

Council Directive 93/42/EEC of 14 June 1993 concerning medical devices

Article 1

Definitions, scope

1 This Directive shall apply to medical devices and their accessories. For the purposes of this Directive, accessories shall be treated as medical devices in their own right. Both medical devices and accessories shall hereinafter be termed devices.

2 For the purposes of this Directive, the following definitions shall apply:

a ‘^{F1}medical device’ means any instrument, apparatus, appliance, software, material or other article, whether used alone or in combination, including the software intended by its manufacturer to be used specifically for diagnostic and/or therapeutic purposes and necessary for its proper application, intended by the manufacturer to be used for human beings for the purpose of:]

- diagnosis, prevention, monitoring, treatment or alleviation of disease,
- diagnosis, monitoring, treatment, alleviation of or compensation for an injury or handicap,
- investigation, replacement or modification of the anatomy or of a physiological process,
- control of conception,

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

b ‘accessory’ means an article which whilst not being a device is intended specifically by its manufacturer to be used together with a device to enable it to be used in accordance with the use of the device intended by the manufacturer of the device;

[^{F2}c ‘*in vitro* diagnostic medical device’ means any medical device which is a reagent, reagent product, calibrator, control material, kit, instrument, apparatus, equipment 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, or
- concerning a congenital abnormality, or
- to determine the safety and compatibility with potential recipients, or
- to monitor therapeutic measures.

Specimen receptacles are considered to be *in vitro* diagnostic medical devices. ‘Specimen receptacles’ are those 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.

Products for general laboratory use are not *in vitro* diagnostic medical devices unless such products, in view of their characteristics, are specifically intended by their manufacturer to be used for *in vitro* diagnostic examination;]

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- d ‘custom-made device’ means any device specifically made in accordance with a duly qualified medical practitioner's written prescription which gives, under his responsibility, specific design characteristics and is intended for the sole use of a particular patient.

The abovementioned prescription may also be made out by any other person authorized by virtue of his professional qualifications to do so.

Mass-produced devices which need to be adapted to meet the specific requirements of the medical practitioner or any other professional user [^{F1}shall not be] considered to be custom-made devices;

- e ‘device intended for clinical investigation’ means any device intended for use by a duly qualified medical practitioner when conducting investigations as referred to in Section 2.1 of Annex X in an adequate human clinical environment.

For the purpose of conducting clinical investigation, any other person who, by virtue of his professional qualifications, is authorized to carry out such investigation shall be accepted as equivalent to a duly qualified medical practitioner;

- f ‘manufacturer’ means the natural or legal person with responsibility for the design, manufacture, packaging and labelling of a device before it is placed on the market under his own name, regardless of whether these operations are carried out by that person himself or on his behalf by a third party.

The obligations of this Directive to be met by manufacturers also apply to the natural or legal person who assembles, packages, processes, fully refurbishes and/or labels one or more ready-made products and/or assigns to them their intended purpose as a device with a view to their being placed on the market under his own name. This subparagraph does not apply to the person who, while not a manufacturer within the meaning of the first subparagraph, assembles or adapts devices already on the market to their intended purpose for an individual patient;

- g ‘intended purpose’ means the use for which the device is intended according to the data supplied by the manufacturer on the labelling, in the instructions and/or in promotional materials;

- h ‘placing on the market’ means the first making available in return for payment or free of charge of a device other than a device intended for clinical investigation, with a view to distribution and/or use on the Community market, regardless of whether it is new or fully refurbished;

[^{F2}i ‘putting into service’ means the stage at which a device has been made available to the final user as being ready for use on the Community market for the first time for its intended purpose;]

[^{F3}j ‘authorised representative’ means any natural or legal person established in the Community who, explicitly designated by the manufacturer, acts and may be addressed by authorities and bodies in the Community instead of the manufacturer with regard to the latter's obligations under this Directive;]

[^{F4}k ‘clinical data’ means the safety and/or performance information that is generated from the use of a device. Clinical data are sourced from:

- clinical investigation(s) of the device concerned; or
- clinical investigation(s) or other studies reported in the scientific literature, of a similar device for which equivalence to the device in question can be demonstrated; or

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- published and/or unpublished reports on other clinical experience of either the device in question or a similar device for which equivalence to the device in question can be demonstrated;
- l ‘device subcategory’ means a set of devices having common areas of intended use or common technology;
- m ‘generic device group’ means a set of devices having the same or similar intended uses or commonality of technology allowing them to be classified in a generic manner not reflecting specific characteristics;
- n ‘single use device’ means a device intended to be used once only for a single patient.]

[^{F13} Where a device is intended to administer a medicinal product within the meaning of Article 1 of Directive 2001/83/EC⁽¹⁾, that device shall be governed by this Directive, without prejudice to the provisions of Directive 2001/83/EC with regard to the medicinal product.

If, however, such a device is placed on the market in such a way that the device and the medicinal product form a single integral product which is intended exclusively for use in the given combination and which is not reusable, that single product shall be governed by Directive 2001/83/EC. The relevant essential requirements of Annex I to this Directive shall apply as far as safety and performance-related device features are concerned.]

4 Where a device incorporates, as an integral part, a substance which, if used separately, may be considered to be a medicinal product within the meaning of Article 1 of Directive [^{F1}2001/83/EC] and which is liable to act upon the body with action ancillary to that of the device, [^{F1}that device shall] be assessed and authorized in accordance with this Directive.

[^{F54} a Where a device incorporates, as an integral part, a substance which, if used separately, may be considered to be a medicinal product constituent or a medicinal product derived from human blood or human plasma within the meaning of Article 1 of Directive [^{F1}2001/83/EC] and which is liable to act upon the human body with action ancillary to that of the device, hereinafter referred to as a ‘human blood derivative’, [^{F1}that device shall] be assessed and authorised in accordance with this Directive.]

- 5 [^{F1}This Directive shall not apply to:]
- a *in vitro* diagnostic devices;
 - b active implantable devices covered by Directive 90/385/EEC;
 - [^{F1}c medicinal products covered by Directive 2001/83/EC. In deciding whether a product falls under that Directive or this Directive, particular account shall be taken of the principal mode of action of the product;]
 - d cosmetic products covered by Directive 76/768/EEC⁽²⁾;
 - [^{F6}e human blood, blood products, plasma or blood cells of human origin or to devices which incorporate at the time of placing on the market such blood products, plasma or cells, with the exception of devices referred to in paragraph 4a;]
 - [^{F1}f transplants or tissues or cells of human origin nor to products incorporating or derived from tissues or cells of human origin, with the exception of devices referred to in paragraph 4a;]
 - g transplants or tissues or cells of animal origin, unless a device is manufactured utilizing animal tissue which is rendered non-viable or non-viable products derived from animal tissue.

