Regulation (EU) 2017/745 of the European Parliament and of the Council of 5 April 2017 on medical devices, amending Directive 2001/83/EC, Regulation (EC) No 178/2002 and Regulation (EC) No 1223/2009 and repealing Council Directives 90/385/EEC and 93/42/EEC (Text with EEA relevance)

ANNEXES

ANNEX I

GENERAL SAFETY AND PERFORMANCE REQUIREMENTS

CHAPTER I

GENERAL REQUIREMENTS

1. Devices shall achieve the performance intended by their manufacturer and shall be designed and manufactured in such a way that, during normal conditions of use, they are suitable for their intended purpose. They shall be safe and effective and shall not compromise the clinical condition or the safety of patients, or the safety and health of users or, where applicable, other persons, provided that any risks 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, taking into account the generally acknowledged state of the art.

2. The requirement in this Annex to reduce risks as far as possible means the reduction of risks as far as possible without adversely affecting the benefit-risk ratio.

3. Manufacturers shall establish, implement, document and maintain a risk management system.

Risk management shall be understood as a continuous iterative process throughout the entire lifecycle of a device, requiring regular systematic updating. In carrying out risk management manufacturers shall:

(a) establish and document a risk management plan for each device;

(b) identify and analyse the known and foreseeable hazards associated with each device;

(c) estimate and evaluate the risks associated with, and occurring during, the intended use and during reasonably foreseeable misuse;

(d) eliminate or control the risks referred to in point (c) in accordance with the requirements of Section 4;

(e) evaluate the impact of information from the production phase and, in particular, from the post-market surveillance system, on hazards and the frequency of occurrence thereof, on estimates of their associated risks, as well as on the overall risk, benefit-risk ratio and risk acceptability; and

(f) based on the evaluation of the impact of the information referred to in point (e), if necessary amend control measures in line with the requirements of Section 4.

4. Risk control measures adopted by manufacturers 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, Manufacturers shall manage risks so that the residual risk associated with each hazard as well as the overall residual risk is judged acceptable. In selecting the most appropriate solutions, manufacturers shall, in the following order of priority:

(a) eliminate or reduce risks as far as possible through safe design and manufacture;

(b) where appropriate, take adequate protection measures, including alarms if necessary, in relation to risks that cannot be eliminated; and

(c) provide information for safety (warnings/precautions/contra-indications) and, where appropriate, training to users.

Manufacturers shall inform users of any residual risks.

5. In eliminating or reducing risks related to use error, the manufacturer shall:

(a) reduce as far as possible the risks related to the ergonomic features of the device and the environment in which the device is intended to be used (design for patient safety), and

(b) give consideration to the technical knowledge, experience, education, training and use environment, where applicable, and the medical and physical conditions of intended users (design for lay, professional, disabled or other users).

6. The characteristics and performance of a 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.

7. Devices shall be designed, manufactured and packaged in such a way that their characteristics and performance during their intended use are not adversely affected during transport and storage, for example, through fluctuations of temperature and humidity, taking account of the instructions and information provided by the manufacturer.

8. All known and foreseeable risks, and any undesirable side-effects, shall be minimised and be acceptable when weighed against the evaluated benefits to the patient and/or user arising from the achieved performance of the device during normal conditions of use.

9. For the devices referred to in Annex XVI, the general safety requirements set out in Sections 1 and 8 shall be understood to mean that the device, when used under the conditions and for the purposes intended, does not present a risk at all or presents a risk that is no more than the maximum acceptable risk related to the product's use which is consistent with a high level of protection for the safety and health of persons.

CHAPTER II

REQUIREMENTS REGARDING DESIGN AND MANUFACTURE

10. Chemical, physical and biological properties

10.1. Devices shall be designed and manufactured in such a way as to ensure that the characteristics and performance requirements referred to in Chapter I are fulfilled. Particular attention shall be paid to:

(a) the choice of materials and substances used, particularly as regards toxicity and, where relevant, flammability;

(b) the compatibility between the materials and substances used and biological tissues, cells and body fluids, taking account of the intended purpose of the device and, where relevant, absorption, distribution, metabolism and excretion;

(c) the compatibility between the different parts of a device which consists of more than one implantable part;

(d) the impact of processes on material properties;

(e) where appropriate, the results of biophysical or modelling research the validity of which has been demonstrated beforehand;

(f) the mechanical properties of the materials used, reflecting, where appropriate, matters such as strength, ductility, fracture resistance, wear resistance and fatigue resistance;

(g) surface properties; and

(h) the confirmation that the device meets any defined chemical and/or physical specifications.

