, field safety corrective actions, periodic summary reports referred to in Article 59, trend reports referred to in Article 62 and field safety notices referred to in Article 61(4). They shall make this documentation available to their notified bodies, which shall assess the impact of the vigilance data on the conformity assessment and the certificate issued.

Article 64

Implementing acts

The Commission may, by means of implementing acts, adopt the modalities and procedural aspects necessary for the implementation of Articles 59 to 63 as regards the following:

(a) typology of serious incidents and field safety corrective actions in relation to specific devices, or categories or groups of devices;

(b) harmonised forms for the reporting of serious incidents and field safety corrective actions, periodic summary reports and trend reports by manufacturers as referred to in Articles 59 and 62;

(c) timelines for the reporting of serious incidents and field safety corrective actions, periodic summary reports and trend reports by manufacturers, taking into account the severity of the event to be reported as referred to in Articles 59 and 62;

(d) harmonised forms for the exchange of information between competent authorities as referred to in Article 61.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 84(3).

SECTION 2 — MARKET SURVEILLANCE

Article 65

Market surveillance activities

1. The competent authorities shall perform appropriate checks on the characteristics and performance of devices including, where appropriate, review of documentation and physical or laboratory checks on the basis of adequate samples. They shall take account of established principles regarding risk assessment and risk management, vigilance data and complaints. The competent authorities may require economic operators to make available the documentation and information necessary for the purpose of carrying out their activities, and, where necessary and justified, enter the premises of economic operators and take the necessary samples of devices. They may destroy or otherwise render inoperable devices presenting a serious risk where they deem it necessary.

2. The Member States shall periodically review and assess the functioning of their surveillance activities. Such reviews and assessments shall be carried out at least every four years and the results thereof shall be communicated to the other Member States and the Commission. The Member State concerned shall make a summary of the results accessible to the public.

3. The competent authorities of the Member States shall coordinate their market surveillance activities, cooperate with each other and share with each other and with the Commission the results thereof. Where appropriate, the competent authorities of the Member States shall agree on work-sharing and specialisation.

4. Where more than one authority in a Member State is responsible for market surveillance and external border controls, those authorities shall cooperate with each other, by sharing information relevant to their role and functions.

5. The competent authorities of the Member States shall cooperate with the competent authorities of third countries with a view to exchanging information and technical support and promoting activities relating to market surveillance.

Article 66

Electronic system on market surveillance

1. The Commission, in collaboration with the Member States, shall set up and manage an electronic system to collate and process the following information:

   (a) information in relation to non-compliant devices presenting a risk to health and safety referred to in Article 68(2), (4) and (6);

   (b) information in relation to compliant devices presenting a risk to health and safety referred to in Article 70(2);

   (c) information in relation to formal non-compliance of products referred to in Article 71(2);

   (d) information in relation to preventive health protection measures referred to in Article 72(2).

2. The information mentioned in paragraph 1 shall be immediately transmitted through the electronic system to all competent authorities concerned and be accessible to the Member States and to the Commission.

Article 67

Evaluation regarding devices presenting a risk to health and safety at national level

Where the competent authorities of a Member State, based on vigilance data or other information, have sufficient reason to believe that a device presents a risk to the health or safety of patients, users or other persons, they shall carry out an evaluation in relation to the device concerned covering all the requirements laid down in this Regulation that are relevant to the risk presented by the device. The relevant economic operators shall cooperate as necessary with the competent authorities.

Article 68

Procedure for dealing with non-compliant devices presenting a risk to health and safety

1. Where, having performed an evaluation pursuant to Article 67, the competent authorities find that the device, which presents a risk to the health or safety of patients, users or other persons, does not comply with the requirements laid down in this Regulation, they shall without delay require the relevant economic operator to take all appropriate and duly justified corrective action to bring the device into compliance with those requirements, to prohibit or restrict the making available of the device on the market, to subject the making available of the device to specific requirements, to withdraw the device from the market, or to recall it within a reasonable period, proportionate to the nature of the risk.

2. Where the competent authorities consider that non-compliance is not restricted to their national territory, they shall inform the Commission and the other Member States of the results of the evaluation and of the actions which they have required the economic operators to take, by means of the electronic system referred to in Article 66.

3. The economic operators shall ensure that all appropriate corrective action is taken in respect of all the devices concerned that they have made available on the market throughout the Union.

4. Where the relevant economic operator does not take adequate corrective action within the period referred to in paragraph 1, the competent authorities shall take all appropriate provisional measures to prohibit or restrict the device's being made available on their national market, to withdraw the device from that market or to recall it.

   They shall notify the Commission and the other Member States, without delay, of those measures, by means of the electronic system referred to in Article 66.

5. The notification referred to in paragraph 4 shall include all available details, in particular the data necessary for the identification of the non-compliant device, the origin of the device, the nature of and the reasons for the non-compliance alleged and the risk involved, the nature and duration of the national measures taken and the arguments put forward by the relevant economic operator.

6. Member States other than the Member State initiating the procedure shall without delay inform the Commission and the other Member States of any additional information at their disposal relating to the non-compliance of the device concerned and of any measures adopted by them in relation to the device concerned. In the event of disagreement with the notified national measure, they shall without delay inform the Commission and the other Member States of their objections, by means of the electronic system referred to in Article 66.

7. Where, within two months of receipt of the notification referred to in paragraph 4, no objection has been raised by either a Member State or the Commission in respect of a provisional measure taken by a Member State, that measure shall be deemed justified.

8. All Member States shall ensure that appropriate restrictive measures are taken without delay in respect of the device concerned.

Article 69

Procedure at Union level

1. Where, within two months of receipt of the notification referred to in Article 68(4), objections are raised by a Member State against a provisional measure taken by another Member State, or where the Commission considers the measure to be contrary to Union legislation, the Commission shall evaluate the national measure. On the basis of the results of that evaluation, the Commission shall decide, by means of implementing acts, whether or not the national measure is justified. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 84(3).

2. If the national measure is considered justified, Article 68(8) shall apply. If the national measure is considered unjustified, the Member State concerned shall withdraw the measure. Where, in the situations referred to in Articles 68 and 70, a Member State or the Commission consider that the risk to health and safety emanating from a device cannot be contained satisfactorily by means of measures taken by the Member State(s) concerned, the Commission, at the request of a Member State or on its own initiative, may take, by means of implementing acts, the necessary and duly justified measures to ensure the protection of health and safety, including measures restricting or prohibiting the placing on the market and putting into service of the device concerned. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 84(3).

3. On duly justified imperative grounds of urgency relating to the health and safety of humans, the Commission shall adopt immediately applicable implementing acts referred to in paragraphs 1 and 2 in accordance with the procedure referred to in Article 84(4).

Article 70

Procedure for dealing with compliant devices presenting a risk to health and safety

1. Where, having performed an evaluation pursuant to Article 67, a Member State finds that although a device has been legally placed on the market or put into service, it presents a risk to the health or safety of patients, users or other persons or to other aspects of the protection of public health, it shall require the relevant economic operator or operators to take all appropriate provisional measures to ensure that the

device concerned, when placed on the market or put into service, no longer presents that risk, to withdraw the device from the market or to recall it within a reasonable period, proportionate to the nature of the risk.

2. The Member State shall immediately notify the Commission and the other Member States of the measures taken, by means of the electronic system referred to in Article 66. That information shall include the data necessary for the identification of the device concerned, the origin and the supply chain of the device, the findings of the Member State's evaluation specifying the nature of the risk involved and the nature and duration of the national measures taken.

3. The Commission shall evaluate the provisional national measures taken. On the basis of the results of that evaluation, the Commission shall decide, by means of implementing acts, whether or not the measure is justified. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 84(3). On duly justified imperative grounds of urgency relating to the health and safety of humans, the Commission shall adopt immediately applicable implementing acts in accordance with the procedure referred to in Article 84(4).

4. Where the national measure is considered justified, Article 68(8) shall apply. If the national measure is considered unjustified, the Member State concerned shall withdraw the measure.

Article 71

Formal non-compliance

1. Without prejudice to Article 68, a Member State shall require the relevant economic operator to put an end to the non-compliance concerned within a reasonable period that is proportionate to the non-compliance where it makes one of the following findings:

   (a) that the CE marking has been affixed in violation of the formal requirements laid down in Article 16;

   (b) that the CE marking has not been affixed to a device contrary to Article 16;

   (c) that the CE marking has been inappropriately affixed in accordance with procedures in this Regulation on a product that is not covered by this Regulation;

   (d) that the EU declaration of conformity has not been drawn up or is not complete;

   (e) that the information to be supplied by the manufacturer on the label or in the instructions for use is not available, not complete, or not provided in the language(s) required;

   (f) that the technical documentation, including the clinical evaluation, is not available or not complete.

2. Where the economic operator does not put an end to the non-compliance within the period referred to in paragraph 1, the Member State concerned shall take all appropriate measures to restrict or prohibit the product being made available on the market or to ensure that it is recalled or withdrawn from the market. That Member State shall inform the Commission and the other Member States without delay of those measures, by means of the electronic system referred to in Article 66.

Article 72

Preventive health protection measures

1. Where a Member State, after having performed an evaluation which indicates a potential risk related to a device or a specific category or group of devices considers that the making available on the market or putting into service of such device or specific category or group of devices should be prohibited, restricted or made subject to particular requirements or that such device or, category or group of devices should be withdrawn from the market or recalled in order to protect the health and safety of patients, users or other persons or other aspects of public health, it may take any necessary and justified provisional measures.

2. The Member State shall immediately notify the Commission and all other Member States, giving the reasons for its decision, by means of the electronic system referred to in Article 66.

3. The Commission shall assess the provisional national measures taken. The Commission shall decide, by means of implementing acts, whether the national measures are justified or not. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 84(3).

   On duly justified imperative grounds of urgency relating to the health and safety of humans, the Commission may adopt immediately applicable implementing acts in accordance with the procedure referred to in Article 84(4).

4. Where the assessment referred to in paragraph 3 demonstrates that the making available on the market or putting into service of a device, specific category or group of devices should be prohibited, restricted or made subject to particular requirements or that such device or category or group of devices should be withdrawn from the market or recalled in all Member States in order to protect the health and safety of patients, users or other persons or other aspects of public health, the Commission shall be empowered to adopt delegated acts in accordance with Article 85 to take the necessary and duly justified measures.

   Where in this case imperative grounds of urgency so require, the procedure provided for in Article 86 shall apply to delegated acts adopted pursuant to this paragraph.

Article 73

Good administrative practice

1. Any measure adopted by the competent authorities of the Member States pursuant to Articles 68 to 72 shall state the exact grounds on which it is based. Where it is addressed to a specific economic operator, it shall be notified without delay to the economic operator concerned, who shall at the same time be informed of the remedies available to him under the law of the Member State concerned and of the time limits to which such remedies are subject. Where the measure is of general scope, it shall be appropriately published.

2. Except in cases where immediate action is necessary for reasons of serious risk to human health or safety, the economic operator concerned shall be given the opportunity to make submissions to the competent authority within an appropriate period of time before any measure is adopted. If action has been taken without the economic operator's being heard, he shall be given the opportunity to make

submissions as soon as possible and the action taken shall be reviewed promptly thereafter.

3. Any measure adopted shall be immediately withdrawn or amended upon the economic operator's demonstrating that he has taken effective corrective action.

4. Where a measure adopted pursuant to Articles 68 to 72 concerns a product for which a notified body has been involved in the conformity assessment, the competent authorities shall inform the relevant notified body of the measure taken.

Chapter VIII
Cooperation between Member States, Medical Device Coordination Group, EU reference laboratories, device registers

Article 74

Competent authorities

1. The Member States shall designate the competent authority or authorities responsible for the implementation of this Regulation. They shall entrust their authorities with the powers, resources, equipment and knowledge necessary for the proper performance of their tasks pursuant to this Regulation. The Member States shall communicate the competent authorities to the Commission which shall publish a list of competent authorities.

2. For the implementation of Articles 48 to 58, the Member States may designate a national contact point other than a national authority. In this case, references to a competent authority in this Regulation shall be understood as including the national contact point.

Article 75

Cooperation

1. The competent authorities of the Member States shall cooperate with each other and with the Commission and exchange with each other the information necessary to enable this Regulation to be applied uniformly.

2. Member States and the Commission shall participate in initiatives developed at international level with the aim of ensuring cooperation between regulatory authorities in the field of medical devices.

Article 76

Medical Device Coordination Group

The Medical Device Coordination Group (MDCG) established in accordance with the conditions and modalities defined in Article 78 of Regulation (EU) [Ref. of future Regulation on medical devices] shall carry out, with the support of the Commission as provided in Article 79 of that Regulation, the tasks assigned to it by this Regulation.

Article 77

Tasks of the MDCG

The MDCG shall have the following tasks:

(a) to contribute to the assessment of applicant conformity assessment bodies and notified bodies pursuant to the provisions set out in Chapter IV;

(b) to contribute to the scrutiny of certain conformity assessments pursuant to Article 42;

(c) to contribute to the development of guidance aimed at ensuring effective and harmonised implementation of this Regulation, in particular regarding the designation and monitoring of notified bodies, application of the general safety and performance requirements and conduct of the clinical evaluation by manufacturers and the assessment by notified bodies;

(d) to assist the competent authorities of the Member States in their coordination activities in the fields of clinical performance studies, vigilance and market surveillance;

(e) to provide advice and assist the Commission, at its request, in its assessment of any issue related to the implementation of this Regulation;

(f) to contribute to harmonised administrative practice with regard to *in vitro* diagnostic medical devices in the Member States.

Article 78

European Union reference laboratories

1. For specific devices, or a category or group of devices, or for specific hazards related to a category or group of devices, the Commission may designate, by means of implementing acts, one or more European Union reference laboratories, hereinafter referred to as 'EU reference laboratories', that satisfy the criteria set out in paragraph 3. The Commission shall only designate laboratories for which a Member State or the Commission's Joint Research Centre have submitted an application for designation.

2. Within the scope of their designation, the EU reference laboratories shall, where appropriate, have the following tasks:

(a) to verify compliance of class D devices with the applicable CTS, when available, or with other solutions chosen by the manufacturer to ensure a level of safety and performance that is at least equivalent, as provided for in the second subparagraph of Article 40(2);

(b) to carry out appropriate tests on samples of manufactured class D devices or batches of class D devices, as provided for in the Section 5.7 of Annex VIII and in Section 5.1 of Annex X;

(c) to provide scientific and technical assistance to the Commission, the Member States and notified bodies in relation to the implementation of this Regulation;

(d) to provide scientific advice regarding the state of the art in relation to specific devices, or a category or group of devices;

(e) to set up and manage a network of national reference laboratories and publish a list of the participating national reference laboratories and their respective tasks;

(f) to contribute to the development of appropriate testing and analysis methods to be applied for conformity assessment procedures and market surveillance;

(g) to collaborate with notified bodies in the development of best practices for the performance of conformity assessment procedures;

(h) to provide recommendations on suitable reference materials and reference measurement procedures of higher metrological order;

(i) to contribute to the development of standards at international level;

(j) to provide scientific opinions in response to consultations by notified bodies in accordance with this Regulation.

3. EU reference laboratories shall satisfy the following criteria:

(a) to have appropriately qualified staff with adequate knowledge and experience in the field of the *in vitro* diagnostic medical devices for which they are designated;

(b) to possess the necessary equipment and reference material to carry out the tasks assigned to them;

(c) to have the necessary knowledge of international standards and best practices;

(d) to have an appropriate administrative organisation and structure;

(e) to ensure that their staff observe the confidentiality of the information and data obtained in carrying out their tasks;

(f) to act in the public interest and in an independent manner;

(g) to ensure that their staff do not have financial or other interests in the *in vitro* diagnostic medical device industry which could affect their impartiality, declare any other direct and indirect interests they may have in the *in vitro* diagnostic medical device industry and update this declaration whenever a relevant change occurs.