[^{F16} Where a device is intended by the manufacturer to be used in accordance with both the provisions on personal protective equipment in Council Directive 89/686/EEC⁽³⁾ and this

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Directive, the relevant basic health and safety requirements of Directive 89/686/EEC shall also be fulfilled.]

[^{F17} This Directive is a specific Directive within the meaning of Article 1(4) of Directive 2004/108/EC of the European Parliament and of the Council⁽⁴⁾.

8 This Directive shall not affect 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⁽⁵⁾, 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⁽⁶⁾.]

Textual Amendments

- F1** Substituted by Directive 2007/47/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 90/385/EEC on the approximation of the laws of the Member States relating to active implantable medical devices, Council Directive 93/42/EEC concerning medical devices and Directive 98/8/EC concerning the placing of biocidal products on the market (Text with EEA relevance).
- F2** Substituted by Directive 98/79/EC of the European Parliament and of the Council of 27 October 1998 on in vitro diagnostic medical devices.
- F3** Inserted by Directive 98/79/EC of the European Parliament and of the Council of 27 October 1998 on in vitro diagnostic medical devices.
- F4** Inserted by Directive 2007/47/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 90/385/EEC on the approximation of the laws of the Member States relating to active implantable medical devices, Council Directive 93/42/EEC concerning medical devices and Directive 98/8/EC concerning the placing of biocidal products on the market (Text with EEA relevance).
- F5** Inserted by Directive 2000/70/EC of the European Parliament and of the Council of 16 November 2000 amending Council Directive 93/42/EEC as regards medical devices incorporating stable derivatives of human blood or human plasma.
- F6** Substituted by Directive 2001/104/EC of the European Parliament and of the Council of 7 December 2001 amending Council Directive 93/42/EEC concerning medical devices (Text with EEA relevance).

[^{F2} Article 2

Placing on the market and putting into service

Member States shall take all necessary steps to ensure that devices may be placed on the market and/or put into service only if they comply with the requirements laid down in this Directive when duly supplied and properly installed, maintained and used in accordance with their intended purpose.]

Textual Amendments

- F2** Substituted by Directive 98/79/EC of the European Parliament and of the Council of 27 October 1998 on in vitro diagnostic medical devices.

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Article 3

Essential requirements

The devices must meet the essential requirements set out in Annex I which apply to them, taking account of the intended purpose of the devices concerned.

[^{F4}Where a relevant hazard exists, devices which are also machinery within the meaning of Article 2(a) of Directive 2006/42/EC of the European Parliament and of the Council of 17 May 2006 on machinery⁽⁷⁾ shall also meet the essential health and safety requirements set out in Annex I to that Directive to the extent to which those essential health and safety requirements are more specific than the essential requirements set out in Annex I to this Directive.]

Textual Amendments

- F4** Inserted by [Directive 2007/47/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 90/385/EEC on the approximation of the laws of the Member States relating to active implantable medical devices, Council Directive 93/42/EEC concerning medical devices and Directive 98/8/EC concerning the placing of biocidal products on the market \(Text with EEA relevance\).](#)

Article 4

Free movement, devices intended for special purposes

1 Member States shall not create any obstacle to the placing on the market or the putting into service within their territory of devices bearing the CE marking provided for in Article 17 which indicate that they have been the subject of an assessment of their conformity in accordance with the provisions of Article 11.

2 Member States shall not create any obstacle to:

- devices intended for clinical investigation being made available to medical practitioners or authorized persons for that purpose if they meet the conditions laid down in Article 15 and in Annex VIII,
- [^{F1}custom-made devices being placed on the market and put into service if they meet the conditions laid down in Article 11 in combination with Annex VIII; Class IIa, IIb and III devices shall be accompanied by the statement referred to in Annex VIII, which shall be available to the particular patient identified by name, an acronym or a numerical code.]

These devices shall not bear the CE marking.

3 At trade fairs, exhibitions, demonstrations, etc. Member States shall not create any obstacle to the showing of devices which do not conform to this Directive, provided that a visible sign clearly indicates that such devices cannot be marketed or put into service until they have been made to comply.

4 Member States may require the information, which must be made available to the user and the patient in accordance with Annex I, point 13, to be in their national language(s) or in

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another Community language, when a device reaches the final user, regardless of whether it is for professional or other use.

5 Where the devices are subject to other Directives concerning other aspects and which also provide for the affixing of the CE marking, the latter shall indicate that the devices also fulfil the provisions of the other Directives.

However, should one or more of these directives allow the manufacturer, during a transitional period, to choose which arrangements to apply, the CE marking shall indicate that the devices fulfil the provisions only of those directives applied by the manufacturer. In this case, the particulars of these directives, as published in the *Official Journal of the European Communities*, must be given in the documents, notices or instructions required by the directives and accompanying such devices.

Textual Amendments

F1 Substituted by [Directive 2007/47/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 90/385/EEC on the approximation of the laws of the Member States relating to active implantable medical devices, Council Directive 93/42/EEC concerning medical devices and Directive 98/8/EC concerning the placing of biocidal products on the market \(Text with EEA relevance\).](#)

Article 5

Reference to standards

1 Member States shall presume compliance with the essential requirements referred to in Article 3 in respect of devices which are in conformity with the relevant national standards adopted pursuant to the harmonized standards the references of which have been published in the *Official Journal of the European Communities*; Member States shall publish the references of such national standards.

2 For the purposes of this Directive, reference to harmonized standards also includes the monographs of the European *Pharmacopoeia* notably on surgical sutures and on interaction between medicinal products and materials used in devices containing such medicinal products, the references of which have been published in the *Official Journal of the European Communities*.

3 If a Member State or the Commission considers that the harmonized standards do not entirely meet the essential requirements referred to in Article 3, the measures to be taken by the Member States with regard to these standards and the publication referred to in paragraph 1 of this Article shall be adopted by the procedure defined in Article 6 (2).

[^{F7}Article 6

Committee on Standards and Technical Regulations

1 The Commission shall be assisted by the Committee set up by Article 5 of Directive [^{F1}98/34/EC]⁽⁸⁾, hereinafter referred to as ‘the Committee’.

2 Where reference is made to this Article, Articles 3 and 7 of Decision 1999/468/EC⁽⁹⁾ shall apply, having regard to the provisions of Article 8 thereof.

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3 The Committee shall adopt its rules of procedure.]