10.2. 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 to those contaminants and residues and to the duration and frequency of exposure.

10.3. Devices shall be designed and manufactured in such a way that they can be used safely with the materials and substances, including gases, with which they enter into contact during their intended use; if the devices are intended to administer medicinal products they shall be designed and manufactured in such a way as to be compatible with the medicinal products concerned in accordance with the provisions and restrictions governing those medicinal products and that the performance of both the medicinal products and of the devices is maintained in accordance with their respective indications and intended use.

10.4. Substances

10.4.1. Design and manufacture of devices

Devices shall be designed and manufactured in such a way as to reduce as far as possible the risks posed by substances or particles, including wear debris, degradation products and processing residues, that may be released from the device.

Devices, or those parts thereof or those materials used therein that:

— are invasive and come into direct contact with the human body,

— (re)administer medicines, body liquids or other substances, including gases, to/from the body, or

— transport or store such medicines, body fluids or substances, including gases, to be (re)administered to the body,

shall only contain the following substances in a concentration that is above 0,1 % weight by weight (w/w) where justified pursuant to Section 10.4.2:

(a) substances which are carcinogenic, mutagenic or toxic to reproduction ('CMR'), of category 1A or 1B, in accordance with Part 3 of Annex VI to Regulation (EC) No 1272/2008 of the European Parliament and of the Council[(1)], or

(b) substances having endocrine-disrupting properties for which there is scientific evidence of probable serious effects to human health and which are identified either in accordance with the procedure set out in Article 59 of Regulation (EC) No 1907/2006 of the European Parliament and of the Council[(2)] or, once a delegated act has been adopted by the Commission pursuant to the first subparagraph of Article 5(3) of Regulation (EU) No 528/2012 of the European Parliament and the Council[(3)], in accordance with the criteria that are relevant to human health amongst the criteria established therein.

10.4.2. Justification regarding the presence of CMR and/or endocrine-disrupting substances

The justification for the presence of such substances shall be based upon:

(a) an analysis and estimation of potential patient or user exposure to the substance;

(b) an analysis of possible alternative substances, materials or designs, including, where available, information about independent research, peer-reviewed studies, scientific opinions from relevant scientific committees and an analysis of the availability of such alternatives;

(c) argumentation as to why possible substance and/ or material substitutes, if available, or design changes, if feasible, are inappropriate in relation to maintaining the functionality, performance and the benefit-risk ratios of the product; including taking into account if the intended use of such devices includes treatment of children or treatment of pregnant or breastfeeding women or treatment of other patient groups considered particularly vulnerable to such substances and/or materials; and

(d) where applicable and available, the latest relevant scientific committee guidelines in accordance with Sections 10.4.3. and 10.4.4.

10.4.3. Guidelines on phthalates

For the purposes of Section 10.4., the Commission shall, as soon as possible and by 26 May 2018, provide the relevant scientific committee with a mandate to prepare guidelines that shall be ready before 26 May 2020. The mandate for the committee shall encompass at least a benefit-risk assessment of the presence of phthalates which belong to either of the groups of substances referred to in points (a) and (b) of Section 10.4.1. The benefit-risk assessment shall take into account the intended purpose and context of the use of the device, as well as any available alternative substances and alternative materials, designs or medical treatments. When deemed appropriate on the basis of the latest scientific evidence, but at least every five years, the guidelines shall be updated.

10.4.4. Guidelines on other CMR and endocrine-disrupting substances

Subsequently, the Commission shall mandate the relevant scientific committee to prepare guidelines as referred to in Section 10.4.3. also for other substances referred to in points (a) and (b) of Section 10.4.1., where appropriate.