4. EU reference laboratories may be granted a Union financial contribution.

The Commission may adopt, by means of implementing acts, the modalities and the amount of the grant of a Union financial contribution to EU reference laboratories, taking into account the objectives of protection of health and safety, support of innovation and cost-effectiveness. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 84(3).

5. Where notified bodies or Member States request scientific or technical assistance or a scientific opinion from an EU reference laboratory, they may be required to pay fees to wholly or partially cover the costs incurred by that laboratory in carrying out the requested task according to a set of predetermined and transparent terms and conditions.

6. The Commission shall be empowered to adopt delegated acts in accordance with Article 85 for the following purposes:

(a) amending or supplementing the tasks of EU reference laboratories referred to in paragraph 2 and the criteria to be satisfied by EU reference laboratories referred to in paragraph 3.

(b) setting out the structure and the level of the fees referred to in paragraph 5 which may be levied by an EU reference laboratory for providing scientific opinions in response to consultations by notified bodies in accordance with this

Regulation, taking into account the objectives of protection of human health and safety, support of innovation and cost-effectiveness.

7. EU reference laboratories shall be subject to controls, including on-site visits and audits, by the Commission to verify compliance with the requirements of this Regulation. If these controls find that a laboratory is not complying with those requirements for which they have been designated, the Commission, by means of implementing acts, shall take appropriate measures, including the withdrawal of the designation.

Article 79

Device registers

The Commission and the Member States shall take all appropriate measures to encourage the establishment of registers for specific types of devices to gather post-market experience related to the use of such devices. Such registers shall contribute to the independent evaluation of the long-term safety and performance of devices.

Chapter IX
Confidentiality, data protection, funding, penalties

Article 80

Confidentiality

1. Unless otherwise provided in this Regulation and without prejudice to existing national provisions and practices in the Member States on medical confidentiality, all parties involved in the application of this Regulation shall respect the confidentiality of information and data obtained in carrying out their tasks in order to protect the following:

   (a) personal data in compliance with Directive 95/46/EC and Regulation (EC) No 45/2001;

   (b) commercial interests of a natural or legal person, including intellectual property rights;

   (c) the effective implementation of this Regulation, in particular for the purpose of inspections, investigations or audits.

2. Without prejudice to paragraph 1, information exchanged between competent authorities and between competent authorities and the Commission on condition of confidentiality shall remain confidential unless the originating authority has agreed to its disclosure.

3. Paragraphs 1 and 2 shall not affect the rights and obligations of the Commission, Member States and notified bodies with regard to exchange of information and the dissemination of warnings, nor the obligations of the persons concerned to provide information under criminal law.

4. The Commission and Member States may exchange confidential information with regulatory authorities of third countries with which they have concluded bilateral or multilateral confidentiality arrangements.

Article 81

Data protection

1. Member States shall apply Directive 95/46/EC to the processing of personal data carried out in the Member States pursuant to this Regulation.

2. Regulation (EC) No 45/2001 shall apply to the processing of personal data carried out by the Commission pursuant to this Regulation.

Article 82

Levy of fees

This Regulation shall be without prejudice to the possibility for Member States to levy fees for the activities set out in this Regulation, provided that the level of the fees is set in a transparent manner and on the basis of cost recovery principles. They shall inform the Commission and the other Member States at least three months before the structure and level of fees is to be adopted.

Article 83

Penalties

The Member States shall lay down the provisions on penalties applicable for infringement of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate, and dissuasive. The Member States shall notify those provisions to the Commission by [3 months prior to the date of application of this Regulation] and shall notify it without delay of any subsequent amendment affecting them.

Chapter X
Final provisions

Article 84

Committee procedure

1. The Commission shall be assisted by the Committee on Medical Devices set up by Article 88 of Regulation (EU) [Ref. of future Regulation on medical devices].

2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

4. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 4 or Article 5, as appropriate, shall apply.

Article 85

Exercise of the delegation

1. The power to adopt the delegated acts referred to in Articles 4(6), 8(2), 15(4), 22(7), 23(7), 27(2), 38(2), 39(4), 40(10), 43(5), 49(7), 51(3), 72(4) and 78(6) is conferred on the Commission subject to the conditions laid down in this Article.

2. The delegation of power referred to in Articles 4(6), 8(2), 15(4), 22(7), 23(7), 27(2), 38(2), 39(4), 40(10), 43(5), 49(7), 51(3), 72(4) and 78(6) shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Regulation.

3. The delegation of power referred to in Articles 4(6), 8(2), 15(4), 22(7), 23(7), 27(2), 38(2), 39(4), 40(10), 43(5), 49(7), 51(3), 72(4) and 78(6) may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following its publication in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to any of the Articles listed in paragraph 1 shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period may be extended by two months at the initiative of the European Parliament or the Council.

Article 86

Urgency procedure for delegated acts

1. Delegated acts adopted under this Article shall enter into force without delay and shall apply as long as no objection is expressed in accordance with paragraph 2. The notification of a delegated act to the European Parliament and to the Council shall state the reasons for the use of the urgency procedure.

2. Either the European Parliament or the Council may object to a delegated act in accordance with the procedure referred to in Article 85. In such a case, the Commission shall repeal the act without delay following the notification of the decision to object by the European Parliament or the Council.

Article 87

Transitional provisions

1. From the date of application of this Regulation any publication of a notification in respect of a notified body in accordance with Directive 98/79/EC shall become void.

2. Certificates issued by notified bodies in accordance with Directive 98/79/EC prior to the entry into force of this Regulation shall remain valid until the end of the period indicated on the certificate, except for certificates issued in accordance with Annex VI of Directive 98/79/EC which shall become void at the latest two years after the date of application of this Regulation.

Certificates issued by notified bodies in accordance with Directive 98/79/EC after the entry into force of this Regulation shall become void at the latest two years after the date of application of this Regulation.

3. By way of derogation from Directive 98/79/EC, devices which comply with this Regulation may be placed on the market before its date of application.

4. By way of derogation from Directive 98/79/EC, conformity assessment bodies which comply with this Regulation may be designated and notified before its date of application. Notified bodies which are designated and notified in accordance with this Regulation may apply the conformity assessment procedures laid down in this Regulation and issue certificates in accordance with this Regulation before its date of application.

5. By way of derogation from Article 10 and points (a) and (b) of Article 12(1) of Directive 98/79/EC, manufacturers, authorised representatives, importers and notified bodies who, during the period from [date of application] until [18 months after date of application], comply with Article 23(2) and (3) and Article 43(4) of this Regulation shall be considered to comply with the laws and regulations adopted by Member States in accordance with Article 10 and points (a) and (b) of Article 12(1) of Directive 98/79/EC as specified in Commission Decision 2010/227/EU.

6. Authorisations granted by competent authorities of the Member States in accordance with Article 9(12) of Directive 98/79/EC shall keep the validity indicated in the authorisation.

Article 88

Evaluation

No later than five years after the date of application, the Commission shall assess the application of this Regulation and establish an evaluation report on the progress towards achievement of the objectives of this Regulation including an assessment of resources required to implement this Regulation.

Article 89

Repeal

Directive 98/79/EC of the European Parliament and of the Council is repealed with effect from [date of application of this Regulation] with the exception of Article 10 and points (a) and (b) of Article 12(1) of Directive 98/79/EC which are repealed with effect from [18 months after date of application].

References to the repealed Directive shall be understood as reference to this Regulation and shall be read in accordance with the correlation table laid down in Annex XIV.

Article 90

Entry into force and date of application

1. This Regulation shall enter into force on the twentieth day after its publication in the *Official Journal of the European Union*.

2. It shall apply from [five years after entry into force].

3. By way of derogation from paragraph 2, the following shall apply:

   (a) Article 23(2) and (3) and Article 43(4) shall apply from [18 months after date of application referred to in paragraph 2];

(b) Articles 26 to 38 shall apply from [six months after entry into force]. However, prior to [date of application as referred to in paragraph 2], the obligations on notified bodies emanating from the provisions in Articles 26 to 38 shall apply only to those bodies which submit an application for notification in accordance with Article 29 of this Regulation.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 26.9.2012

For the European Parliament	*For the Council*
The President	*The President*

ANNEXES

ANNEX I

GENERAL SAFETY AND PERFORMANCE REQUIREMENTS

I. GENERAL REQUIREMENTS

1. The devices shall achieve the performance intended by the manufacturer and be designed and manufactured in such a way that, during normal conditions of use, they are suitable for their intended purpose, taking into account the generally acknowledged state of the art. They shall not compromise, directly or indirectly, the clinical condition or the safety of the patients, or the safety or health of users or, where applicable, other persons, provided that any risks or limits to performance which may be associated with their use constitute acceptable risks when weighed against the benefits to the patient and are compatible with a high level of protection of health and safety.

   This shall include:

   – reducing as far as possible the risk of error due to ergonomic features of the device and the environment in which the device is intended to be used (design for patient safety), and

   – consideration of the technical knowledge, experience, education or training, and the medical and physical conditions of intended users (design for lay, professional, disabled or other users).

2. The solutions adopted by the manufacturer for the design and manufacture of the devices shall conform to safety principles, taking account of the generally acknowledged state of the art. To reduce risks, the manufacturer shall manage the risks so that the residual risk associated with each hazard as well as the overall residual risk is judged acceptable. The manufacturer shall apply the following principles in the priority order listed:

   (a) identify known or foreseeable hazards and estimate the associated risks arising from the intended use and foreseeable misuse;

   (b) eliminate risks as far as possible through inherently safe design and manufacture;

   (c) reduce as far as possible the remaining risks by taking adequate protection measures, including alarms; and

   (d) provide training to users and/or inform users of any residual risks.

3. The characteristics and performances of the device shall not be adversely affected to such a degree that the health or safety of the patient or the user and, where applicable, of other persons are compromised during the lifetime of the device, as indicated by the manufacturer, when the device is subjected to the stresses which can occur during normal conditions of use and has been properly maintained in accordance with the manufacturer's instructions. When no lifetime is stated, the same applies for the lifetime reasonably to be expected of a device of that kind, having regard to the intended purpose and the anticipated use of the device.

4. The devices shall be designed, manufactured and packaged in such a way that their characteristics and performance during their intended use will not be adversely affected by transport and storage conditions (for example, fluctuations of temperature

and humidity) taking account of the instructions and information provided by the manufacturer.

5. All known and foreseeable risks, and any undesirable effects, shall be minimised and be acceptable when weighed against the benefits to the patients of the intended performance of the device during normal conditions of use.

II. REQUIREMENTS REGARDING DESIGN AND CONSTRUCTION

6. Performance characteristics

6.1. The devices shall be designed and manufactured in such a way that the performance characteristics support the intended purpose, based on appropriate scientific and technical methods. They shall achieve the performances, as stated by the manufacturer and in particular, where appropriate:

(a) the analytical performance, such as accuracy (trueness and precision), bias, analytical sensitivity, analytical specificity, limits of detection and quantitation, measuring range, linearity, cut-off, repeatability, reproducibility, including determination of appropriate criteria for specimen collection and handling and control of known relevant endogenous and exogenous interference, cross-reactions; and

(b) the clinical performance, such as diagnostic sensitivity, diagnostic specificity, positive and negative predictive value, likelihood ratio, expected values in normal or affected populations.

6.2. The performance characteristics of the device need to be maintained during the lifetime of the device as indicated by the manufacturer.

6.3. Where the performance of devices depends on the use of calibrators and/or control materials, the metrological traceability of values assigned for a given analyte to such calibrators and/or control materials shall be assured through available and suitable reference measurement procedures and/or available and suitable reference materials of a higher metrological order. The device shall be designed and manufactured to enable the user to provide measurement results in patient specimens metrologically traceable to available and suitable higher order reference materials and/or reference measurement procedures following the instructions and information provided by the manufacturer.

7. Chemical, physical and biological properties

7.1. The devices shall be designed and manufactured in such a way as to ensure the characteristics and performance referred to in Chapter I 'General Requirements'.

Particular attention shall be paid to the possibility of impairment of analytical performance due to incompatibility between the materials used and the specimens and/or analyte to be detected (such as biological tissues, cells, body fluids and micro-organisms), taking account of the intended purpose of the device.

7.2. The devices shall be designed, manufactured and packaged in such a way as to minimise the risk posed by contaminants and residues to patients, taking account of the intended purpose of the device, and to the persons involved in the transport, storage and use of the devices. Particular attention shall be paid to tissues exposed and to the duration and frequency of exposure.

7.3. The devices shall be designed and manufactured in such a way as to reduce as far as possible the risks posed by substances that may leach or leak from the device. Special attention shall be given to substances which are carcinogenic, mutagenic or toxic to reproduction, in accordance with Part 3 of Annex VI to Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006[40], and to substances having endocrine disrupting properties for which there is scientific evidence of probable serious effects to human health and which are identified in accordance with the procedure set out in Article 59 of Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH)[41] .

7.4. The devices shall be designed and manufactured in such a way as to reduce as far as possible the risks posed by the unintentional ingress or egress of substances into or from the device, taking into account the device and the nature of the environment in which it is intended to be used.

8. Infection and microbial contamination

8.1. The devices and their manufacturing processes shall be designed in such a way as to eliminate or reduce as far as possible the risk of infection to the user, professional or lay, or, where applicable, other persons.

The design shall:

(a) allow easy and safe handling;

and, where necessary

(b) reduce as far as possible and appropriate any microbial leakage from the device and/or microbial exposure during use;

(c) prevent microbial contamination of the device or specimen.

8.2. The devices labelled either as sterile or as having a special microbiological state shall be designed, manufactured and packaged to ensure that they remain so when placed on the market, and remain so under the transport and storage conditions specified by the manufacturer, until the protective packaging is damaged or opened.

8.3. The devices labelled either as sterile or as having a special microbiological state shall have been processed, manufactured and, if applicable, sterilised by appropriate validated methods.

8.4. The devices intended to be sterilised shall be manufactured in appropriately controlled (e.g. environmental) conditions.

8.5. Packaging systems for non-sterile devices shall maintain the integrity and cleanliness of the device indicated by the manufacturer and, if the devices are to be sterilised prior to use, minimise the risk of microbial contamination; the packaging system shall be suitable taking account of the method of sterilisation indicated by the manufacturer.

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40 OJ L 353, 31.12.2008, p. 1.

41 OJ L 136, 29.5.2007, p.3.

8.6. The labelling of the devices shall distinguish between identical or similar products placed on the market in both sterile and non-sterile condition.

9. Devices incorporating materials of biological origin

9.1. Where the devices include tissues, cells and substances originating from animals, the processing, preservation, testing and handling of tissues, cells and substances of such origin shall be carried out so as to provide optimal safety for user, professional or lay, or other person.

In particular, safety with regard to viruses and other transmissible agents shall be addressed by implementation of validated methods of elimination or inactivation in the course of the manufacturing process. This may not apply to certain devices if the activity of the virus and other transmissible agent are integral to the intended purpose of the device or when such elimination or inactivation process would compromise the performance of the device.

9.2. Where the devices include human tissues, cells or substances, the selection of sources, donors and/or substances of human origin, the processing, preservation, testing and handling of tissues, cells and substances of such origin shall be carried out so as to provide optimal safety for user, professional or lay, or other person.

In particular, safety with regard to viruses and other transmissible agents shall be addressed by implementation of validated methods of elimination or inactivation in the course of the manufacturing process. This may not apply to certain devices if the activity of the virus and other transmissible agent are integral to the intended purpose of the device or when such elimination or inactivation process would compromise the performance of the device.

9.3. Where the devices include cells or substances of microbial origin, the processing, preservation, testing and handling of cells and substances shall be carried out so as to provide optimal safety for user, professional or lay, or other person.

In particular, safety with regard to viruses and other transmissible agents shall be addressed by implementation of validated methods of elimination or inactivation in the course of the manufacturing process. This may not apply to certain devices if the activity of the virus and other transmissible agent are integral to the intended purpose of the device or when such elimination or inactivation process would compromise the performance of the device.