Textual Amendments

- F1** Substituted by Directive 2007/47/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 90/385/EEC on the approximation of the laws of the Member States relating to active implantable medical devices, Council Directive 93/42/EEC concerning medical devices and Directive 98/8/EC concerning the placing of biocidal products on the market (Text with EEA relevance).
- F7** Substituted by Regulation (EC) No 1882/2003 of the European Parliament and of the Council of 29 September 2003 adapting to Council Decision 1999/468/EC the provisions relating to committees which assist the Commission in the exercise of its implementing powers laid down in instruments subject to the procedure referred to in Article 251 of the EC Treaty.

^{F1}Article 7

1 The Commission shall be assisted by the Committee set up by Article 6(2) of Directive 90/385/EEC, hereinafter referred to as ‘the Committee’.

2 Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

3 Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

4 Where reference is made to this paragraph, Article 5a(1), (2), (4) and (6) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.]

Textual Amendments

- F1** Substituted by Directive 2007/47/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 90/385/EEC on the approximation of the laws of the Member States relating to active implantable medical devices, Council Directive 93/42/EEC concerning medical devices and Directive 98/8/EC concerning the placing of biocidal products on the market (Text with EEA relevance).

Article 8

Safeguard clause

1 Where a Member State ascertains that the devices referred to in Article 4 (1) and (2) second indent, when correctly installed, maintained and used for their intended purpose, may compromise the health and/or safety of patients, users or, where applicable, other persons, it shall take all appropriate interim measures to withdraw such devices from the market or prohibit or restrict their being placed on the market or put into service. The Member State shall immediately inform the Commission of any such measures, indicating the reasons for its decision and, in particular, whether non-compliance with this Directive is due to:

- a failure to meet the essential requirements referred to in Article 3;

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- b incorrect application of the standards referred to in Article 5, in so far as it is claimed that the standards have been applied;
- c shortcomings in the standards themselves.

[^{F12} The Commission shall enter into consultation with the Parties concerned as soon as possible. Where, after such consultation, the Commission finds that:

- a the measures are justified:
 - (i) it shall immediately so inform the Member State which took the measures and the other Member States. Where the decision referred to in paragraph 1 is attributed to shortcomings in the standards, the Commission shall, after consulting the Parties concerned, bring the matter before the Committee referred to in Article 6(1) within two months if the Member State which has taken the decision intends to maintain it and shall initiate the advisory procedure referred to in Article 6(2);
 - (ii) when necessary in the interests of public health, appropriate measures designed to amend non-essential elements of this Directive relating to withdrawal from the market of devices referred to in paragraph 1 or to prohibition or restriction of their placement on the market or being put into service or to introduction of particular requirements in order for such products to be put on the market, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 7(3). On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 7(4);
- b the measures are unjustified, it shall immediately so inform the Member State which took the measures and the manufacturer or his authorised representative.]

3 Where a non-complying device bears the CE marking, the competent Member State shall take appropriate action against whomsoever has affixed the mark and shall inform the Commission and the other Member States thereof.

4 The Commission shall ensure that the Member States are kept informed of the progress and outcome of this procedure.

Textual Amendments

- F1** Substituted by [Directive 2007/47/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 90/385/EEC on the approximation of the laws of the Member States relating to active implantable medical devices, Council Directive 93/42/EEC concerning medical devices and Directive 98/8/EC concerning the placing of biocidal products on the market \(Text with EEA relevance\).](#)

Article 9

Classification

1 Devices shall be divided into Classes I, IIa, IIb and III. Classification shall be carried out in accordance with Annex IX.

2 In the event of a dispute between the manufacturer and the notified body concerned, resulting from the application of the classification rules, the matter shall be referred for decision to the competent authority to which the notified body is subject.

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[^{F13} Where a Member State considers that the classification rules set out in Annex IX require adaptation in the light of technical progress and any information which becomes available under the information system provided for in Article 10, it may submit a duly substantiated request to the Commission and ask it to take the necessary measures for adaptation of classification rules. The measures designed to amend non-essential elements of this Directive relating to adaptation of classification rules shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 7(3).]

Textual Amendments

- F1** Substituted by [Directive 2007/47/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 90/385/EEC on the approximation of the laws of the Member States relating to active implantable medical devices, Council Directive 93/42/EEC concerning medical devices and Directive 98/8/EC concerning the placing of biocidal products on the market \(Text with EEA relevance\)](#).

Article 10

Information on incidents occurring following placing of devices on the market

1 Member States shall take the necessary steps to ensure that any information brought to their knowledge, in accordance with the provisions of this Directive, regarding the incidents mentioned below involving a Class I, IIa, IIb or III device is recorded and evaluated centrally:

- a any malfunction or deterioration in the characteristics and/or performance of a device, as well as any inadequacy in the labelling or the instructions for use which might lead to or might have led to the death of a patient or user or to a serious deterioration in his state of health;
- b any technical or medical reason in relation to the characteristics or performance of a device for the reasons referred to in subparagraph (a), leading to systematic recall of devices of the same type by the manufacturer.

2 Where a Member State requires medical practitioners or the medical institutions to inform the competent authorities of any incidents referred to in paragraph 1, it shall take the necessary steps to ensure that the manufacturer of the device concerned, or his authorized representative[^{F8} established in the Community], is also informed of the incident.

[^{F13} After carrying out an assessment, if possible together with the manufacturer or his authorised representative, Member States shall, without prejudice to Article 8, immediately inform the Commission and the other Member States of measures that have been taken or are contemplated to minimise the recurrence of the incidents referred to in paragraph 1, including information on the underlying incidents.]

[^{F44} Any appropriate measures to adopt procedures to implement this Article shall be adopted in accordance with the regulatory procedure referred to in Article 7(2).]

Textual Amendments

- F1** Substituted by [Directive 2007/47/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 90/385/EEC on the approximation of the laws of the Member States relating to active implantable medical devices, Council Directive 93/42/EEC concerning medical devices and Directive 98/8/EC concerning the placing of biocidal products on the market \(Text with EEA relevance\)](#).

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| <p>F4</p> <p>F8</p> | <p>Inserted by Directive 2007/47/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 90/385/EEC on the approximation of the laws of the Member States relating to active implantable medical devices, Council Directive 93/42/EEC concerning medical devices and Directive 98/8/EC concerning the placing of biocidal products on the market (Text with EEA relevance).</p> <p>Deleted by Directive 2007/47/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 90/385/EEC on the approximation of the laws of the Member States relating to active implantable medical devices, Council Directive 93/42/EEC concerning medical devices and Directive 98/8/EC concerning the placing of biocidal products on the market (Text with EEA relevance).</p> |
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Article 11

Conformity assessment procedures

1 In the case of devices falling within Class III, other than devices which are custom-made or intended for clinical investigations, the manufacturer shall, in order to affix the CE marking, either:

- a follow the procedure relating to the EC declaration of conformity set out in Annex II (full quality assurance); or
- b follow the procedure relating to the EC type-examination set out in Annex III, coupled with:
 - (i) the procedure relating to the EC verification set out in Annex IV;
 - or
 - (ii) the procedure relating to the EC declaration of conformity set out in Annex V (production quality assurance).

2 In the case of devices falling within Class IIa, other than devices which are custom-made or intended for clinical investigations, the manufacturer shall, in order to affix the CE marking, follow the procedure relating to the EC declaration of conformity set out in Annex VII, coupled with either:

- a the procedure relating to the EC verification set out in Annex IV;
- or
- b the procedure relating to the EC declaration of conformity set out in Annex V (production quality assurance);
- or
- c the procedure relating to the EC declaration of conformity set out in Annex VI (product quality assurance).

Instead of applying these procedures, the manufacturer may also follow the procedure referred to in paragraph 3 (a).

3 In the case of devices falling within Class IIb, other than devices which are custom-made or intended for clinical investigations, the manufacturer shall, in order to affix the CE marking, either:

- a follow the procedure relating to the EC declaration of conformity set out in Annex II (full quality assurance); in this case, point 4 of Annex II is not applicable; or

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- b follow the procedure relating to the EC type-examination set out in Annex III, coupled with:
 - (i) the procedure relating to the EC verification set out in Annex IV;
or
 - (ii) the procedure relating to the EC declaration of conformity set out in Annex V (production quality assurance);
or
 - (iii) the procedure relating to the EC declaration of conformity set out in Annex VI (product quality assurance).

4 The Commission shall, no later than five years from the date of implementation of this Directive, submit a report to the Council on the operation of the provisions referred to in Article 10 (1), Article 15 (1), in particular in respect of Class I and Class IIa devices, and on the operation of the provisions referred to in Annex II, Section 4.3 second and third subparagraphs and in Annex III, Section 5 second and third subparagraphs to this Directive, accompanied, if necessary, by appropriate proposals.

5 In the case of devices falling within Class I, other than devices which are custom-made or intended for clinical investigations, the manufacturer shall, in order to affix the CE marking, follow the procedure referred to in Annex VII and draw up the EC declaration of conformity required before placing the device on the market.

6 In the case of custom-made devices, the manufacturer shall follow the procedure referred to in Annex VIII and draw up the statement set out in that Annex before placing each device on the market.

Member States may require that the manufacturer shall submit to the competent authority a list of such devices which have been put into service in their territory.

7 During the conformity assessment procedure for a device, the manufacturer and/or the notified body shall take account of the results of any assessment and verification operations which, where appropriate, have been carried out in accordance with this Directive at an intermediate stage of manufacture.

8 The manufacturer may instruct his authorized representative^[F8] established in the Community] to initiate the procedures provided for in Annexes III, IV, VII and VIII.

9 Where the conformity assessment procedure involves the intervention of a notified body, the manufacturer, or his authorized representative^[F8] established in the Community], may apply to a body of his choice within the framework of the tasks for which the body has been notified.

10 The notified body may require, where duly justified, any information or data, which is necessary for establishing and maintaining the attestation of conformity in view of the chosen procedure.

11 Decisions taken by the notified bodies in accordance with ^[F1]Annexes II, III, V and VI] shall be valid for a maximum of five years and may be extended on application, made at a time agreed in the contract signed by both parties, ^[F1]for further periods of a maximum length of five years].

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12 The records and correspondence relating to the procedures referred to in paragraphs 1 to 6 shall be in an official language of the Member State in which the procedures are carried out and/or in another Community language acceptable to the notified body.

13 By derogation from paragraphs 1 to 6, the competent authorities may authorize, on duly justified request, the placing on the market and putting into service, within the territory of the Member State concerned, of individual devices for which the procedures referred to in paragraphs 1 to 6 have not been carried out and the use of which is in the interest of protection of health.

[^{F4}14 The measures designed to amend non-essential elements of this Directive, by supplementing it, relating to the means by which, in the light of technical progress and considering the intended users of the devices concerned, the information laid down in Annex I Section 13.1 may be set out, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 7(3).]

Textual Amendments

- F1** Substituted by Directive 2007/47/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 90/385/EEC on the approximation of the laws of the Member States relating to active implantable medical devices, Council Directive 93/42/EEC concerning medical devices and Directive 98/8/EC concerning the placing of biocidal products on the market (Text with EEA relevance).
- F4** Inserted by Directive 2007/47/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 90/385/EEC on the approximation of the laws of the Member States relating to active implantable medical devices, Council Directive 93/42/EEC concerning medical devices and Directive 98/8/EC concerning the placing of biocidal products on the market (Text with EEA relevance).
- F8** Deleted by Directive 2007/47/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 90/385/EEC on the approximation of the laws of the Member States relating to active implantable medical devices, Council Directive 93/42/EEC concerning medical devices and Directive 98/8/EC concerning the placing of biocidal products on the market (Text with EEA relevance).

Article 12

[^{F1}Particular procedure for systems and procedure packs and procedure for sterilisation]

1 By way of derogation from Article 11 this Article shall apply to systems and procedure packs.

2 Any natural or legal person who puts devices bearing the CE marking together within their intended purpose and within the limits of use specified by their manufacturers, in order to place them on the market as a system or procedure pack, shall draw up a declaration by which he states that:

- a he has verified the, mutual compatibility of the devices in accordance with the manufacturers' instructions and has carried out his operations in accordance with these instructions; and
- b he has packaged the system or procedure pack and supplied relevant information to users incorporating relevant instructions from the manufacturers; and
- c the whole activity is subjected to appropriate methods of internal control and inspection.

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Where the conditions above are not met, as in cases where the system or procedure pack incorporate devices which do not bear a CE marking or where the chosen combination of devices is not compatible in view of their original intended use, the system or procedure pack shall be treated as a device in its own right and as such be subjected to the relevant procedure pursuant to Article 11.