10. Interaction of devices with their environment

10.1. If the device is intended for use in combination with other devices or equipment, the whole combination, including the connection system, shall be safe and shall not impair the specified performances of the devices. Any restrictions on use applying to such combinations shall be indicated on the label and/or in the instructions for use. Connections which the user has to handle shall be designed and constructed in such a way as to minimise all possible risks from incorrect connection.

10.2. The devices shall be designed and manufactured in such a way as to remove or reduce as far as possible and appropriate:

(a) the risks of injury to user, professional or lay, or other person in connection with their physical and ergonomic features;

(b) the risks of use error due to the ergonomic features, human factors and the environment in which the device is intended to be used;

(c) the risks connected with any foreseeable external influences or environmental conditions, such as magnetic fields, external electrical and electromagnetic effects, electrostatic discharge, pressure, humidity, temperature variations or radio signal interferences;

(d) the risks associated with the use of the device when it comes into contact with materials, liquids, and substances, including gases, to which it is exposed during normal conditions of use;

(e) the risks associated with the possible negative interaction between software and the environment within which it operates and interacts;

(f) the risks of accidental ingress of substances into the device;

(g) the risk of incorrect identification of specimens;

(h) the risks of any foreseeable interference with other devices.

10.3. The devices shall be designed and manufactured in such a way as to minimise the risks of fire or explosion during normal use and in single fault condition. Particular attention shall be paid to devices whose intended purpose includes exposure to or use in association with flammable substances or substances which could cause combustion.

10.4. The devices shall be designed and manufactured in such a way that adjustment, calibration, and maintenance, where such is necessary to achieve the performances intended, can be done safely.

10.5. The devices that are intended to be operated together with other devices or products shall be designed and manufactured in such as way that the interoperability is reliable and safe.

10.6. The devices shall be designed and manufactured in such a way as to facilitate the safe disposal of the device and/or of any waste substances by the user, professional or lay, or other person.

10.7. The measuring, monitoring or display scale (including colour change and other visual indicators) shall be designed and manufactured in line with ergonomic principles, taking account of the intended purpose of the device.

11. Devices with a measuring function

11.1. The devices having a primary analytical measuring function shall be designed and manufactured in such a way as to provide sufficient accuracy, precision and stability of measurement within appropriate accuracy limits, taking into account the intended purpose of the device and of available and appropriate reference measurement procedures and materials. The accuracy limits shall be specified by the manufacturer.

11.2. The measurements made by devices with a measuring function and expressed in legal units shall conform to the provisions of Council Directive 80/181/EEC[42].

12. Protection against radiation

12.1. The devices shall be designed, manufactured and packaged in such a way that exposure of user, professional or lay, or other persons to the emitted radiation (intended, unintended, stray or scattered) is reduced as far as possible.

[42] OJ L 39, 15.2.1980.

12.2. When the devices are intended to emit potentially hazardous, visible and/or invisible radiation, they shall as far as possible be:

(a) designed and manufactured in such a way as to ensure that the characteristics and the quantity of radiation emitted can be controlled and/or adjusted; and

(b) fitted with visual displays and/or audible warnings of such emissions.

12.3. The operating instructions for devices emitting radiation shall give detailed information as to the nature of the emitted radiation, means of protecting the user, and on ways of avoiding misuse and of eliminating the risks inherent in installation.

13. Software incorporated in devices and standalone software

13.1. The devices that incorporate electronic programmable systems, including software, or standalone software that are devices in themselves, shall be designed to ensure repeatability, reliability and performance according to the intended purpose. In the event of a single fault condition, appropriate means shall be adopted to eliminate or reduce as far as possible and appropriate consequent risks.

13.2. For the devices that incorporate software or for standalone software that are devices in themselves, the software shall be developed and manufactured according to the state of the art taking into account the principles of development life cycle, risk management, verification and validation.

13.3. Software referred to in this Section that are intended to be used in combination with mobile computing platforms shall be designed and manufactured taking into account the specific features of the mobile platform (e.g. size and contrast ratio of the screen) and the external factors related to their use (varying environment as regards to level of light or noise).

14. Devices connected to or equipped with an energy source

14.1. For the devices connected to or equipped with an energy source, in the event of a single fault condition, appropriate means shall be adopted to eliminate or reduce as far as possible and appropriate consequent risks.

14.2. The devices where the safety of the patient depends on an internal power supply in the device shall be equipped with a means of determining the state of the power supply.

14.3. The devices shall be designed and manufactured in such a way as to reduce as far as possible the risks of creating electromagnetic interference which could impair the operation of this or other devices or equipment in the intended environment.

14.4. The devices shall be designed and manufactured in such a way as to provide an adequate level of intrinsic immunity to electromagnetic disturbance to enable them to operate as intended.

14.5. The devices shall be designed and manufactured in such a way as to avoid, as far as possible, the risk of accidental electric shocks to the user, professional or lay, or other person both during normal use of the device and in the event of a single fault condition in the device, provided the device is installed and maintained as indicated by the manufacturer.

15. Protection against mechanical and thermal risks

15.1. The devices shall be designed and manufactured in such a way as to protect the user, professional or lay, or other person against mechanical risks.

15.2. The devices shall be sufficiently stable under the foreseen operating conditions. They shall be suitable to withstand stresses inherent in the foreseen working environment, and to retain this resistance during the expected lifetime of the devices, subject to any inspection and maintenance requirements as indicated by the manufacturer.

15.3. Where there are risks due to the presence of moving parts, risks due to break-up or detachment, or leakage of substances, then appropriate protection means shall be incorporated.

Any guards or other means included with the device to provide protection, in particular against moving parts, shall be secure and shall not interfere with access for the normal operation of the device, or restrict routine maintenance of the device as intended by the manufacturer.

15.4. The devices shall be designed and manufactured in such a way as to reduce to the lowest possible level the risks arising from vibration generated by the devices, taking account of technical progress and of the means available for limiting vibrations, particularly at source, unless the vibrations are part of the specified performance.

15.5. The devices shall be designed and manufactured in such a way as to reduce to the lowest possible level the risks arising from the noise emitted, taking account of technical progress and of the means available to reduce noise, particularly at source, unless the noise emitted is part of the specified performance.

15.6. Terminals and connectors to the electricity, gas or hydraulic and pneumatic energy supplies which the user, professional or lay, or other person has to handle shall be designed and constructed in such a way as to minimise all possible risks.

15.7. Errors likely to be made when fitting or refitting, or connecting or reconnecting, certain parts before or during use which could be a source of risk must be made impossible by the design and construction of such parts or, failing this, by information given on the parts themselves and/or their housings.

The same information must be given on moving parts and/or their housings where the direction of movement needs to be known in order to avoid a risk.

15.8. Accessible parts of the devices (excluding the parts or areas intended to supply heat or reach given temperatures) and their surroundings shall not attain potentially dangerous temperatures under normal conditions of use.

16. Protection against the risks posed by devices intended by the manufacturer for self-testing or near-patient testing

16.1. The devices intended for self-testing or near-patient testing shall be designed and manufactured in such a way that they perform appropriately for their intended purpose taking into account the skills and the means available to the intended user and the influence resulting from variation that can be reasonably anticipated in the intended user's technique and environment. The information and instructions provided by the manufacturer shall be easy for the intended user to understand and apply.

16.2. The devices intended for self-testing or near-patient testing shall be designed and manufactured in such a way as to

– ensure that the device is easy to use by the intended user at all stages of the procedure; and

– reduce as far as possible the risk of error by the intended user in the handling of the device and, if applicable, the specimen, and also in the interpretation of the results.

16.3. The devices intended for self-testing and near-patient testing shall, where reasonably possible, include a procedure by which the intended user can:

– verify that, at the time of use, the device will perform as intended by the manufacturer; and

– be warned if the device has failed to provide a valid result.

III. REQUIREMENTS REGARDING INFORMATION SUPPLIED WITH THE DEVICE

17. Label and instructions for use

17.1. General requirements regarding the information supplied by the manufacturer

Each device shall be accompanied by the information needed to identify the device and its manufacturer, and communicate safety and performance related information to the user, professional or lay, or other person, as appropriate. Such information may appear on the device itself, on the packaging or in the instructions for use, taking into account the following:

(i) The medium, format, content, legibility, and location of the label and instructions for use shall be appropriate to the particular device, its intended purpose and the technical knowledge, experience, education or training of the intended user(s). In particular, instructions for use shall be written in terms readily understood by the intended user and, where appropriate, supplemented with drawings and diagrams. Some devices may include separate information for the professional user and the lay person.

(ii) The information required on the label, shall be provided on the device itself. If this is not practicable or appropriate, some or all of the information may appear on the packaging for each unit, and/or on the packaging of multiple devices.

Where multiple devices are supplied to a single user and/or location, a single copy of the instructions for use may be provided if so agreed by the purchaser who in any case may request further copies to be provided.

(iii) In duly justified and exceptional cases instructions for use may not be needed or may be abbreviated if the device can be used safely and as intended by the manufacturer without any such instructions for use.

(iv) Labels shall be provided in a human-readable format but may be supplemented by machine-readable forms, such as radio-frequency identification (RFID) or bar codes.

(v) When the device is intended for professional use only , instructions for use may be provided to the user in non-paper format (e.g. electronic), except when the device is intended for near-patient testing.

(vi) Residual risks which are required to be communicated to the user and/or other person shall be included as limitations, contraindications, precautions or warnings in the information supplied by the manufacturer.

(vii) Where appropriate, this information should take the form of internationally recognised symbols. Any symbol or identification colour used shall conform to the harmonised standards or CTS. In areas for which no standards or CTS exist, the

symbols and colours shall be described in the documentation supplied with the device.

(viii) In the case of devices containing a substance or a mixture which may be considered as being dangerous, taking account of the nature and quantity of its constituents and the form under which they are present, relevant hazard pictograms and labelling requirements of Regulation (EC) 1272/2008 shall apply. Where there is insufficient space to put all the information on the device itself or on its label, the relevant hazard pictograms shall be put on the label and the other information required by that Regulation shall be given in the instructions for use.

(ix) The provisions of Regulation (EC) 1907/2006 on the safety data sheet shall apply, unless all relevant information as appropriate is already made available by the instructions for use.

17.2. Information on the label

The label shall bear the following particulars:

(i) The name or trade name of the device;

(ii) The details strictly necessary for the user to identify the device and, where it is not obvious for the user, the intended purpose of the device;

(iii) The name, registered trade name or registered trade mark of the manufacturer and the address of his registered place of business at which he can be contacted and his location be established;

(iv) For imported devices, the name, registered trade name or registered trade mark of the authorised representative established within the Union and the address of his registered place of business at which he can be contacted and his location be established;

(v) An indication that the device is for *in vitro* diagnostic use;

(vi) The batch code/lot number or the serial number of the device preceded by the word LOT or SERIAL NUMBER or an equivalent symbol, as appropriate;

(vii) Where applicable, the unique device identification (UDI);

(viii) An unambiguous indication of the date until when the device may be used safely, without degradation of performance, expressed at least as the year, the month and, where relevant, the day, in that order;

(ix) Where there is no indication of the date until when it may be used safely, the year of manufacture. This year of manufacture may be included as part of the batch or serial number, provided the date is clearly identifiable;

(x) Where relevant, an indication of the net quantity of contents, expressed in terms of weight or volume, numerical count, or any combination of these, or other terms which accurately reflect the contents of the package;

(xi) An indication of any special storage and/or handling condition that applies;

(xii) Where appropriate, an indication of the sterile state of the device and the sterilisation method, or a statement indicating any special microbiological state or state of cleanliness;

(xiii) Warnings or precautions to be taken that need to be brought to the immediate attention of the user, professional or lay, or other person. This information may be

kept to a minimum in which case more detailed information shall appear in the instructions for use;

(xiv) Where applicable, any particular operating instructions;

(xv) If the device is intended for single use, an indication of that fact. A manufacturer's indication of single use shall be consistent across the Union;

(xvi) If the device is intended for self-testing or near-patient testing, an indication of that fact;

(xvii) If the device is for performance evaluation only, an indication of that fact;

(xviii) Where device kits include individual reagents and articles that may be made available as separate devices, each of these devices shall comply with the labelling requirements contained in this Section;

(xix) Wherever reasonable and practicable, the devices and separate components shall be identified, where appropriate in terms of batches, to allow all appropriate action to detect any potential risk posed by the devices and detachable components.

17.3. Information in the instructions for use

17.3.1. The instructions for use shall contain the following particulars:

(i) The name or trade name of the device;

(ii) The device’s intended purpose:

– what is detected and/or measured;

– its function (e.g. screening, monitoring, diagnosis or aid to diagnosis);

– the specific disorder, condition or risk factor of interest that it is intended to detect, define or differentiate;

– whether it is automated or not;

– whether it is qualitative, semi-quantitative or quantitative;

– the type of specimen(s) required; and

– where applicable, the testing population.

(iii) An indication that the device is for *in vitro* diagnostic use;

(iv) The intended user, as appropriate (e.g. healthcare professionals, lay person);

(v) The test principle;

(vi) A description of the reagents, calibrators and controls and any limitation upon their use (e.g. suitable for a dedicated instrument only);

(vii) A list of materials provided and a list of special materials required but not provided;

(viii) For devices intended for use together with other devices and/or general purpose equipment:

– information to identify such devices or equipment, in order to obtain a safe combination, and/or

– information on any known restrictions to combinations of devices and equipment.

(ix) An indication of any special storage (e.g. temperature, light, humidity, etc.) and/or handling conditions which apply;

(x) In-use stability which may include the storage conditions, and shelf life following the first opening of the primary container, together with the storage conditions and stability of working solutions, where this is relevant;

(xi) If the device is supplied as sterile, an indication of its sterile state, the sterilisation method and instructions in the event of the sterile packaging being damaged before use;

(xii) Information that allows the user to be informed of any warnings, precautions, measures to be taken and limitations of use regarding the device. This information shall cover, where appropriate:

- warnings, precautions and/or measures to be taken in the event of malfunction of the device or its degradation as suggested by changes in its appearance that may affect performance;
- warnings, precautions and/or measures to be taken in regards to the exposure to reasonably foreseeable external influences or environmental conditions, such as magnetic fields, external electrical and electromagnetic effects, electrostatic discharge, radiation associated with diagnostic or therapeutic procedures, pressure, humidity, or temperature;
- warnings, precautions and/or measures to be taken in regards to the risks of interference posed by the reasonably foreseeable presence of the device during specific diagnostic investigations, evaluations, therapeutic treatment or other procedures (e.g. electromagnetic interference emitted by the device affecting other equipment);
- precautions related to materials incorporated into the device that are carcinogenic, mutagenic or toxic, or that have endocrine disrupting properties or that could result in sensitisation or allergic reaction of the patient or user;
- if the device is intended for single use, an indication of that fact. A manufacturer's indication of single use shall be consistent across the Union;
- if the device is reusable, information on the appropriate processes to allow reuse, including cleaning, disinfection, decontamination, packaging and, where appropriate, the validated method of re-sterilization. Information shall be provided to identify when the device should no longer be reused, e.g. signs of material degradation or the maximum number of allowable reuses.

(xiii) Any warnings and/or precautions related to potentially infectious material that is included in the device;

(xiv) Where relevant, requirements for special facilities (e.g. clean room environment) or special training (e.g. radiation safety), or particular qualifications of the device intended user;

(xv) Conditions for collection, handling, and preparation of the specimen;

(xvi) Details of any preparatory treatment or handling of the device before it is ready for use (e.g. sterilisation, final assembly, calibration, etc.);

(xvii) The information needed to verify whether the device is properly installed and is ready to perform safely and as intended by the manufacturer, together with, where relevant:

- details of the nature, and frequency, of preventative and regular maintenance, including cleaning and disinfection;
- identification of any consumable components and how to replace them;
- information on any necessary calibration to ensure that the device operates properly and safely during its intended lifetime;
- methods of mitigating the risks encountered by persons involved in installing, calibrating or servicing devices.

(xviii) Where relevant, recommendations for quality control procedures;

(xix) The metrological traceability of values assigned to calibrators and trueness-control materials, including identification of applicable reference materials and/or reference measurement procedures of higher order;

(xx) Assay procedure including calculations and interpretation of results and where relevant if any confirmatory testing shall be considered;

(xxi) Analytical performance characteristics, such as sensitivity, specificity, and accuracy, repeatability, reproducibility, limits of detection and measurement range, including information needed for the control of known relevant interferences, limitations of the method and information about the use of available reference measurement procedures and materials by the user;

(xxii) Where relevant, clinical performance characteristics, such as diagnostic sensitivity and diagnostic specificity;

(xxiii) Where relevant, reference intervals;

(xxiv) Information on interfering substances or limitations (e.g. visual evidence of hyperlipidaemia or haemolysis, age of specimen) that may affect the performance of the device;

(xxv) Warnings or precautions to be taken in order to facilitate the safe disposal of the device, its accessories, and the consumables used with it, if any. This information shall cover, where appropriate:

- infection or microbial hazards (e.g. consumables contaminated with potentially infectious substances of human origin);
- environmental hazards (e.g. batteries or materials that emit potentially hazardous levels of radiation);
- physical hazards (e.g. explosion).

(xxvi) The name, registered trade name or registered trade mark of the manufacturer and the address of his registered place of business at which he can be contacted and his location be established, together with a telephone number and/or fax number and/or website address to obtain technical assistance;

(xxvii) Date of issue of the instructions for use or, if they have been revised, date of issue and identifier of the latest revision of the instructions for use;

(xxviii) A notice to the user, professional or lay, that any serious incident that has occurred in relation to the device should be reported to the manufacturer and the competent authority of the Member State where the user and/or patient is established;

(xxix) Where device kits include individual reagents and articles that may be made available as separate devices, each of these devices shall comply with the instructions for use requirements contained in this Section.

17.3.2. In addition, the instructions for use for devices intended for self-testing or near-patient testing shall comply with the following principles:

(i) Details of the test procedure shall be given, including any reagent preparation, specimen collection and/or preparation and information on how to run the test and read the results;

(ii) The results need to be expressed and presented in a way that is readily understood by the intended user;

(iii) Information needs to be provided with advice to the user on action to be taken (in case of positive, negative or indeterminate result), on the test limitations and on the possibility of false positive or false negative result. Information shall also be provided as to any factors that can affect the test result (e.g. age, gender, menstruation, infection, exercise, fasting, diet or medication);

(iv) for devices intended for self-testing, the information provided shall include a statement clearly directing that the user should not take any decision of medical relevance without first consulting the appropriate healthcare professional;

(v) for devices intended for self-testing used for the monitoring of an existing disease, the information shall specify that the patient should only adapt the treatment if he has received the appropriate training to do so.

ANNEX II

TECHNICAL DOCUMENTATION

The technical documentation and, if applicable, the summary technical documentation (STED) to be drawn up by the manufacturer shall include in particular the following elements:

1. DEVICE DESCRIPTION AND SPECIFICATION, INCLUDING VARIANTS AND ACCESSORIES

1.1. Device description and specification

(a) product or trade name and a general description of the device, including its intended purpose;

(b) the UDI device identifier as referred to in item (i) of point (a) of Article 22(1) attributed by the manufacturer to the device in question, as soon as identification of this device shall be based on a UDI system, or otherwise clear identification by means of product code, catalogue number or other unambiguous reference allowing traceability;

(c) the intended purpose of the device which may include:

(i) what is detected and/or measured;

(ii) its function (e.g. screening, monitoring, diagnosis or aid to diagnosis);

(iii) the specific disorder, condition or risk factor of interest that it is intended to detect, define or differentiate;

(iv) whether it is automated or not;

(v) whether it is qualitative, semi-quantitative or quantitative;

(vi) the type of specimen(s) required;

(vii) where applicable, the testing population;

(viii) the intended user.

(d) the description of the principle of the assay method or instrument principles of operation;

(e) the risk class of the device and the applicable classification rule according to Annex VII;

(f) the description of the components and where appropriate, the description of the reactive ingredients of relevant components (such as antibodies, antigens, nucleic acid primers);

and where applicable:

(g) the description of the specimen collection and transport materials provided with the device or descriptions of specifications recommended for use;

(h) for instruments of automated assays: the description of the appropriate assay characteristics or dedicated assays;

(i) for automated assays: a description of the appropriate instrumentation characteristics or dedicated instrumentation;

(j) a description of any software to be used with the device;

(k) a description or complete list of the various configurations/variants of the device that will be made available;

(l) a description of the accessories, other *in vitro* diagnostic medical devices and other products, which are intended to be used in combination with the device.

1.2. Reference to previous and similar generations of the device

(a) an overview of the manufacturer's previous generation(s) of the device, if such exist;

(b) an overview of the manufacturer's similar devices available on the EU or international markets, if such exist.

2. INFORMATION SUPPLIED BY THE MANUFACTURER

(a) a complete set of

– the label(s) on the device and on its packaging;

– the instructions for use;

(b) a list of the language variants for the Member States where the device is envisaged to be marketed.

3. DESIGN AND MANUFACTURING INFORMATION

3.1. Design information

Information to allow a general understanding of the design stages applied to the device.

This shall include:

(a) the description of the critical ingredients of the device such as antibodies, antigens, enzymes and nucleic acid primers provided or recommended for use with the device;

(b) for instruments, the description of major subsystems, analytical technology (e.g. operating principles, control mechanisms), dedicated computer hardware and software;

(c) for instruments and software, the overview of the entire system;

(d) for standalone software, the description of the data interpretation methodology (i.e. algorithm);

(e) for devices intended for self-testing or near-patient testing devices the description of the design aspects that make them suitable for self-testing or near-patient testing.

3.2. Manufacturing information

(a) Information to allow a general understanding of the manufacturing processes such as production, assembly, final product testing, and packaging of the finished device. More detailed information needs to be provided for the audit of the quality management system or other applicable conformity assessment procedures;

(b) identification of all sites, including suppliers and sub-contractors, where manufacturing activities are performed.

4. GENERAL SAFETY AND PERFORMANCE REQUIREMENTS

The documentation shall contain information regarding the solutions adopted to meet the general safety and performance requirements laid down in Annex I. This information may take the form of a checklist identifying:

(a) the general safety and performance requirements that apply to the device and why others do not apply;

(b) the method(s) used to demonstrate conformity with each applicable general safety and performance requirement;

(c) the harmonised standards or CTS applied or other method(s) employed;

(d) the precise identity of the controlled documents offering evidence of conformity with each harmonised standard, CTS or other method employed to demonstrate conformity with the general safety and performance requirements. This information shall incorporate a cross-reference to the location of such evidence within the full technical documentation and, if applicable, the summary technical documentation.

5. RISK/BENEFIT ANALYSIS AND RISK MANAGEMENT

The documentation shall contain a summary of

(a) the risk/benefit analysis referred to in Section 1 and 5 of Annex I; and

(b) the solutions adopted and the results of the risk management referred to in Section 2 of Annex I.

6. PRODUCT VERIFICATION AND VALIDATION

The documentation shall contain the results of verification and validation testing and/or studies undertaken to demonstrate conformity of the device with the requirements of this Regulation and in particular the applicable general safety and performance requirements.

This includes:

6.1 Information on analytical performance

6.1.1 Specimen type

This section shall describe the different specimen types that can be used, including their stability (e.g. storage and where applicable transport conditions) and storage conditions (e.g. duration, temperature limits and freeze/thaw cycles).

6.1.2 Analytical performance characteristics

6.1.2.1 Accuracy of measurement

(a) Trueness of measurement

This section shall provide information on the trueness of the measurement procedure and summarise the data in sufficient detail to allow assessment of the adequacy of the means selected to establish the trueness. Trueness measures apply to both

quantitative and qualitative assays only when a reference standard or method is available.

(b) Precision of measurement

This section shall describe repeatability and reproducibility studies.

6.1.2.2 Analytical sensitivity

This section shall include information about the study design and results. It shall provide a description of specimen type and preparation including matrix, analyte levels, and how levels were established. The number of replicates tested at each concentration shall also be provided as well as a description of the calculation used to determine assay sensitivity.

6.1.2.3 Analytical specificity

This section shall describe interference and cross reactivity studies to determine the analytical specificity in the presence of other substances/agents in the specimen.

Information shall be provided on the evaluation of potentially interfering and cross reacting substances/agents on the assay, on the substance/agent type and concentration tested, specimen type, analyte test concentration, and results.

Interferents and cross reacting substances/agents, which vary greatly depending on the assay type and design, could derive from exogenous or endogenous sources such as:

(a) substances used for patient treatment (e.g. medicinal products);

(b) substances ingested by the patient (e.g. alcohol, foods);

(c) substances added during specimen preparation (e.g. preservatives, stabilisers);

(d) substances encountered in specific specimens types (e.g. haemoglobin, lipids, bilirubin, proteins);

(e) analytes of similar structure (e.g. precursors, metabolites) or medical conditions unrelated to the test condition including specimens negative for the assay but positive for a condition that may mimic the test condition.

6.1.2.4 Metrological traceability of calibrator and control material values

6.1.2.5 Measuring range of the assay

This section shall include information on the measuring range (linear and non-linear measuring systems) including the limit of detection and describe information on how these were established.

This information shall include a description of specimen type, number of specimen, number of replicates, and preparation including information on matrix, analyte levels and how levels were established. If applicable, a description of high dose hook effect and the data supporting the mitigation (e.g. dilution) steps shall be added.

6.1.2.6 Definition of assay cut-off

This section shall provide a summary of analytical data with a description of the study design including methods for determining the assay cut-off, including:

(a) the population(s) studied (demographics / selection / inclusion and exclusion criteria / number of individuals included);

(b) method or mode of characterisation of specimens; and

(c) statistical methods e.g. Receiver Operator Characteristic (ROC) to generate results and if applicable, define grey-zone/equivocal zone.

6.2 Information on clinical performance

Where applicable, the documentation shall contain data on the clinical performance of the device.

The clinical evidence report referred to in Section 3 of Annex XII shall be included and/or fully referenced in the technical documentation.

6.3 Stability (excluding specimen stability)

This section shall describe claimed shelf life, in use stability and shipping stability studies.

6.3.1 Claimed shelf life

This section shall provide information on stability testing studies to support the claimed shelf life. Testing shall be performed on at least three different lots manufactured under conditions that are essentially equivalent to routine production conditions (these lots do not need to be consecutive lots). Accelerated studies or extrapolated data from real time data are acceptable for initial shelf life claim but need to be followed up with real time stability studies.

Such detailed information shall describe:

(a) the study report (including the protocol, number of lots, acceptance criteria and testing intervals);

(b) when accelerated studies have been performed in anticipation of the real time studies, the method used for accelerated studies;

(c) the conclusions and claimed shelf life.

6.3.2 In-use stability

This section shall provide information on in-use stability studies for one lot reflecting actual routine use of the device (real or simulated). This may include open vial stability and/or, for automated instruments, on board stability.

In the case of automated instrumentation if calibration stability is claimed, supporting data shall be included.

Such detailed information shall describe:

(a) the study report (including the protocol, acceptance criteria and testing intervals);

(b) the conclusions and claimed in-use stability.

6.3.3 Shipping stability

This section shall provide information on shipping stability studies for one lot to evaluate the tolerance of products to the anticipated shipping conditions.

Shipping studies can be done under real and/or simulated conditions and shall include variable shipping conditions such as extreme heat and/or cold.

Such information shall describe:

(a) the study report (including the protocol, acceptance criteria);

(b) the method used for simulated conditions;

(c) the conclusion and recommended shipping conditions.

6.4 Software verification and validation

The documentation shall contain evidence of the validation of the software, as used in the finished device. This information shall typically include the summary results of all verification, validation and testing performed in-house and as applicable in an actual user environment prior to final release. It shall also address all of the different hardware configurations and, where applicable, operating systems identified in the labelling.

6.5 Additional information in specific cases

(a) In the case of devices placed on the market in a sterile or defined microbiological condition, a description of the environmental conditions for the relevant manufacturing steps. In the case of devices placed on the market in a sterile condition, a description of the methods used, including the validation reports, with respect to packaging, sterilisation and maintenance of sterility. The validation report shall address bioburden testing, pyrogen testing and, if applicable, testing for sterilant residues.

(b) In the case of devices containing tissues, cells and substances of animal, human or microbial origin, information on the origin of such material and on the conditions in which it was collected.

(c) In the case of devices placed on the market with a measuring function, a description of the methods used in order to ensure the accuracy as given in the specifications.

(d) If the device is to be connected to other equipment in order to operate as intended, a description of this combination including proof that it conforms to the general safety and performance requirements when connected to any such equipment having regard to the characteristics specified by the manufacturer.

ANNEX III

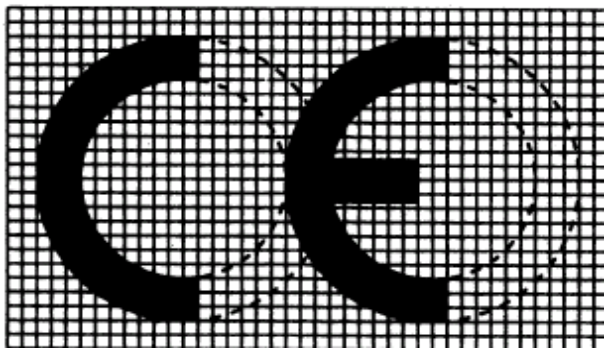
EU DECLARATION OF CONFORMITY

1. Name, registered trade name or registered trade mark of the manufacturer and, if applicable, his authorised representative, and the address of their registered place of business where they can be contacted and their location be established;
2. A statement that the declaration of conformity is issued under the sole responsibility of the manufacturer;
3. The UDI device identifier as referred to in item (i) of point (a) of Article 22(1) as soon as identification of the device that is covered by the declaration shall be based on a UDI system;
4. Product or trade name, product code, catalogue number or other unambiguous reference allowing identification and traceability of the device that is covered by the declaration (it may include a photograph, where appropriate). Except for the product or trade name, the information allowing identification and traceability may be provided by the device identifier referred to in point 3;
5. Risk class of the device in accordance with the rules set out in Annex VII;
6. A statement that the device that is covered by the present declaration is in conformity with this Regulation and, if applicable, with other relevant Union legislation that make provision for the issuing of a declaration of conformity;
7. References to the relevant harmonised standards or CTS used in relation to which conformity is declared;
8. Where applicable, name and identification number of the notified body, description of the conformity assessment procedure performed and identification of the certificate(s) issued;
9. Where applicable, additional information;
10. Place and date of issue, name and function of the person who signs as well as indication for and on behalf of whom he/she signs, signature.

ANNEX IV

CE MARKING OF CONFORMITY

1. The CE marking shall consist of the initials ‘CE’ taking the following form:



2. If the CE marking is reduced or enlarged, the proportions given in the above graduated drawing shall be respected.

3. The various components of the CE marking shall have substantially the same vertical dimension, which may not be less than 5 mm. This minimum dimension may be waived for small-scale devices.