[^{F13} Any natural or legal person who sterilises, for the purpose of placing on the market, systems or procedure packs referred to in paragraph 2 or other CE-marked medical devices designed by their manufacturers to be sterilised before use, shall, at his choice, follow one of the procedures referred to in Annex II or V. The application of the abovementioned Annexes and the intervention of the notified body are limited to the aspects of the procedure relating to the obtaining of sterility until the sterile package is opened or damaged. The person shall draw up a declaration stating that sterilisation has been carried out in accordance with the manufacturer's instructions.]

4 The products referred to in paragraphs 2 and 3 themselves shall not bear an additional CE marking. They shall be accompanied by the information referred to in point 13 of Annex I which includes, where appropriate, the information supplied by the manufacturers of the devices which have been put together. [^{F1}The declarations referred to in paragraphs 2 and 3 shall be kept at the disposal of the competent authorities for a period of five years.]

Textual Amendments

F1 Substituted by [Directive 2007/47/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 90/385/EEC on the approximation of the laws of the Member States relating to active implantable medical devices, Council Directive 93/42/EEC concerning medical devices and Directive 98/8/EC concerning the placing of biocidal products on the market \(Text with EEA relevance\).](#)

[^{F4}Article 12a

Reprocessing of medical devices

The Commission shall, no later than 5 September 2010, submit a report to the European Parliament and to the Council on the issue of the reprocessing of medical devices in the Community.

In the light of the findings of this report, the Commission shall submit to the European Parliament and to the Council any additional proposal it may deem appropriate in order to ensure a high level of health protection.]

Textual Amendments

F4 Inserted by [Directive 2007/47/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 90/385/EEC on the approximation of the laws of the Member States relating to active implantable medical devices, Council Directive 93/42/EEC concerning medical devices and Directive 98/8/EC concerning the placing of biocidal products on the market \(Text with EEA relevance\).](#)

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[^{F1}Article 13

Decisions with regard to classification and derogation clause

1 A Member State shall submit a duly substantiated request to the Commission and ask it to take the necessary measures in the following situations:

- a that Member State considers that the application of the classification rules set out in Annex IX requires a decision with regard to the classification of a given device or category of devices;
- b that Member State considers that a given device or family of devices should, by way of derogation from the provisions of Annex IX, be classified in another class;
- c that Member State considers that the conformity of a device or family of devices should, by way of derogation from Article 11, be established by applying solely one of the given procedures chosen from among those referred to in Article 11;
- d that Member State considers that a decision is required as to whether a particular product or product group falls within one of the definitions in Article 1(2)(a) to (e).

The measures referred to in the first subparagraph of this paragraph shall, as appropriate, be adopted in accordance with the procedure referred to in Article 7(2).

2 The Commission shall inform the Member States of the measures taken.]

Textual Amendments

- F1** Substituted by [Directive 2007/47/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 90/385/EEC on the approximation of the laws of the Member States relating to active implantable medical devices, Council Directive 93/42/EEC concerning medical devices and Directive 98/8/EC concerning the placing of biocidal products on the market \(Text with EEA relevance\).](#)

Article 14

Registration of persons responsible for placing devices on the market

1 Any manufacturer who, under his own name, places devices on the market in accordance with the procedures referred to in Article 11 (5) and (6) and any other natural or legal person engaged in the activities referred to in Article 12 shall inform the competent authorities of the Member State in which he has his registered place of business of the address of the registered place of business and the description of the devices concerned.

[^{F3}For all medical devices of [^{F1}classes IIa, IIb and III], Member States may request to be informed of all data allowing for identification of such devices together with the label and the instructions for use when such devices are put into service within their territory.]

[^{F12} Where a manufacturer who places a device on the market under his own name does not have a registered place of business in a Member State, he shall designate a single authorised representative in the European Union. For devices referred to in the first subparagraph of paragraph 1, the authorised representative shall inform the competent authority of the Member State in which he has his registered place of business of the details referred to in paragraph 1.]

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[^{F13} The Member States shall on request inform the other Member States and the Commission of the details referred to in the first subparagraph of paragraph 1 given by the manufacturer or authorised representative.]

Textual Amendments

- F1** Substituted by Directive 2007/47/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 90/385/EEC on the approximation of the laws of the Member States relating to active implantable medical devices, Council Directive 93/42/EEC concerning medical devices and Directive 98/8/EC concerning the placing of biocidal products on the market (Text with EEA relevance).
- F3** Inserted by Directive 98/79/EC of the European Parliament and of the Council of 27 October 1998 on in vitro diagnostic medical devices.

[^{F3} Article 14a

European databank

1 Regulatory data in accordance with this Directive shall be stored in a European database accessible to the competent authorities to enable them to carry out their tasks relating to this Directive on a well-informed basis.

The databank shall contain the following:

- [^{F1}a data relating to registration of manufacturers and authorised representatives and devices in accordance with Article 14 excluding data related to custom-made devices;]
- b data relating to certificates issued, modified, supplemented, suspended, withdrawn or refused according to the procedures, as laid down in Annexes II to VII;
- c data obtained in accordance with the vigilance procedure as defined in Article 10;
- [^{F4}d data relating to clinical investigations referred to in Article 15.]

2 Data shall be forwarded in a standardised format.

[^{F13} The measures necessary for the implementation of paragraphs 1 and 2 of this Article, in particular paragraph 1(d), shall be adopted in accordance with the regulatory procedure referred to in Article 7(2).]

[^{F4} The provisions of this Article shall be implemented no later than 5 September 2012. The Commission shall, no later than 11 October 2012, evaluate the operational functioning and the added value of the databank. On the basis of this evaluation, the Commission shall, if appropriate, present proposals to the European Parliament and the Council or present draft measures in accordance with paragraph 3.]

Textual Amendments

- F1** Substituted by Directive 2007/47/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 90/385/EEC on the approximation of the laws of the Member States relating to active implantable medical devices, Council Directive 93/42/EEC concerning medical devices and Directive 98/8/EC concerning the placing of biocidal products on the market (Text with EEA relevance).
- F3** Inserted by Directive 98/79/EC of the European Parliament and of the Council of 27 October 1998 on in vitro diagnostic medical devices.

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- F4** Inserted by Directive 2007/47/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 90/385/EEC on the approximation of the laws of the Member States relating to active implantable medical devices, Council Directive 93/42/EEC concerning medical devices and Directive 98/8/EC concerning the placing of biocidal products on the market (Text with EEA relevance).

[^{F1}Article 14b

Particular health monitoring measures

Where a Member State considers, in relation to a given product or group of products, that, in order to ensure protection of health and safety and/or to ensure that public health requirements are observed, such products should be withdrawn from the market, or their placing on the market and putting into service should be prohibited, restricted or subjected to particular requirements, it may take any necessary and justified transitional measures.