ANNEX V

INFORMATION TO BE SUBMITTED WITH THE REGISTRATION OF DEVICES AND ECONOMIC OPERATORS IN ACCORDANCE WITH ARTICLE 23

AND

DATA ELEMENTS OF THE UDI DEVICE IDENTIFIER IN ACCORDANCE WITH ARTICLE 22

Part A

Information to be submitted with the registration of devices in accordance with Article 23

Manufacturers or, when applicable, authorised representatives, and, when applicable, importers shall submit the following information:

1. economic operator's role (manufacturer, authorised representative, or importer),
2. name, address and contact details of the economic operator,
3. where submission of information is completed by another person on behalf of any of the economic operators mentioned under point 1, the name, address and contact details of this person,
4. UDI device identifier, or where identification of the device is not yet based on a UDI system, the data elements laid down in points 5 to 18 of Part B of this Annex,
5. type, number and expiry date of certificate and name or identification number of the notified body that has issued the certificate (and link to the information on the certificate entered by the notified body in the electronic system on certificates),
6. Member State where the device shall or has been placed on the market in the Union,
7. in case of devices classified as classes B, C or D: Member States where the device is or shall be made available,
8. in case of imported device: country of origin,
9. presence of tissues, cells or substances of human origin (y/n),
10. presence of tissues, cells or substances of animal origin (y/n),
11. presence of cells or substances of microbial origin (y/n),
12. risk class of the device according to the rules set out in Annex VII,
13. where applicable, single identification number of the interventional clinical performance study and other clinical performance study involving risks for the subjects of the study conducted in relation to the device (or link to the clinical performance study registration in the electronic system regarding clinical performance studies),
14. in case of devices designed and manufactured by another legal or natural person as referred in Article 8(10), the name, address and contact details of that legal or natural person,

15. in case of devices classified as class C or D, the summary of safety and performance,

16. status of the device (on the market, no longer manufactured, withdrawn from the market, recalled),

17. indication when the device is a 'new' device.

    A device shall be considered as 'new' if:

    (a) there has been no such device continuously available on the Union market during the previous three years for the relevant analyte or other parameter;

    (b) the procedure involves analytical technology not continuously used in connection with a given analyte or other parameter on the Union market during the previous three years.

18. Indication if the device is intended for self-testing or near-patient testing.

Part B

Data elements of the UDI device identifier in accordance with Article 22

The UDI device identifier shall provide access to the following information related to the manufacturer and the device model:

1. quantity per package configuration,

2. if applicable, alternative or additional identifier(s),

3. the way how the device production is controlled (expiration date or manufacturing date, lot or batch number, serialisation number),

4. if applicable, the 'unit of use' device identifier (when a UDI is not assigned to the device at the level of its 'unit of use', a 'unit of use' device identifier shall be assigned to associate the use of a device with a patient),

5. name and address of the manufacturer (as indicated on the label),

6. if applicable, name and address of the authorised representative (as indicated on the label),

7. Global Medical Device Nomenclature (GMDN) code or internationally recognised nomenclature code,

8. if applicable, trade/brand name,

9. if applicable, device model, reference, or catalogue number,

10. additional product description (optional),

11. if applicable, storage and/or handling conditions (as indicated on the label or in the instructions for use),

12. if applicable, additional trade names of the device,

13. labelled as single use device (y/n),

14. if applicable, restricted number of reuses,

15. device packaged sterile (y/n),

16. need for sterilisation before use (y/n),

17. URL for additional information, e.g. electronic instructions for use (optional),

18. if applicable, critical warnings or contraindications.

ANNEX VI

MINIMUM REQUIREMENTS TO BE MET BY NOTIFIED BODIES

1. ORGANISATIONAL AND GENERAL REQUIREMENTS

1.1. Legal status and organisational structure

1.1.1. A notified body shall be established under the national law of a Member State, or under the law of a third country with which the Union has concluded an agreement in this respect, and shall have full documentation of its legal personality and status. This shall include information about ownership and the legal or natural persons exercising control over the notified body.

1.1.2. If the notified body is a legal entity that is part of a larger organisation, the activities of this organisation as well as its organisational structure and governance, and the relationship with the notified body shall be clearly documented.

1.1.3. If the notified body wholly or partly owns legal entities established in a Member State or in a third country, the activities and responsibilities of those entities, as well as their legal and operational relationships with the notified body, shall be clearly defined and documented.

1.1.4. The organisational structure, distribution of responsibilities and operation of the notified body shall be such that it assures confidence in the performance and results of the conformity assessment activities conducted.

The organisational structure and the functions, responsibilities and authority of its top-level management and of other personnel with influence upon the performance and results of the conformity assessment activities shall be clearly documented.

1.2. Independence and impartiality

1.2.1. The notified body shall be a third-party body that is independent of the manufacturer of the product in relation to which it performs conformity assessment activities. The notified body shall also be independent of any other economic operator having an interest in the product as well as of any competitor of the manufacturer.

1.2.2. The notified body shall be organised and operated so as to safeguard the independence, objectivity and impartiality of its activities. The notified body shall have procedures in place that effectively ensure identification, investigation and resolution of any case in which a conflict of interests may arise, including involvement in consultancy services in the field of *in vitro* diagnostic medical devices prior to taking up employment with the notified body.

1.2.3. The notified body, its top-level management and the personnel responsible for carrying out the conformity assessment tasks shall not

– be the designer, manufacturer, supplier, installer, purchaser, owner, user or maintainer of the products, nor the authorised representative of any of those parties. This shall not preclude the purchase and use of assessed products that are necessary for the operations of the notified body (e.g. measuring equipment), the conduct of the conformity assessment or the use of such products for personal purposes;

– be directly involved in the design, manufacture or construction, the marketing, installation, use or maintenance of the products which they assess, or represent

the parties engaged in those activities. They shall not engage in any activity that may conflict with their independence of judgement or integrity in relation to conformity assessment activities for which they are notified;

– offer or provide any service which may jeopardise the confidence in their independence, impartiality or objectivity. In particular, they shall not offer or provide consultancy services to the manufacturer, his authorised representative, a supplier or a commercial competitor as regards the design, construction, marketing or maintenance of the products or processes under assessment. This does not preclude general training activities relating to medical device regulations or related standards that are not client specific.

1.2.4. The impartiality of the notified bodies, of their top level management and of the assessment personnel shall be guaranteed. The remuneration of the top level management and assessment personnel of a notified body shall not depend on the results of the assessments.

1.2.5. If a notified body is owned by a public entity or institution, independence and absence of any conflict of interests shall be ensured and documented between, on the one hand, the national authority responsible for notified bodies and/or competent authority and, on the other hand, the notified body.

1.2.6. The notified body shall ensure and document that the activities of its subsidiaries or subcontractors, or of any associated body, do not affect its independence, impartiality or objectivity of its conformity assessment activities.

1.2.7. The notified body shall operate in accordance with a set of consistent, fair and reasonable terms and conditions, taking into account the interests of small and medium-sized enterprises as defined by Commission Recommendation 2003/361/EC.

1.2.8. The requirements of this section in no way preclude exchanges of technical information and regulatory guidance between a notified body and a manufacturer seeking their conformity assessment.

1.3. Confidentiality

The personnel of a notified body shall observe professional secrecy with regard to all information obtained in carrying out their tasks under this Regulation, except in relation to the national authorities responsible for notified bodies, competent authorities or the Commission. Proprietary rights shall be protected. To this end, the notified body shall have documented procedures in place.

1.4. Liability

The notified body shall take out appropriate liability insurance that corresponds to the conformity assessment activities for which it is notified, including the possible suspension, restriction or withdrawal of certificates, and the geographic scope of its activities, unless liability is assumed by the State in accordance with national law, or the Member State itself is directly responsible for the conformity assessment.

1.5. Financial requirements

The notified body shall have at its disposal the financial resources required to conduct its conformity assessment activities and related business operations. It shall document and provide evidence of its financial capacity and its sustainable economic viability, taking into account specific circumstances during an initial start-up phase.

1.6. Participation in coordination activities

1.6.1. The notified body shall participate in, or ensure that its assessment personnel is informed of the relevant standardisation activities and the activities of the notified body coordination group and that its assessment and decision making personnel are informed of all relevant legislation, guidance and best practice documents adopted in the framework of this Regulation.

1.6.2. The notified body shall adhere to a code of conduct, addressing among other things, ethical business practices for notified bodies in the field of *in vitro* diagnostic medical devices that is accepted by the national authorities responsible for notified bodies. The code of conduct shall provide for a mechanism of monitoring and verification of its implementation by notified bodies.

2. QUALITY MANAGEMENT REQUIREMENTS

2.1. The notified body shall establish, document, implement, maintain and operate a quality management system that is appropriate to the nature, area and scale of its conformity assessment activities and capable of supporting and demonstrating the consistent achievement of the requirements of this Regulation.

2.2. The quality management system of the notified body shall at least address the following:

– policies for assignment of personnel to activities and their responsibilities;

– decision-making process in accordance with the tasks, responsibilities and role of the top-level management and other notified body personnel;

– control of documents;

– control of records;

– management review;

– internal audits;

– corrective and preventive actions;

– complaints and appeals.

3. RESOURCE REQUIREMENTS

3.1. General

3.1.1. A notified body shall be capable of carrying out all the tasks assigned to it by this Regulation with the highest degree of professional integrity and the requisite technical competence in the specific field, whether those tasks are carried out by the notified body itself or on its behalf and under its responsibility.

In particular, it shall have the necessary personnel and shall possess or have access to all equipment and facilities needed to perform properly the technical and administrative tasks entailed in the conformity assessment activities in relation to which it has been notified.

This presupposes the availability within its organisation of sufficient scientific personnel who possess experience and knowledge sufficient to assess the medical functionality and performance of devices for which it has been notified, having

regard to the requirements of this Regulation and, in particular, those set out in Annex I.

3.1.2. At all times and for each conformity assessment procedure and each kind or category of products in relation to which it has been notified, a notified body shall have within its organisation the necessary administrative, technical and scientific personnel with technical knowledge and sufficient and appropriate experience relating to *in vitro* diagnostic medical devices and the corresponding technologies to perform the conformity assessment tasks, including the assessment of clinical data.

3.1.3. The notified body shall clearly document the extent and the limits of the duties, responsibilities and authorities in relation of the personnel involved in conformity assessment activities and inform the personnel concerned about it.

3.2. Qualification criteria in relation to personnel

3.2.1. The notified body shall establish and document qualification criteria and procedures for selection and authorisation of persons involved in conformity assessment activities (knowledge, experience and other competence required) and the required training (initial and ongoing training). The qualification criteria shall address the various functions within the conformity assessment process (e.g. auditing, product evaluation/testing, design dossier/file review, decision-making) as well as the devices, technologies and areas covered by the scope of designation.

3.2.2. The qualification criteria shall refer to the scope of the notified body's designation in accordance with the scope description used by the Member State for the notification referred to in Article 31, providing sufficient level of detail for the required qualification within the subdivisions of the scope description.

Specific qualification criteria shall be defined for the assessment of biocompatibility aspects, *clinical evaluation and the different types of sterilisation processes.*

3.2.3. The personnel responsible for authorising other personnel to perform specific conformity assessment activities and the personnel with overall responsibility for the final review and decision-making on certification shall be employed by the notified body itself and shall not be subcontracted. This personnel altogether shall have proven knowledge and experience in the following:

- Union *in vitro* diagnostic medical devices legislation and relevant guidance documents;
- the conformity assessment procedures in accordance with this Regulation;
- a broad base of *in vitro* diagnostic medical device technologies, the *in vitro* diagnostic medical device industry and the design and manufacture of *in vitro* diagnostic medical devices;
- the notified body’s quality management system and related procedures;
- the types of qualifications (knowledge, experience and other competence) required for carrying out conformity assessments in relation to *in vitro* diagnostic medical devices as well as the relevant qualification criteria;
- training relevant to personnel involved in conformity assessment activities in relation to *in vitro* diagnostic medical devices;
- the ability to draw up certificates, records and reports demonstrating that the conformity assessments have been appropriately carried out.

3.2.4. Notified bodies shall have available personnel with clinical expertise. This personnel shall be integrated in the notified body's decision-making process in a steady way in order to:

- identify when specialist input is required for the assessment of the clinical evaluation conducted by the manufacturer and identify appropriately qualified experts;
- appropriately train external clinical experts in the relevant requirements of this Regulation, delegated and/or implementing acts, harmonised standards, CTS and guidance documents and ensure that the external clinical experts are fully aware of the context and implication of their assessment and advice provided;
- be able to discuss the clinical data contained within the manufacturer's clinical evaluation with the manufacturer and with external clinical experts and to appropriately guide external clinical experts in the assessment of the clinical evaluation;
- be able to scientifically challenge the clinical data presented, and the results of the external clinical experts' assessment of the manufacturer's clinical evaluation;
- be able to ascertain the comparability and consistency of the clinical assessments conducted by clinical experts;
- be able to make an objective clinical judgement about the assessment of the manufacturer's clinical evaluation and make a recommendation to the notified body's decision maker.

3.2.5. The personnel responsible for carrying out product related review (e.g. design dossier review, technical documentation review or type examination including aspects such as clinical evaluation, sterilisation, software validation) shall have the following proven qualification:

- successful completion of a university or a technical college degree or equivalent qualification in relevant studies, e.g. medicine, natural science or engineering;
- four years professional experience in the field of healthcare products or related sectors (e.g. industry, audit, healthcare, research experience) whilst two years of this experience shall be in the design, manufacture, testing or use of the device or technology to be assessed or related to the scientific aspects to be assessed;
- appropriate knowledge of the general safety and performance requirements laid down in Annex I as well as related delegated and/or implementing acts, harmonised standards, CTS and guidance documents;
- appropriate knowledge and experience of risk management and related *in vitro* diagnostic medical device standards and guidance documents;
- appropriate knowledge and experience of the conformity assessment procedures laid down in Annexes VIII to X, in particular of those aspects for which they are authorised, and adequate authority to carry out those assessments.

3.2.6. The personnel responsible for carrying out audits of the manufacturer's quality management system shall have the following proven qualification:

– successful completion of a university or a technical college degree or equivalent qualification in relevant studies, e.g. medicine, natural sciences or engineering;

– four years professional experience in the field of healthcare products or related sectors (e.g. industry, audit, healthcare, research experience) whilst two years of this experience shall be in the area of quality management;

– appropriate knowledge of the *in vitro* diagnostic medical devices legislation as well as related delegated and/or implementing acts, harmonised standards, CTS and guidance documents;

– appropriate knowledge and experience of risk management and related *in vitro* diagnostic medical device standards and guidance documents;

– appropriate knowledge of quality management systems and related standards and guidance documents;

– appropriate knowledge and experience of the conformity assessment procedures laid down in Annexes VIII to X, in particular of those aspects for which they are authorised, and adequate authority to carry out the audits;

– training in auditing techniques enabling them to challenge quality management systems.

3.3. Documentation of qualification, training and authorisation of personnel

3.3.1. The notified body shall have a process in place to fully document the qualification of each personnel involved in conformity assessment activities and the satisfaction of the qualification criteria referred to in Section 3.2. Where in exceptional circumstances the fulfilment of the qualification criteria set out in Section 3.2 cannot be fully demonstrated, the notified body shall appropriately justify the authorisation of this personnel to carry out specific conformity assessment activities.

3.3.2. For its personnel referred to in Sections 3.2.3 to 3.2.6, the notified body shall establish and maintain up to date:

– a matrix detailing the responsibilities of the personnel in respect of the conformity assessment activities;

– records demonstrating the required knowledge and experience for the conformity assessment activity for which they are authorised.

3.4. Subcontractors and external experts

3.4.1. Without prejudice to the limitations emanating from Section 3.2., the notified bodies may subcontract clearly defined parts of the conformity assessment activities. The subcontracting of the auditing of quality management systems or of product related reviews as a whole is not allowed.

3.4.2. Where a notified body subcontracts conformity assessment activities either to an organisation or an individual, it shall have a policy describing the conditions under which subcontracting may take place. Any subcontracting or consultation of external experts shall be properly documented and be subject to a written agreement covering, among others, confidentiality and conflict of interests.

3.4.3. Where subcontractors or external experts are used in the context of the conformity assessment, the notified body shall have adequate own competence in each product area for which it is designated to lead the conformity assessment, to verify the appropriateness and validity of expert opinions and make the decision on the certification.

3.4.4. The notified body shall establish procedures for assessing and monitoring the competence of all subcontractors and external experts used.

3.5. Monitoring of competences and training

3.5.1. The notified body shall appropriately monitor the satisfactory performance of the conformity assessment activities by its personnel.

3.5.2. It shall review the competence of its personnel and identify training needs in order to maintain the required level of qualification and knowledge.

4. PROCESS REQUIREMENTS

4.1. The notified body's decision-making process shall be clearly documented, including the process for the issue, suspension, reinstatement, withdrawal or refusal of conformity assessment certificates, their modification or restriction and the issue of supplements.

4.2. The notified body shall have in place a documented process for the conduct of the conformity assessment procedures for which it is designated taking into account their respective specificities, including legally required consultations, in respect of the different categories of devices covered by the scope of notification, ensuring transparency and the ability of reproduction of those procedures.

4.3. The notified body shall have in place documented procedures covering at least:

– the application for conformity assessment by a manufacturer or by an authorised representative,

– the processing of the application, including the verification of the completeness of the documentation, the qualification of the product as *in vitro* diagnostic medical device and its classification,

– the language of the application, of the correspondence and of the documentation to be submitted,

– the terms of the agreement with the manufacturer or authorised representative,

– the fees to be charged for conformity assessment activities,

– the assessment of relevant changes to be submitted for prior approval,
– the planning of surveillance,
– the renewal of certificates.

ANNEX VII

CLASSIFICATION CRITERIA

1. IMPLEMENTING RULES FOR THE CLASSIFICATION RULES

1.1. Application of the classification rules shall be governed by the intended purpose of the devices.

1.2. If the device is intended to be used in combination with another device, the classification rules shall apply separately to each of the devices.

1.3. Accessories are classified in their own right separately from the device with which they are used.

1.4. Standalone software, which drives a device or influences the use of a device, falls automatically in the same class as the device. If standalone software is independent of any other device, it is classified in its own right.

1.5. Calibrators intended to be used with a device shall be classified in the same class as the device.

1.6. Standalone control materials with quantitative or qualitative assigned values intended for one specific analyte or multiple analytes shall be classified in the same class as the device.

1.7. The manufacturer shall take into consideration all the rules in order to establish the proper classification for the device.

1.8. Where a device has multiple intended purposes stated by the manufacturer, which place the device into more than one class, it shall be classified in the higher class.

1.9. If several classification rules apply to the same device the rule resulting in the higher classification shall apply.

2. CLASSIFICATION RULES

2.1. Rule 1

Devices intended for the following purposes are classified as **class D**:

– Devices intended to be used to detect the presence of, or exposure to, a transmissible agent in blood, blood components, cells, tissues or organs, or in any of their derivatives, in order to assess their suitability for transfusion or transplantation.

– Devices intended to be used to detect the presence of, or exposure to, a transmissible agent that causes a life-threatening disease with a high or currently undefined risk of propagation.

This rule applies to first line assays, confirmatory assays and supplemental assays.

2.2. Rule 2

Devices intended to be used for blood grouping, or tissue typing to ensure the immunological compatibility of blood, blood components, cells, tissue or organs that are intended for transfusion or transplantation, are classified as **class C,** except when intended to determine any of the following markers:

– ABO system [A (ABO1), B (ABO2), AB (ABO3)];

– Rhesus system [RH1 (D), RH2 (C), RH3 (E), RH4 (c), RH5 (e)];

– Kell system [Kel1 (K)];

– Kidd system [JK1 (Jka), JK2 (Jkb)];

– Duffy system [FY1 (Fya), FY2 (Fyb)]

in which case they are classified as **class D.**

2.3. Rule 3

Devices are classified as **class C** if they are intended for:

(a) detecting the presence of, or exposure to, a sexually transmitted agent;

(b) detecting the presence in cerebrospinal fluid or blood of an infectious agent with a risk of limited propagation;

(c) detecting the presence of an infectious agent, if there is a significant risk that an erroneous result would cause death or severe disability to the individual or foetus being tested, or to the individual's offspring;

(d) pre-natal screening of women in order to determine their immune status towards transmissible agents;

(e) determining infective disease status or immune status, if there is a risk that an erroneous result would lead to a patient management decision resulting in an imminent life-threatening situation for the patient or for the patient's offspring;

(f) selection of patients, *i.e.*

(i) Devices intended to be used as companion diagnostics; or

(ii) Devices intended to be used for disease staging; or

(iii) Devices intended to be used in screening for or in the diagnosis of cancer.

(g) human genetic testing;

(h) monitoring of levels of medicinal products, substances or biological components, when there is a risk that an erroneous result will lead to a patient management decision resulting in an imminent life-threatening situation for the patient or for the patient's offspring;

(i) management of patients suffering from a life-threatening infectious disease;

(j) screening for congenital disorders in the foetus.

2.4. Rule 4

(a) Devices intended for self-testing are classified as class C, except those devices from which the result is not determining a medically critical status, or is preliminary and requires follow-up with the appropriate laboratory test in which case they are Class B.

(b) Devices intended for blood gases and blood glucose determinations for near-patient testing are class C. Other devices that are intended for near-patient testing shall be classified in their own right.

2.5. Rule 5

The following devices are classified as **class A**:

(a) reagents or other articles which possess specific characteristics, intended by the manufacturer to make them suitable for *in vitro* diagnostic procedures related to a specific examination;

(b) instruments intended by the manufacturer specifically to be used for *in vitro* diagnostic procedures;

(c) specimen receptacles.

2.6. Rule 6

Devices not covered by the above-mentioned classification rules are classified as **class B**.

2.7. Rule 7

Devices which are controls without a quantitative or qualitative assigned value are classified as **class B**.

ANNEX VIII

CONFORMITY ASSESSMENT BASED ON FULL QUALITY ASSURANCE AND DESIGN EXAMINATION

Chapter I: Full Quality Assurance System

1. The manufacturer shall ensure application of the quality management system approved for the design, manufacture and final inspection of the devices concerned, as specified in Section 3, and is subject to audit as laid down in Sections 3.3 and 3.4 and to the surveillance as specified in Section 4.

2. The manufacturer who fulfils the obligations imposed by Section 1 shall draw up and keep an EU declaration of conformity in accordance with Article 15 and Annex III for the device model covered by the conformity assessment procedure. By issuing a declaration of conformity, the manufacturer ensures and declares that the devices concerned meet the provisions of this Regulation which apply to them.

3. Quality management system

3.1. The manufacturer shall lodge an application for assessment of his quality management system with a notified body. The application shall include:

- the name and address of the manufacturer and any additional manufacturing site covered by the quality management system, and, if the application is lodged by the authorised representative, his name and address as well,
- all the relevant information on the device or device category covered by the procedure,
- a written declaration that no application has been lodged with any other notified body for the same device-related quality management system, or information about any previous application for the same device-related quality management system that has been refused by another notified body,
- the documentation on the quality management system,
- a description of the procedures in place to fulfil the obligations imposed by the quality management system approved and the undertaking by the manufacturer to apply these procedures,
- a description of the procedures in place to keep the approved quality management system adequate and efficacious and an undertaking by the manufacturer to apply these procedures,
- the documentation on the post-market surveillance plan, including, when applicable, a plan for the post-market follow-up, and the procedures put in place to ensure compliance with the obligations emanating from the provisions on vigilance set out in Articles 59 to 64,
- a description of the procedures in place to keep up to date the post-market surveillance plan, including, when applicable, a plan for the post-market follow-up, and the procedures ensuring compliance with the obligations emanating from the provisions on vigilance set out in Articles 59 to 64, as well as the undertaking by the manufacturer to apply these procedures.

3.2. Application of the quality management system shall ensure that the devices conform to the provisions of this Regulation which apply to them at every stage, from design to final inspection. All the elements, requirements and provisions adopted by the manufacturer for his quality management system shall be documented in a systematic and orderly manner in the form of written policies and procedures, such as quality programmes, quality plans, quality manuals and quality records.

Moreover, the documentation to be submitted for the assessment of the quality management system shall include an adequate description of, in particular:

(a) the manufacturer's quality objectives;

(b) the organisation of the business and in particular:

– the organisational structures, the responsibilities of the managerial staff and their organisational authority where quality of design and manufacture of the products is concerned,

– the methods of monitoring the efficient operation of the quality management system and in particular its ability to achieve the desired quality of design and of product, including control of products which fail to conform,

– where the design, manufacture and/or final inspection and testing of the products, or elements thereof, is carried out by another party, the methods of monitoring the efficient operation of the quality management system and in particular the type and extent of control applied to the other party,

– where the manufacturer does not have a registered place of business in a Member State, the draft mandate for the designation of an authorised representative and a letter of intention of the authorised representative to accept the mandate;

(c) the procedures and techniques for monitoring, verifying, validating and controlling the design of the devices, including the corresponding documentation as well as the data and records arising from those procedures and techniques;

(d) the inspection and quality assurance techniques at the manufacturing stage and in particular:

– the processes and procedures which will be used, particularly as regards sterilisation, purchasing and the relevant documents,

– the product identification procedures drawn up and kept up to date from drawings, specifications or other relevant documents at every stage of manufacture;

(e) the appropriate tests and trials which will be carried out before, during and after manufacture, the frequency with which they will take place, and the test equipment used; it shall be possible to trace back the calibration of the test equipment adequately.

In addition, the manufacturer shall grant the notified body access to the technical documentation referred to in Annex II.

3.3. Audit

(a) The notified body shall audit the quality system to determine whether it meets the requirements referred to in Section 3.2. Unless duly substantiated, it shall

presume that quality management systems which satisfy the relevant harmonised standards or CTS conform to the requirements covered by the standards or CTS.

(b) The assessment team shall include at least one member with past experience of assessments of the technology concerned. The assessment procedure shall include an audit on the manufacturer's premises and, if appropriate, on the premises of the manufacturer's suppliers and/or subcontractors to inspect the manufacturing and other relevant processes.

(c) Moreover, in the case of devices classified as class C, the audit procedure shall include an assessment, on a representative basis, of the design documentation within the technical documentation as referred to in Annex II of the device(s) concerned. In choosing representative sample(s) the notified body shall take into account the novelty of the technology, similarities in design, technology, manufacturing and sterilisation methods, the intended purpose and the results of any previous relevant assessments that have been carried out in accordance with this Regulation. The notified body shall document its rationale for the sample(s) taken.

(d) If the quality management system conforms to the relevant provisions of this Regulation, the notified body shall issue an EU full quality assurance certificate. The decision shall be notified to the manufacturer. It shall contain the conclusions of the audit and a reasoned assessment.

3.4. The manufacturer shall inform the notified body which approved the quality management system of any plan for substantial changes to the quality management system or the product-range covered. The notified body shall assess the changes proposed and verify whether after these changes the quality management system still meets the requirements referred to in Section 3.2. It shall notify the manufacturer of its decision which shall contain the conclusions of the audit and a reasoned assessment. The approval of any substantial change to the quality management system or the product-range covered shall take the form of a supplement to the EU full quality assurance certificate.

4. Surveillance assessment applicable to devices classified as class C and D

4.1. The aim of surveillance is to ensure that the manufacturer duly fulfils the obligations imposed by the approved quality management system.

4.2. The manufacturer shall authorise the notified body to carry out all the necessary audits, including inspections, and supply it with all relevant information, in particular:

– the documentation on the quality management system,

– the documentation on the post-market surveillance plan, including a post-market follow-up, as well as, if applicable, any findings resulting from the application of the post-market surveillance plan, including the post-market follow-up, and of the provisions on vigilance set out in Articles 59 to 64,

– the data stipulated in the part of the quality management system relating to design, such as the results of analyses, calculations, tests and the solutions adopted regarding the risk-management as referred to in Section 2 of Annex I,

– the data stipulated in the part of the quality management system relating to manufacture, such as inspection reports and test data, calibration data, qualification reports of the personnel concerned, etc.

4.3. The notified body shall periodically, at least every 12 months, carry out appropriate audits and assessments to make sure that the manufacturer applies the approved quality management system and the post-market surveillance plan, and shall supply the manufacturer with an assessment report. This shall include inspections on the premises of the manufacturer and, if appropriate, of the manufacturer's suppliers and/or subcontractors. At the time of such inspections, the notified body shall, where necessary, carry out or ask for tests in order to check that the quality management system is working properly. It shall provide the manufacturer with an inspection report and, if a test has been carried out, with a test report.

4.4. The notified body shall randomly perform unannounced factory inspections to the manufacturer and, if appropriate, of the manufacturer's suppliers and/or subcontractors, which may be combined with the periodic surveillance assessment referred to in Section 4.3. or be performed in addition to this surveillance assessment. The notified body shall establish a plan for the unannounced inspections which shall not be disclosed to the manufacturer.

Within the context of such unannounced inspections, the notified body shall check an adequate sample from the production or the manufacturing process to verify that the manufactured device is in conformity with the technical documentation and/or design dossier. Prior to the unannounced inspection, the notified body shall specify the relevant sampling criteria and testing procedure.

Instead of, or in addition to, the sampling from the production, the notified body shall take samples of devices from the market to verify that the manufactured device is in conformity with the technical documentation and/or design dossier. Prior to the sampling, the notified body shall specify the relevant sampling criteria and testing procedure.

The notified body shall provide the manufacturer with an inspection report which shall include, if applicable, the result of the sample check.

4.5. In the case of devices classified as class C, the surveillance assessment shall also include the assessment of the design documentation within the technical documentation of the device(s) concerned on the basis of further representative sample(s) chosen in accordance with the rationale documented by the notified body in accordance with point (c) of Section 3.3.

4.6. The notified body shall ensure that the composition of the assessment team assures experience with the technology concerned, continuous objectivity and neutrality; this shall include a rotation of the members of the assessment team at appropriate intervals. As a general rule, a lead auditor shall not lead and attend an audit for more than three consecutive years in respect to the same manufacturer.

4.7. If the notified body establishes a divergence between the sample taken from the production or from the market and the specifications laid down in the technical documentation or the approved design, it shall suspend or withdraw the relevant certificate or impose restrictions on it.

Chapter II: Design dossier examination

5. Examination of the design of the device and batch verification applicable to devices in class D

5.1. In addition to the obligation imposed by Section 3, the manufacturer of devices classified as class D shall lodge with the notified body referred to in Section 3.1 an application for the examination of the design dossier relating to the device which he plans to manufacture and which falls into the device category covered by the quality management system referred to in Section 3.

5.2. The application shall describe the design, manufacture and performances of the device in question. It shall include the technical documentation as referred to in Annex II; where the technical documentation is voluminous and/or held in different locations, the manufacturer shall submit a summary technical documentation (STED) and grant access to the full technical documentation upon request.

In the case of devices for self-testing or near-patient testing, the application shall also include the aspects referred to in Section 6.1, point b).

5.3. The notified body shall examine the application employing staff with proven knowledge and experience regarding the technology concerned. The notified body may require the application to be completed by further tests or other evidence to allow assessment of conformity with the requirements of this Regulation. The notified body shall carry out adequate physical or laboratory tests in relation to the device or request the manufacturer to carry out such tests.

5.4. Before issuing an EU design-examination certificate, the notified body shall request a reference laboratory, where designated in accordance with Article 78, to verify compliance of the device with the CTS, when available, or with other solutions chosen by the manufacturer to ensure a level of safety and performance that is at least equivalent.

The reference laboratory shall provide a scientific opinion within 30 days.

The scientific opinion of the reference laboratory and any possible updates shall be included in the documentation of the notified body concerning the device. The notified body shall give due consideration to the views expressed in the scientific opinion when making its decision. The notified body shall not deliver the certificate if the scientific opinion is unfavourable.

5.5. The notified body shall provide the manufacturer with an EU design-examination report.

If the device conforms to the relevant provisions of this Regulation, the notified body shall issue an EU design-examination certificate. The certificate shall contain the conclusions of the examination, the conditions of validity, the data needed for identification of the approved design, where appropriate, a description of the intended purpose of the device.