The Member State shall then inform the Commission and all other Member States, giving the reasons for its decision.

The Commission shall, whenever possible, consult the interested Parties and the Member States.

The Commission shall adopt its opinion, indicating whether the national measures are justified or not. The Commission shall inform all the Member States and the consulted interested Parties thereof.

When appropriate, the necessary measures designed to amend non-essential elements of this Directive, relating to withdrawal from the market, prohibition of placing on the market and putting into service of a certain product or group of products or to restrictions or introduction of particular requirements in order for such products to be put on the market, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 7(3). On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 7(4).]]

Textual Amendments

- F1** Substituted by Directive 2007/47/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 90/385/EEC on the approximation of the laws of the Member States relating to active implantable medical devices, Council Directive 93/42/EEC concerning medical devices and Directive 98/8/EC concerning the placing of biocidal products on the market (Text with EEA relevance).
- F3** Inserted by Directive 98/79/EC of the European Parliament and of the Council of 27 October 1998 on in vitro diagnostic medical devices.

Article 15

Clinical investigation

[^{F1} In the case of devices intended for clinical investigations, the manufacturer or the authorised representative, established in the Community, shall follow the procedure referred to in Annex VIII and notify the competent authorities of the Member States in which the

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investigations are to be conducted by means of the statement mentioned in Section 2.2 of Annex VIII.

2 In the case of devices falling within Class III and implantable and long-term invasive devices falling within Class IIa or IIb, the manufacturer may commence the relevant clinical investigation at the end of a period of 60 days after notification, unless the competent authorities have notified him within that period of a decision to the contrary based on considerations of public health or public policy.

Member States may however authorise manufacturers to commence the relevant clinical investigations before the expiry of the period of 60 days, insofar as the relevant ethics committee has issued a favourable opinion on the programme of investigation in question, including its review of the clinical investigation plan.

3 In the case of devices other than those referred to in paragraph 2, Member States may authorise manufacturers to commence clinical investigations immediately after the date of notification, provided that the ethics committee concerned has issued a favourable opinion on the programme of investigation in question including its review of the clinical investigation plan.]

4 The authorization referred to in paragraph 2 second subparagraph and paragraph 3, may be made subject to authorization from the competent authority.

[^{F15} The clinical investigations must be conducted in accordance with the provisions of Annex X. The measures designed to amend non-essential elements of this Directive, inter alia by supplementing it, relating to the provisions on clinical investigation in Annex X shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 7(3).

6 The Member States shall, if necessary, take the appropriate steps to ensure public health and public policy. Where a clinical investigation is refused or halted by a Member State, that Member State shall communicate its decision and the grounds therefor to all Member States and the Commission. Where a Member State has called for a significant modification or temporary interruption of a clinical investigation, that Member State shall inform the Member States concerned about its actions and the grounds for the actions taken.

7 The manufacturer or his authorised representative shall notify the competent authorities of the Member States concerned of the end of the clinical investigation, with a justification in case of early termination. In the case of early termination of the clinical investigation on safety grounds this notification shall be communicated to all Member States and the Commission. The manufacturer or his authorised representative shall keep the report referred to in Section 2.3.7 of Annex X at the disposal of the competent authorities.]

8 The provisions of paragraphs 1 and 2 do not apply where the clinical investigations are conducted using devices which are authorized in accordance with Article 11 to bear the CE marking unless the aim of these investigations is to use the devices for a purpose other than that referred to in the relevant conformity assessment procedure. The relevant provisions of Annex X remain applicable.

Textual Amendments

- F1** Substituted by [Directive 2007/47/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 90/385/EEC on the approximation of the laws of the Member States relating to active implantable medical devices, Council Directive 93/42/EEC concerning medical devices and Directive 98/8/EC concerning the placing of biocidal products on the market \(Text with EEA relevance\).](#)

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Article 16

Notified bodies

1 The Member States shall notify the Commission and other Member States of the bodies which they have designated for carrying out the tasks pertaining to the procedures referred to in Article 11 and the specific tasks for which the bodies have been designated. The Commission shall assign identification numbers to these bodies, hereinafter referred to as 'notified bodies'.

The Commission shall publish a list of the notified bodies, together with the identification numbers it has allocated to them and the tasks for which they have been notified, in the *Official Journal of the European Communities*. It shall ensure that the list is kept up to date.

2 Member States shall apply the criteria set out in Annex XI for the designation of bodies. Bodies that meet the criteria laid down in the national standards which transpose the relevant harmonized standards shall be presumed to meet the relevant criteria.

[^{F4}When appropriate in the light of technical progress, the detailed measures necessary to ensure a consistent application of the criteria set out in Annex XI for the designation of bodies by the Member States shall be adopted in accordance with the regulatory procedure referred to in Article 7(2).]

3 A Member State that has notified a body shall withdraw that notification if it finds that the body no longer meets the criteria referred to in paragraph 2. It shall immediately inform the other Member States and the Commission thereof.

4 The notified body and the manufacturer, or his authorized representative [^{F8} established in the Community], shall lay down, by common accord, the time limits for completion of the assessment and verification operations referred to in Annexes II to VI.

[^{F3} [^{F15} The notified body shall inform its competent authority about all certificates issued, modified, supplemented, suspended, withdrawn or refused and the other notified bodies within the scope of this Directive about certificates suspended, withdrawn or refused and, on request, about certificates issued. The notified body shall also make available, on request, all additional relevant information.]

6 Where a notified body finds that pertinent requirements of this Directive have not been met or are no longer met by the manufacturer or where a certificate should not have been issued, it shall, taking account of the principle of proportionality, suspend or withdraw the certificate issued or place any restrictions on it unless compliance with such requirements is ensured by the implementation of appropriate corrective measures by the manufacturer. In the case of suspension or withdrawal of the certificate or of any restriction placed on it or in cases where an intervention of the competent authority may become necessary, the notified body shall inform its competent authority thereof. The Member State shall inform the other Member States and the Commission.

7 The notified body shall, on request, supply all relevant information and documents including budgetary documents, required to enable the Member State to verify compliance with Annex XI requirements.]