5.6. Changes to the approved design shall receive further approval from the notified body which issued the EU design-examination certificate, wherever the changes could affect conformity with the general safety and performance requirements of this Regulation or with the conditions prescribed for use of the device. The applicant shall inform the notified body which issued the EU design-examination certificate of any planned changes to the approved design. The notified body shall examine the planned changes, notify the manufacturer of its decision and provide him with a supplement to the EU design-examination report.

Where the changes could affect compliance with the CTS or with other solutions chosen by the manufacturer which were approved through the EU design-

examination certificate, the notified body shall consult the reference laboratory that was involved in the initial consultation, in order to confirm that compliance with the CTS or with other solutions chosen by the manufacturer to ensure a level of safety and performance that is at least equivalent are maintained.

The reference laboratory shall provide a scientific opinion within 30 days.

The approval of any change to the approved design shall take the form of a supplement to the EU design-examination certificate.

5.7. To verify conformity of manufactured devices classified as class D, the manufacturer shall carry out tests on the manufactured devices or each batch of devices. After the conclusion of the controls and tests he shall forward to the notified body without delay the relevant reports on these tests. Furthermore, the manufacturer shall make the samples of manufactured devices or batches of devices available to the notified body in accordance with pre-agreed conditions and modalities which shall include that the notified body or the manufacturer, in regular intervals, shall send samples of the manufactured devices or batches of devices to a reference laboratory, where designated in accordance with Article 78, to carry out appropriate tests. The reference laboratory shall inform the notified body about its findings.

5.8. The manufacturer may place the devices on the market, unless the notified body communicates to the manufacturer within the agreed time-frame, but not later than 30 days after reception of the samples, any other decision, including in particular any condition of validity of delivered certificates.

6. Examination of the design of specific types of devices

6.1. Examination of the design of devices for self-testing and near-patient testing classified as class A, B or C

(a) The manufacturer of devices for self-testing or near-patient testing classified as class A, B and C shall lodge with the notified body referred to in Section 3.1 an application for the examination of the design.

(b) The application shall enable the design of the device to be understood and shall enable conformity with the design-related requirements of this Regulation to be assessed. It shall include:

– test reports, including results of studies carried out with intended users;

– where practicable, an example of the device; if required, the device shall be returned on completion of the design examination;

– data showing the handling suitability of the device in view of its intended purpose for self-testing or near patient-testing;

– the information to be provided with the device on its label and its instructions for use.

The notified body may require the application to be completed by further tests or proof to allow assessment of conformity with the requirements of this Regulation.

(c) The notified body shall examine the application employing staff with proven knowledge and experience regarding the technology concerned and provide the manufacturer with an EU design-examination report.

(d) If the device conforms to the relevant provisions of this Regulation, the notified body shall issue an EU design-examination certificate. The certificate

shall contain the conclusions of the examination, the conditions of validity, the data needed for the identification of the approved design and, where appropriate, a description of the intended purpose of the device.

(e) Changes to the approved design shall receive further approval from the notified body which issued the EU design-examination certificate, wherever the changes could affect conformity with the general safety and performance requirements of this Regulation or with the conditions prescribed for use of the device. The applicant shall inform the notified body which issued the EU design-examination certificate of any planned changes to the approved design. The notified body shall examine the planned changes, notify the manufacturer of its decision and provide him with a supplement to the EU design-examination report. The approval of any change to the approved design shall take the form of a supplement to the EU design-examination certificate.

6.2. Examination of the design of companion diagnostics

(a) The manufacturer of a companion diagnostic shall lodge with the notified body referred to in Section 3.1 an application for the examination of the design.

(b) The application shall enable the design of the device to be understood and shall enable conformity with the design-related requirements of this Regulation to be assessed, in particular, with regard to the suitability of the device in relation to the medicinal product concerned.

(c) For companion diagnostic intended to be used to assess the patient eligibility to a treatment with a specific medicinal product, the notified body shall consult before issuing an EU design-examination certificate and on the basis of the draft summary of safety and performance and the draft instructions for use, one of the competent authorities designated by the Member States in accordance with Directive 2001/83/EC (hereinafter referred to as 'medicinal products competent authority') or the European Medicines Agency (hereinafter referred to as 'EMA') established by the Regulation (EC) No 726/2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency[43], regarding the suitability of the device in relation to the medicinal product concerned. Where the medicinal product falls exclusively within the scope of the Annex of Regulation (EC) No 726/2004, the notified body shall consult the EMA.

(d) The medicinal products competent authority or the EMA shall give its opinion, if any, within 60 days after receipt of valid documentation. This 60-day period may be extended only once for a further 60 days on scientifically valid grounds. The opinion of the medicinal products authority or of the EMA and any possible update shall be included in the documentation of the notified body concerning the device.

(e) The notified body shall give due consideration to the opinion, if any, expressed by the medicinal products competent authority concerned or the EMA when making its decision. It shall convey its final decision to the medicinal products competent authority concerned or to the EMA. The design-examination certificate shall be delivered in accordance with point (d) of Section 6.1.

[43] OJ L 136, 30.4.2004, p. 1

(f) Before changes affecting the suitability of the device in relation to the medicinal product concerned are made, the manufacturer shall inform the notified body of the changes, which shall consult the medicinal products competent authority that was involved in the initial consultation or the EMA. The medicinal products competent authority or the EMA shall give its opinion, if any, within 30 days after receipt of the valid documentation regarding the changes. A supplement to the EU design-examination certificate shall be issued in accordance with point (e) of Section 6.1.

Chapter III: Administrative provisions

7. The manufacturer or his authorised representative shall, for a period ending at least five years after the last device has been placed on the market, keep at the disposal of the competent authorities:

– the declaration of conformity,

– the documentation referred to in the fourth indent of Section 3.1 and in particular the data and records arising from the procedures referred to in point (c) of Section 3.2.,

– the changes referred to in Section 3.4,

– the documentation referred to in Sections 5.2 and point (b) of Section 6.1, and

– the decisions and reports from the notified body as referred to in Sections 3.3, 4.3, 4.4, 5.5, 5.6, 5.8, points (c), (d) and (e) of Section 6.1, point (e) of Section 6.2 and point (f) of Section 6.2.

8. Each Member State shall make provision that this documentation is kept at the disposal of the competent authorities for the period indicated in the first sentence of the preceding paragraph in case the manufacturer, or his authorised representative, established within its territory goes bankrupt or ceases its business activity prior to the end of this period.

ANNEX IX

CONFORMITY ASSESSMENT BASED ON TYPE EXAMINATION

1. EU type-examination is the procedure whereby a notified body ascertains and certifies that a representative sample of the production covered fulfils the relevant provisions of this Regulation.

2. Application

The application shall include:

- the name and address of the manufacturer and, if the application is lodged by the authorised representative, the name and address of the authorised representative,
- the technical documentation referred to in Annex II needed to assess the conformity of the representative sample of the production in question, hereinafter referred to as the 'type', with the requirements of this Regulation; where the technical documentation is voluminous and/or held in different locations, the manufacturer shall submit a summary technical documentation (STED) and grant access to the full technical documentation upon request. The applicant shall make a 'type' available to the notified body. The notified body may request other samples as necessary,
- in the case of devices for self-testing or near-patient testing, test reports, including results of studies carried out with intended users, and data showing the handling suitability of the device in view of its intended purpose for self-testing or near patient-testing,
- a written declaration that no application has been lodged with any other notified body for the same type, or information about any previous application for the same type that has been refused by another notified body.

3. Assessment

The notified body shall:

3.1. examine and assess the technical documentation and verify that the type has been manufactured in conformity with that documentation; it shall also record the items designed in conformity with the applicable specifications of the standards referred to in Article 6 or CTS, as well as the items not designed on the basis of the relevant provisions of the abovementioned standards;

3.2. carry out or arrange for the appropriate assessments and the physical or laboratory tests necessary to verify whether the solutions adopted by the manufacturer meet the general safety and performance requirements of this Regulation if the standards referred to in Article 6 or CTS have not been applied; if the device is to be connected to other equipment in order to operate as intended, proof shall be provided that it conforms to the general safety and performance requirements when connected to any such equipment having the characteristics specified by the manufacturer;

3.3. carry out or arrange for the appropriate assessments and the physical or laboratory tests necessary to verify whether, if the manufacturer has chosen to apply the relevant standards, these have actually been applied;

3.4. agree with the applicant on the place where the necessary assessments and tests will be carried out;

3.5. in the case of devices classified as class D, request a reference laboratory, where designated in accordance with Article 78, to verify compliance of the device with the CTS or with other solutions chosen by the manufacturer to ensure a level of safety and performance that is at least equivalent. The reference laboratory shall provide a scientific opinion within 30 days. The scientific opinion of the reference laboratory and any possible update shall be included in the documentation of the notified body concerning the device. The notified body shall give due consideration to the views expressed in the scientific opinion when making its decision. The notified body shall not deliver the certificate if the scientific opinion is unfavourable;

3.6. For companion diagnostic intended to be used to assess the patient eligibility to a treatment with a specific medicinal product, seek the opinion, on the basis of the draft summary of safety and performance and the draft instructions for use, of a one of the competent authorities designated by the Member States in accordance with Directive 2001/83/EC (hereinafter referred to as 'medicinal products competent authority') or the European Medicines Agency (hereinafter referred to as 'EMA') on the suitability of the device in relation to the medicinal product concerned. Where the medicinal product falls exclusively within the scope of the Annex of Regulation (EC) No 726/2004, the notified body shall consult the EMA. The medicinal products authority or the European Medicines Agency shall deliver its opinion, if any, within 60 days upon receipt of the valid documentation. This 60-day period may be extended only once for a further 60 days on scientifically valid grounds. The opinion of the medicinal products authority or of the EMA and any possible update shall be included in the documentation of the notified body concerning the device. The notified body shall give due consideration to the opinion, if any, expressed by the medicinal products competent authority concerned or the EMA when making its decision. It shall convey its final decision to the medicinal products competent authority concerned or to the EMA.

4. Certificate

If the type conforms to the provisions of this Regulation, the notified body shall issue an EU type-examination certificate. The certificate shall contain the name and address of the manufacturer, the conclusions of the assessment, the conditions of validity and the data needed for identification of the type approved. The relevant parts of the documentation shall be annexed to the certificate and a copy kept by the notified body.

5. Changes to the type

5.1. The applicant shall inform the notified body which issued the EU type-examination certificate of any planned change to the approved type.

5.2. Changes to the approved product shall receive further approval from the notified body which issued the EU type-examination certificate wherever the changes may affect conformity with the general safety and performance requirements or with the conditions prescribed for use of the product. The notified body shall examine the planned changes, notify the manufacturer of its decision and provide him with a supplement to the EU type-examination report. The approval of any change to the approved type shall take the form of a supplement to the initial EU type-examination certificate.

5.3. Where the changes could affect compliance with the CTS or with other solutions chosen by the manufacturer which were approved through the EU type-examination certificate, the notified body shall consult the reference laboratory that was involved in the initial consultation, in order to confirm that compliance with the CTS, when available, or with other solutions chosen by the manufacturer to ensure a level of safety and performance that is at least equivalent are maintained.

The reference laboratory shall provide a scientific opinion within 30 days.

5.4. Where the changes affect a companion diagnostic approved through the EU type-examination certificate with regard to its suitability in relation to a medicinal product, the notified body shall consult the medicinal products competent authority that was involved in the initial consultation or the EMA. The medicinal products competent authority or the EMA shall give its opinion, if any, within 30 days after receipt of the valid documentation regarding the changes. The approval of any change to the approved type shall take the form of a supplement to the initial EU type-examination certificate.

6. Administrative provisions

The manufacturer or his authorised representative shall, for a period ending at least five years, after the last device has been placed on the market, keep at the disposal of the competent authorities:

– the documentation referred to in the second indent of Section 2,

– the changes referred to in Section 5,

– copies of EU type-examination certificates and their additions.

Section 8 of Annex VIII shall apply.

ANNEX X

CONFORMITY ASSESSMENT BASED ON PRODUCTION QUALITY ASSURANCE

1. The manufacturer shall ensure application of the quality management system approved for the manufacture of the devices concerned and carry out the final inspection, as specified in Section 3, and is subject to the surveillance referred to in Section 4.

2. The manufacturer who fulfils the obligations imposed by Section 1 shall draw up and keep an EU declaration of conformity in accordance with Article 15 and Annex III for the device model covered by the conformity assessment procedure. By issuing an EU declaration of conformity, the manufacturer ensures and declares that the devices concerned conform to the type described in the EU type-examination certificate and meet the provisions of this Regulation which apply to them.

3. Quality management system

3.1. The manufacturer shall lodge an application for assessment of his quality management system with a notified body.

The application shall include:

– all elements listed in Section 3.1 of Annex VIII,

– the technical documentation as referred to in Annex II for the types approved; where the technical documentation is voluminous and/or held in different locations, the manufacturer shall submit a summary technical documentation (STED) and grant access to the full technical documentation upon request;

– a copy of the EU-type examination certificates referred to in Section 4 of Annex IX; if the EU-type examination certificates have been issued by the same notified body with which the application is lodged, a reference to the technical documentation and the certificates issued is sufficient.

3.2. Application of the quality management system shall ensure that the devices conform to the type described in the EU type-examination certificate and to the provisions of this Regulation which apply to them at every stage. All the elements, requirements and provisions adopted by the manufacturer for his quality management system shall be documented in a systematic and orderly manner in the form of written policies and procedures such as quality programmes, quality plans, quality manuals and quality records.

It shall, in particular, include an adequate description of all elements listed in points (a), (b), (d) and (e) of Section 3.2 of Annex VIII.

3.3. The provisions of points (a) and (b) of Section 3.3 of Annex VIII, apply.

If the quality system ensures that the devices conform to the type described in the in the EU type-examination certificate and conforms to the relevant provisions of this Regulation, the notified body shall issue an EU quality assurance certificate. The decision shall be notified to the manufacturer. It shall contain the conclusions of the inspection and a reasoned assessment.

3.4. The provisions of the Section 3.4 of Annex VIII apply.

4. Surveillance

The provisions of Section 4.1, the first, second and fourth indents of Section 4.2, Section 4.3, Section 4.4, Section 4.6 and Section 4.7 of Annex VIII apply.

5. Verification of manufactured devices classified as class D

5.1. In the case of devices classified as class D, the manufacturer shall carry out tests on the manufactured devices or each batch of devices. After the conclusion of the controls and tests he shall forward to the notified body without delay the relevant reports on these tests. Furthermore, the manufacturer shall make the samples of manufactured devices or batches of devices available to the notified body in accordance with pre-agreed conditions and modalities which shall include that the notified body or the manufacturer, in regular intervals, shall send samples of the manufactured devices or batches of devices to a reference laboratory, where designated in accordance with Article 78, to carry out appropriate tests. The reference laboratory shall inform the notified body about its findings

5.2. The manufacturer may place the devices on the market, unless the notified body communicates to the manufacturer within the agreed time-frame, but not later than 30 days after reception of the samples, any other decision, including in particular any condition of validity of delivered certificates.

6. Administrative provisions

The manufacturer or his authorised representative shall, for a period ending at least five years after the last device has been placed on the market, keep at the disposal of the competent authorities:

- the declaration of conformity,
- the documentation referred to in the fourth indent of Section 3.1 of Annex VIII,
- the documentation referred to in the seventh indent of Section 3.1 of Annex VIII, including the EU type-examination certificate referred to in Annex IX,
- the changes referred to in Section 3.4 of Annex VIII and
- the decisions and reports from the notified body as referred to in Sections 3.3, 4.3 and 4.4 of Annex VIII.

Section 8 of Annex VIII shall apply.