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Textual Amendments

- F1** Substituted by Directive 2007/47/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 90/385/EEC on the approximation of the laws of the Member States relating to active implantable medical devices, Council Directive 93/42/EEC concerning medical devices and Directive 98/8/EC concerning the placing of biocidal products on the market (Text with EEA relevance).
- F3** Inserted by Directive 98/79/EC of the European Parliament and of the Council of 27 October 1998 on in vitro diagnostic medical devices.
- F4** Inserted by Directive 2007/47/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 90/385/EEC on the approximation of the laws of the Member States relating to active implantable medical devices, Council Directive 93/42/EEC concerning medical devices and Directive 98/8/EC concerning the placing of biocidal products on the market (Text with EEA relevance).
- F8** Deleted by Directive 2007/47/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 90/385/EEC on the approximation of the laws of the Member States relating to active implantable medical devices, Council Directive 93/42/EEC concerning medical devices and Directive 98/8/EC concerning the placing of biocidal products on the market (Text with EEA relevance).

Article 17

CE marking

1 Devices, other than devices which are custom-made or intended for clinical investigations, considered to meet the essential requirements referred to in Article 3 must bear the CE marking of conformity when they are placed on the market.

2 The CE marking of conformity, as shown in Annex XII, must appear in a visible, legible and indelible form on the device or its sterile pack, where practicable and appropriate, and on the instructions for use. Where applicable, the CE marking must also appear on the sales packaging.

It shall be accompanied by the identification number of the notified body responsible for implementation of the procedures set out in Annexes II, IV, V and VI.

3 It is prohibited to affix marks or inscriptions which are likely to mislead third parties with regard to the meaning or the graphics of the CE marking. Any other mark may be affixed to the device, to the packaging or to the instruction leaflet accompanying the device provided that the visibility and legibility of the CE marking is not thereby reduced.

Article 18

Wrongly affixed CE marking

Without prejudice to Article 8:

- (a) [F¹ where a Member State establishes that the CE marking has been affixed unduly or is missing in violation of the Directive, the manufacturer or his authorised representative shall be obliged to end the infringement under conditions imposed by the Member State;]

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- (b) where non-compliance continues, the Member State must take all appropriate measures to restrict or prohibit the placing on the market of the product in question or to ensure that it is withdrawn from the market, in accordance with the procedure in Article 8.

[^{F3}Those provisions shall also apply where the CE marking has been affixed in accordance with the procedures in this Directive, but inappropriately, on products that are not covered by this Directive.]

Textual Amendments

- F1** Substituted by Directive 2007/47/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 90/385/EEC on the approximation of the laws of the Member States relating to active implantable medical devices, Council Directive 93/42/EEC concerning medical devices and Directive 98/8/EC concerning the placing of biocidal products on the market (Text with EEA relevance).
- F3** Inserted by Directive 98/79/EC of the European Parliament and of the Council of 27 October 1998 on in vitro diagnostic medical devices.

Article 19

Decision in respect of refusal or restriction

- 1 Any decision taken pursuant to this Directive:
- a to refuse or restrict the placing on the market or the putting into service of a device or the carrying out of clinical investigations;
- or
- b to withdraw devices from the market,

shall state the exact grounds on which it is based. Such decisions shall be notified without delay to the party concerned, who shall at the same time be informed of the remedies available to him under the national law in force in the Member State in question and of the time limits to which such remedies are subject.

- 2 In the event of a decision as referred to in paragraph 1, the manufacturer, or his authorized representative [^{F8} established in the Community], shall have an opportunity to put forward his viewpoint in advance, unless such consultation is not possible because of the urgency of the measure to be taken.

Textual Amendments

- F8** Deleted by Directive 2007/47/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 90/385/EEC on the approximation of the laws of the Member States relating to active implantable medical devices, Council Directive 93/42/EEC concerning medical devices and Directive 98/8/EC concerning the placing of biocidal products on the market (Text with EEA relevance).

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[^{F1}Article 20

Confidentiality

1 Without prejudice to the existing national provisions and practices on medical confidentiality, Member States shall ensure that all the Parties involved in the application of this Directive are bound to observe confidentiality with regard to all information obtained in carrying out their tasks.

This does not affect the obligation of Member States and notified bodies with regard to mutual information and the dissemination of warnings, nor the obligations of the persons concerned to provide information under criminal law.

- 2 The following information shall not be treated as confidential:
- a information on the registration of persons responsible for placing devices on the market in accordance with Article 14;
 - b information to users sent out by the manufacturer, authorised representative or distributor in relation to a measure according to Article 10(3);
 - c information contained in certificates issued, modified, supplemented, suspended or withdrawn.

3 The measures designed to amend non-essential elements of this Directive, *inter alia* by supplementing it, relating to determination of the conditions under which other information may be made publicly available, and in particular for Class IIb and Class III devices to any obligation for manufacturers to prepare and make available a summary of the information and data related to the device, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 7(3).]

Textual Amendments

- F1** Substituted by [Directive 2007/47/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 90/385/EEC on the approximation of the laws of the Member States relating to active implantable medical devices, Council Directive 93/42/EEC concerning medical devices and Directive 98/8/EC concerning the placing of biocidal products on the market \(Text with EEA relevance\)](#).

[^{F4}Article 20a

Cooperation

Member States shall take appropriate measures to ensure that the competent authorities of the Member States cooperate with each other and with the Commission and transmit to each other the information necessary to enable this Directive to be applied uniformly.

The Commission shall provide for the organisation of an exchange of experience between the competent authorities responsible for market surveillance in order to coordinate the uniform application of this Directive.

Without prejudice to the provisions of this Directive, cooperation may be part of initiatives developed at an international level.]

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Textual Amendments

- F4** Inserted by [Directive 2007/47/EC](#) of the European Parliament and of the Council of 5 September 2007 amending Council Directive 90/385/EEC on the approximation of the laws of the Member States relating to active implantable medical devices, Council Directive 93/42/EEC concerning medical devices and Directive 98/8/EC concerning the placing of biocidal products on the market (Text with EEA relevance).

Article 21

Repeal and amendment of Directives

1 Directive 76/764/EEC is hereby repealed with effect from 1 January 1995.

2 In the title and Article 1 of Directive 84/539/EEC, ‘human or’ is deleted.

In Article 2 of Directive 84/539/EEC, the following subparagraph is added to paragraph 1:

If the appliance is at the same time a medical device within the meaning of Directive 93/42/EEC⁽¹⁰⁾ and if it satisfies the essential requirements laid down therein for that device, the device shall be deemed to be in conformity with the requirements of this Directive.

3 Directive 90/385/EEC is hereby amended as follows:

1. in Article 1 (2) the following two subparagraphs are added:

(h) “placing on the market” means the first making available in return for payment or free of charge of a device other than a device intended for clinical investigation, with a view to distribution and/or use on the Community market, regardless of whether it is new or fully refurbished;

(i) “manufacturer” means the natural or legal person with responsibility for the design, manufacture, packaging and labelling of a device before it is placed on the market under his own name, regardless of whether these operations are carried out by that person himself or on his behalf by a third party.