ANNEX XI

MINIMUM CONTENT OF CERTIFICATES ISSUED BY A NOTIFIED BODY

1. Name, address and identification number of the notified body;
2. name and address of the manufacturer and, if applicable, of the authorised representative;
3. unique number identifying the certificate;
4. date of issue;
5. date of expiry;
6. data needed for the identification of the device(s) or categories of devices covered by the certificate, including the intended purpose of the device(s) and the GMDN code(s) or internationally recognised nomenclature code(s);
7. if applicable, the manufacturing facilities covered by the certificate;
8. reference to this Regulation and the relevant Annex according to which the conformity assessment has been carried out;
9. examinations and tests performed, e.g. reference to relevant standards / test reports / audit report(s);
10. if applicable, reference to the relevant parts of the technical documentation or other certificates required for the placing on the market of the device(s) covered;
11. if applicable, information about the surveillance by the notified body;
12. conclusions of the notified body's assessment, examination or inspection;
13. conditions for or limitations to the validity of the certificate;
14. legally binding signature of the notified body according to the applicable national law.

ANNEX XII

CLINICAL EVIDENCE AND POST-MARKET FOLLOW-UP

Part A: Clinical evidence

The demonstration of conformity with the general safety and performance requirements set out in Annex I, under the normal conditions of use of the device, shall be based on clinical evidence.

The clinical evidence includes all the information supporting the scientific validity of the analyte, the analytical performance and, where applicable, the clinical performance of the device for its intended purpose as stated by the manufacturer.

1. SCIENTIFIC VALIDITY DETERMINATION AND PERFORMANCE EVALUATION

1.1. Scientific validity determination

1.1.1. The scientific validity refers to the association of the analyte to a clinical condition or a physiological state.

1.1.2. The determination of the scientific validity may not be necessary where the association of the analyte to a clinical condition or a physiological state is well known, based on available information, such as peer reviewed literature, historical data and experience.

1.1.3. For a new analyte and/or a new intended purpose, the scientific validity shall be demonstrated based on one or a combination of the following sources:

- information on devices measuring the same analyte with the same intended purpose that have marketing history;
- literature;
- expert opinions;
- results from proof of concept studies;
- results from clinical performance studies.

1.1.4. The information supporting the scientific validity of the analyte shall be summarised as part of the clinical evidence report.

1.2. Performance evaluation

The performance evaluation of a device is the process by which generated data are assessed and analysed to demonstrate the analytical performance, and where applicable the clinical performance of that device for its intended purpose as stated by the manufacturer.

Interventional performance studies and other clinical performance studies involving risks for the subjects of the studies shall only be performed once the analytical performance of the device has been established and determined to be acceptable.

1.2.1. Analytical performance

1.2.1.1 The analytical performance characteristics are described in point (a) of Section 6(1) of Annex I.

1.2.1.2 As a general rule, the analytical performance shall always be demonstrated on the basis of analytical performance studies.

1.2.1.3 For novel devices, it may not be possible to demonstrate trueness since suitable higher order reference materials or a suitable comparative method may not be available. If there are no comparative methods, different approaches may be used (e.g. comparison to some other well-documented method, comparison to the composite reference method). In the absence of such approaches, a clinical performance study comparing test performance to the current clinical standard practice would be needed.

1.2.1.4 The analytical performance data shall be summarised as part of the clinical evidence report.

1.2.2. Clinical performance

1.2.2.1 The clinical performance characteristics are described in point (b) of Section 6(1) of Annex I.

1.2.2.2 Clinical performance data may not be required for established and standardised devices and for devices classified as class A according to the rules set out in Annex VII.

1.2.2.3 Clinical performance of a device shall be demonstrated based on one or a combination of the following sources

- clinical performance studies;
- literature;
- experience gained by routine diagnostic testing.

1.2.2.4 Clinical performance studies shall be performed unless it is duly justified to rely on other sources of clinical performance data.

1.2.2.5 Clinical performance data shall be summarised as part of the clinical evidence report.

1.2.2.6 When the clinical performance evaluation includes a clinical performance study, the level of detail of the clinical performance study report referred to in Section 2.3.3 of this Annex will vary based on the risk class of the device determined according to the rules set out in Annex VII:

- For devices classified as class B according to the rules set out in Annex VII, the clinical performance study report may be limited to a summary of the study protocol, results and conclusion;
- For devices classified as class C according to the rules set out in Annex VII, the clinical performance study report shall include the method of data analysis, the study conclusion and the relevant details of the study protocol;
- For devices classified as class D according to the rules set out in Annex VII, the clinical performance study report shall include the method of data analysis, the study conclusion, the relevant details of the study protocol and the individual data points.

2. CLINICAL PERFORMANCE STUDIES

2.1. Purpose of clinical performance studies

The purpose of clinical performance studies is to establish or confirm aspects of device performance which cannot be determined by analytical performance studies, literature and/or previous experience gained by routine diagnostic testing. This information is used to demonstrate compliance with the relevant general safety and performance requirements with respect to clinical performance. When clinical performance studies are conducted, the data

obtained shall be used in the performance evaluation process and be part of the clinical evidence for the device.

2.2. Ethical considerations for clinical performance studies

Every step in the clinical performance study, from first consideration of the need and justification of the study to the publication of the results, shall be carried out in accordance with recognised ethical principles, as for example those laid down in the World Medical Association Declaration of Helsinki on Ethical Principles for Medical Research Involving Human Subjects adopted by the 18th World Medical Assembly in Helsinki, Finland, in 1964 and last amended by the 59th World Medical Association General Assembly in Seoul, Korea, in 2008.

2.3. Methods for clinical performance studies

2.3.1. Clinical performance study design type

Clinical performance studies shall be designed in such a way as to maximize the relevance of the data while minimising potential biases. The design of the study shall provide the data necessary to address the clinical performance of the device.

2.3.2. Clinical performance study protocol

Clinical performance studies shall be performed on the basis of an appropriate 'clinical performance study protocol'.

The clinical performance study protocol shall set out how the study is intended to be conducted. It shall contain information about the study design such as the purpose, objectives, study population, description of test method(s) and interpretation of results, site training and monitoring, specimen type, specimen collection, preparation, handling and storage, inclusion and exclusion criteria, limitations, warning and precautions, data collection/management, data analysis, required materials, number of study sites and if applicable, clinical endpoints/outcomes, and requirements for patient follow-up.

In addition, the clinical performance study protocol shall identify the key factors which may impact the completeness and significance of results, such as intended participant follow-up procedures, decision algorithms, discrepancy resolution process, masking/blinding, approaches to statistical analyses, and methods for recording endpoints/outcomes and, where appropriate, communication of test results.

2.3.3. Clinical performance study report

A 'clinical performance study report', signed by a medical practitioner or any other authorised person responsible, shall contain documented information on the clinical performance study protocol, results and conclusions of the clinical performance study, including negative findings. The results and conclusions shall be transparent, free of bias and clinically relevant. The report shall contain sufficient information to enable it to be understood by an independent party without reference to other documents. The report shall also include as appropriate any protocol amendments or deviations, and data exclusions with the appropriate rationale.

3. CLINICAL EVIDENCE REPORT

3.1 The clinical evidence report shall contain the scientific validity data, the analytical performance data and, where applicable, the clinical performance data. If the analytical performance data is determined to be sufficient to declare conformity with the general safety and

performance requirements set out to in Annex I without the need for clinical performance data, a rationale should be documented and included in the clinical evidence report.

3.2 The clinical evidence report shall in particular outline:

- the justification for the approach taken to gather the clinical evidence;
- the technology on which the device is based, the intended purpose of the device and any claims made about the device's clinical performance or safety;
- the nature and extent of the scientific validity and the performance data that has been evaluated;
- how the referenced information demonstrate the clinical performance and safety of the device in question;
- the literature search methodology, if a literature review is the approach taken to gathering clinical evidence.

3.3 The clinical evidence and its documentation shall be updated throughout the life cycle of the device concerned with data obtained from the implementation of the manufacturer's post-market surveillance plan referred to in Article 8(5) which shall include a plan for the device post-market follow-up in accordance with Part B of this Annex.

Part B: Post-market follow-up

1. Manufacturers shall put in place procedures to enable them to collect and evaluate information relating to the scientific validity, as well as the analytical and clinical performance of their devices on the basis of data obtained from post-market follow-up.
2. Where such information becomes available to the manufacturer, an appropriate risk assessment shall be conducted and the clinical evidence report shall be amended accordingly.
3. Where changes to devices are necessary, the conclusion of the post market follow-up shall be taken into account for the clinical evidence referred to in Part A of this Annex and for the risk assessment referred to in Section 2 of Annex I. If necessary, the clinical evidence or risk management shall be updated and/or corrective actions be implemented.
4. Any new intended purpose of a device shall be supported by an updated clinical evidence report.

ANNEX XIII

INTERVENTIONAL CLINICAL PERFORMANCE STUDIES AND OTHER CLINICAL PERFORMANCE STUDIES INVOLVING RISKS FOR THE SUBJECTS OF THE STUDIES

I. Documentation regarding the application for interventional clinical performance studies and other clinical performance studies involving risks for the subjects of the studies

For devices for performance evaluation intended to be used in the context of interventional clinical performance studies or other clinical performance studies involving risks for the subjects of the studies the sponsor shall draw up and submit the application in accordance with Article 49 accompanied by the documentation as laid down below:

1. Application form

The application form shall be duly filled out containing the following information:

1.1. Name, address and contact details of the sponsor and, if applicable, name, address and contact details of his contact person established in the Union.

1.2. If different from the above, name, address and contact details of the manufacturer of the device intended for performance evaluation and, if applicable, of his authorised representative.

1.3. Title of the clinical performance study.

1.4. Single identification number in accordance with Article 49(1).

1.5. Status of the clinical performance study (e.g. first submission, resubmission, significant amendment).

1.6. If resubmission with regard to same device, previous date(s) and reference number(s) of earlier submission(s) or in the case of significant amendment, reference to the original submission.

1.7. If parallel submission for a clinical trial on a medicinal product in accordance with Regulation (EU) No [Ref. of future Regulation on clinical trials], reference to the official registration number of the clinical trial.

1.8. Identification of the Member States, EFTA countries, Turkey and third countries in which the clinical performance study shall be conducted as part of a multicentre/ multinational study at the time of application.

1.9. Brief description of the device for performance evaluation (e.g. name, GMDN code or internationally recognised nomenclature code, intended purpose, risk class and applicable classification rule according to Annex VII).

1.10 Summary of the clinical performance study protocol.

1.11. If applicable, information regarding a comparator.

2. Investigator's Brochure

The investigator's brochure (IB) shall contain the information on the device for performance evaluation that is relevant for the study and available at the time of application. It shall be clearly identified and contain in particular the following information:

2.1. Identification and description of the device, including information on the intended purpose, the risk classification and applicable classification rule according to Annex VII, design and manufacturing of the device and reference to previous and similar generations of the device.

2.2. Manufacturer's instructions for installation, and use, including storage and handling requirements, as well as the label and instructions for use to the extent that this information is available.

2.3. Pre-clinical testing and experimental data.

2.4. Existing clinical data, in particular the following:

– relevant scientific literature available relating to the safety, performance, design characteristics and intended purpose of the device and/or of equivalent or similar devices;

– other relevant clinical data available relating to the safety, performance, design characteristics and intended purpose of equivalent or similar devices of the same manufacturer, including length of time on the market and a review of performance and safety related issues and any corrective actions taken.

2.5. Summary of the risk/benefit analysis and the risk management, including information regarding known or foreseeable risks and warnings.

2.6. In the case of devices that include tissues, cells and substances of human, animal or microbial origins detailed information on the tissues, cells and substances, and on the compliance with the relevant general safety and performance requirements and the specific risk management in relation to the tissues, cells and substances.

2.7. Reference to harmonised or other internationally recognised standards complied with in full or in part.

2.8. A clause that any updates to the IB or any other relevant information that is newly available shall be brought to the attention of the investigators.

3. Clinical performance study protocol, as referred to in Section 2.3.2 of Annex XII.

4. Other information

4.1. A signed statement by the natural or legal person responsible for the manufacture of the device for performance evaluation that the device in question conforms to the general safety and performance requirements apart from the aspects covered by the clinical performance study and that, with regard to these aspects, every precaution has been taken to protect the health and safety of the subject. This statement may be supported by an attestation issued by a notified body.

4.2. Where applicable according to national law, a copy of the opinion(s) of the ethics committee(s) concerned as soon as available.

4.3. Proof of insurance cover or indemnification of subjects in case of injury, according to the national law

4.4. Documents and procedures to be used to obtain informed consent.

4.5 Description of the arrangements to comply with the applicable rules on the protection and confidentiality of personal data, in particular:

– organisational and technical arrangements that will be implemented to avoid unauthorised access, disclosure, dissemination, alteration or loss of information and personal data processed;

– a description of measures that will be implemented to ensure confidentiality of records and personal data of subjects concerned in clinical performance studies;

– a description of measures that will be implemented in case of data security breach in order to mitigate the possible adverse effects.

II. Other sponsor's obligations

1. The sponsor shall undertake to keep available for the competent national authorities any documentation necessary to provide evidence for the documentation referred to in Chapter I of this Annex. If the sponsor is not the natural or legal person responsible for the manufacture of the device intended for performance evaluation, this obligation may be fulfilled by that person on behalf of the sponsor.

2. The reportable events shall be provided by the investigator(s) in timely conditions.

3. The documentation mentioned in this Annex shall be kept for a period of time of at least five years after the clinical performance study with the device in question has ended, or, when the device is subsequently placed on the market, at least five years after the last device has been placed on the market.

Each Member State shall make provision that this documentation is kept at the disposal of the competent authorities for the period indicated in the preceding paragraph in case the sponsor, or his contact person, established within its territory goes bankrupt or ceases its activity prior to the end of this period.

ANNEX XIV

CORRELATION TABLE

Directive 98/79/EC	**This Regulation**
Article 1(1)	Article 1(1)
Article 1(2)	Article 2
Article 1(3)	Number (36) of Article 2
Article 1(4)	-
Article 1(5)	Article 4(4) and (5)
Article 1(6)	Article 1(6)
Article 1(7)	Article 1(4)
Article 2	Article 4(1)
Article 3	Article 4(2)
Article 4(1)	Article 20
Article 4(2)	Article 17(1)
Article 4(3)	Article 17(3)
Article 4(4)	Article 8(7)
Article 4(5)	Article 16(6)
Article 5(1)	Article 6(1)
Article 5(2)	-
Article 5(3)	Article 7
Article 6	-
Article 7	Article 84
Article 8	Articles 67 to 70
Article 9(1) 1st subparagraph	Article 40(5) 1st subparagraph
Article 9(1) 2nd subparagraph	Article 40(3) 2nd subparagraph and (4) 2nd subparagraph
Article 9(2)	Article 40(2)

Article 9(3)	Article 40(3)
Article 9(4)	Article 40(7)
Article 9(5)	-
Article 9(6)	Article 9(3)
Article 9(7)	Article 8(4)
Article 9(8)	Article 41(1)
Article 9(9)	Article 41(3)
Article 9(10)	Article 43(2)
Article 9(11)	Article 40(8)
Article 9(12)	Article 45(1)
Article 9(13)	Article 5(2)
Article 10	Article 23
Article 11(1)	Numbers (43) and (44) of Article 2, Article 59(1) and Article 61(1)
Article 11(2)	Article 59(3) and Article 61(1) 2nd subparagraph
Article 11(3)	Article 61(2) and (3)
Article 11(4)	-
Article 11(5)	Article 61(3) and Article 64
Article 12	Article 25
Article 13	Article 72
Article 14(1)(a)	Article 39(4)
Article 14(1)(b)	-
Article 14(2)	-
Article 14(3)	-
Article 15(1)	Article 31 and Article 32
Article 15(2)	Article 27

Article 15(3)	Article 33(1) and Article 34(2)
Article 15(4)	-
Article 15(5)	Article 43(4)
Article 15(6)	Article 43 (3)
Article 15(7)	Articles 29(2) and Article 33(1)
Article 16	Article 16
Article 17	Article 71
Article 18	Article 73
Article 19	Article 80
Article 20	Article 75
Article 21	-
Article 22	-
Article 23	Article 90
Article 24	-