The obligations of this Directive to be met by manufacturers also apply to the natural or legal person who assembles, packages, processes, fully refurbishes and/or labels one or more ready-made products and/or assigns to them their intended purpose as a device with a view to their being placed on the market under his own name. This subparagraph does not apply to the person who, while not a manufacturer within the meaning of the first subparagraph, assembles or adapts devices already on the market to their intended purpose for an individual patient;

2. in Article 9 the following paragraphs are added:

5. During the conformity assessment procedure for a device, the manufacturer and/or the notified body shall take account of the results of any assessment and verification operations which, where appropriate, have been carried out in accordance with this Directive at an intermediate stage of manufacture.

6. Where the conformity assessment procedure involves the intervention of a notified body, the manufacturer, or his authorized representative established in the

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Community, may apply to a body of his choice within the framework of the tasks for which the body has been notified.

7 The notified body may require, where duly justified, any information or data which is necessary for establishing and maintaining the attestation of conformity in view of the chosen procedure.

8 Decisions taken by the notified bodies in accordance with Annexes II and III shall be valid for a maximum of five years and may be extended on application, made at a time agreed in the contract signed by both parties, for further periods of five years.

9 By derogation from paragraphs 1 and 2 the competent authorities may authorize, on duly justified request, the placing on the market and putting into service, within the territory of the Member State concerned, of individual devices for which the procedures referred to in paragraphs 1 and 2 have not been carried out and the use of which is in the interest of protection of health.;

3. the following Article 9a is inserted after Article 9:

Article 9a

1 Where a Member State considers that the conformity of a device or family of devices should be established, by way of derogation from the provisions of Article 9, by applying solely one of the given procedures chosen from among those referred to in Article 9, it shall submit a duly substantiated request to the Commission and ask it to take the necessary measures. These measures shall be adopted in accordance with the procedure referred to in Article 7 (2) of Directive 93/42/EEC⁽¹⁾.

2 The Commission shall inform the Member States of the measures taken and, where appropriate, publish the relevant parts of these measures in the *Official Journal of the European Communities*.

4. Article 10 shall be amended as follows:

— the following subparagraph shall be added to paragraph 2:

Member States may however authorize manufacturers to start the clinical investigations in question before the expiry of the 60-day period, provided that the Ethical Committee concerned has delivered a favourable opinion with respect to the investigation programme in question.,

— the following paragraph shall be inserted:

2a. The authorization referred to in the second subparagraph of paragraph 2 may be subject to approval by the competent authority.;

5. the following is added to Article 14:

In the event of a decision as referred to in the previous paragraph the manufacturer, or his authorized representative established in the Community, shall have an opportunity to put forward his viewpoint in advance, unless such consultation is not possible because of the urgency of the measures to be taken.

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Article 22

Implementation, transitional provisions

1 Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive not later than 1 July 1994. They shall immediately inform the Commission thereof.

The Standing Committee referred to in Article 7 may assume its tasks from the date of notification⁽¹²⁾ of this Directive. The Member States may take the measures referred to in Article 16 on notification of this Directive.

When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such a reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

Member States shall apply these provisions with effect from 1 January 1995.

2 Member States shall communicate to the Commission the texts of the provisions of national law which they adopt in the field covered by this Directive.

3 Member States shall take the necessary action to ensure that the notified bodies which are responsible pursuant to Article 11 (1) to (5) for conformity assessment take account of any relevant information regarding the characteristics and performance of such devices, including in particular the results of any relevant tests and verification already carried out under pre-existing national law, regulations or administrative provisions in respect of such devices.

[^{F24} Member States shall accept:

- devices which conform to the rules in force in their territory on 31 December 1994 being placed on the market during a period of five years following the adoption of this Directive, and
- the aforementioned devices being put into service until 30 June 2001 at the latest.]

In the case of devices which have been subjected to EEC pattern approval in accordance with Directive 76/764/EEC, Member States shall accept their being placed on the market and put into service during the period up to 30 June 2004.

Textual Amendments

- F2** Substituted by [Directive 98/79/EC of the European Parliament and of the Council of 27 October 1998 on in vitro diagnostic medical devices](#).

Article 23

This Directive is addressed to the Member States.

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- (1) [^{F1}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 (OJ L 311, 28.11.2001, p. 67). Directive as last amended by Regulation (EC) No 1901/2006 (OJ L 378, 27.12.2006, p. 1).]
- (2) OJ No L 262, 27.9.1976, p. 169. Directive as last amended by Commission Directive 92/86/EEC (OJ No L 325, 11.11.1992, p. 18).
- (3) [^{F1}Council Directive 89/686/EEC of 21 December 1989 on the approximation of the laws of the Member States relating to personal protective equipment (OJ L 399, 30.12.1989, p. 18). Directive as last amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).]
- (4) [^{F1}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 (OJ L 390, 31.12.2004, p. 24).]
- (5) [^{F1}OJ L 159, 29.6.1996, p. 1.]
- (6) [^{F1}OJ L 180, 9.7.1997, p. 22.]
- (7) [^{F4}OJ L 157, 9.6.2006, p. 24.]
- (8) [^{F7}[^{F1}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 and of rules on Information Society services (OJ L 204, 21.7.1998, p. 37). Directive as last amended by the 2003 Act of Accession.]]
- (9) [^{F7}Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (OJ L 184, 17.7.1999, p. 23).]
- (10) OJ No L 169, 12.7.1993, p. 1.’
- (11) OJ No L 169, 12.7.1993, p. 1.’
- (12) This Directive was notified to the Member States on 29 June 1993.

Textual Amendments

- F1** Substituted by Directive 2007/47/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 90/385/EEC on the approximation of the laws of the Member States relating to active implantable medical devices, Council Directive 93/42/EEC concerning medical devices and Directive 98/8/EC concerning the placing of biocidal products on the market (Text with EEA relevance).
- F4** Inserted by Directive 2007/47/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 90/385/EEC on the approximation of the laws of the Member States relating to active implantable medical devices, Council Directive 93/42/EEC concerning medical devices and Directive 98/8/EC concerning the placing of biocidal products on the market (Text with EEA relevance).
- F7** Substituted by Regulation (EC) No 1882/2003 of the European Parliament and of the Council of 29 September 2003 adapting to Council Decision 1999/468/EC the provisions relating to committees which assist the Commission in the exercise of its implementing powers laid down in instruments subject to the procedure referred to in Article 251 of the EC Treaty.