10.4.5. Labelling

Where devices, parts thereof or materials used therein as referred to in Section 10.4.1. contain substances referred to in points (a) or (b) of Section 10.4.1. in a concentration above 0,1 % weight by weight (w/w), the presence of those substances shall be labelled on the device itself and/or on the packaging for each unit or, where appropriate, on the sales packaging, with the list of such substances. If the intended use of such devices includes treatment of children or treatment of pregnant or breastfeeding women or treatment of other patient groups considered particularly vulnerable to such substances and/or materials, information on residual risks for those patient groups and, if applicable, on appropriate precautionary measures shall be given in the instructions for use.

10.5. Devices shall be designed and manufactured in such a way as to reduce as far as possible the risks posed by the unintentional ingress of substances into the device taking into account the device and the nature of the environment in which it is intended to be used.

10.6. Devices shall be designed and manufactured in such a way as to reduce as far as possible the risks linked to the size and the properties of particles which are or can be released into the patient's or user's body, unless they come into contact with intact skin only. Special attention shall be given to nanomaterials.

11. Infection and microbial contamination

11.1. Devices and their manufacturing processes shall be designed in such a way as to eliminate or to reduce as far as possible the risk of infection to patients, users and, where applicable, other persons. The design shall:

(a) reduce as far as possible and appropriate the risks from unintended cuts and pricks, such as needle stick injuries,

(b) allow easy and safe handling,

(c) reduce as far as possible any microbial leakage from the device and/or microbial exposure during use, and

(d) prevent microbial contamination of the device or its content such as specimens or fluids.

11.2. Where necessary devices shall be designed to facilitate their safe cleaning, disinfection, and/or re-sterilisation.

11.3. Devices labelled as having a specific microbial state shall be designed, manufactured and packaged to ensure that they remain in that state when placed on the market and remain so under the transport and storage conditions specified by the manufacturer.

11.4. Devices delivered in a sterile state shall be designed, manufactured and packaged in accordance with appropriate procedures, to ensure that they are sterile when placed on the market and that, unless the packaging which is intended to maintain their sterile condition is damaged, they remain sterile, under the transport and storage conditions specified by the manufacturer, until that packaging is opened at the point of use. It shall be ensured that the integrity of that packaging is clearly evident to the final user.

11.5. Devices labelled as sterile shall be processed, manufactured, packaged and, sterilised by means of appropriate, validated methods.

11.6. Devices intended to be sterilised shall be manufactured and packaged in appropriate and controlled conditions and facilities.

11.7. Packaging systems for non-sterile devices shall maintain the integrity and cleanliness of the product and, where 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.

11.8. The labelling of the device shall distinguish between identical or similar devices placed on the market in both a sterile and a non-sterile condition additional to the symbol used to indicate that devices are sterile.

12. Devices incorporating a substance considered to be a medicinal product and devices that are composed of substances or of combinations of substances that are absorbed by or locally dispersed in the human body.

12.1. In the case of devices referred to in the first subparagraph of Article 1(8), the quality, safety and usefulness of the substance which, if used separately, would be considered to be a medicinal product within the meaning of point (2) of Article 1 of Directive 2001/83/EC, shall be verified by analogy with the methods specified in Annex I to Directive 2001/83/EC, as required by the applicable conformity assessment procedure under this Regulation.

12.2. Devices that are composed of substances or of combinations of substances that are intended to be introduced into the human body, and that are absorbed by or

locally dispersed in the human body shall comply, where applicable and in a manner limited to the aspects not covered by this Regulation, with the relevant requirements laid down in Annex I to Directive 2001/83/EC for the evaluation of absorption, distribution, metabolism, excretion, local tolerance, toxicity, interaction with other devices, medicinal products or other substances and potential for adverse reactions, as required by the applicable conformity assessment procedure under this Regulation.

13. Devices incorporating materials of biological origin

13.1. For devices manufactured utilising derivatives of tissues or cells of human origin which are non-viable or are rendered non-viable covered by this Regulation in accordance with point (g) of Article 1(6), the following shall apply:

(a) donation, procurement and testing of the tissues and cells shall be done in accordance with Directive 2004/23/EC;

(b) processing, preservation and any other handling of those tissues and cells or their derivatives shall be carried out so as to provide safety for patients, users and, where applicable, other persons. In particular, safety with regard to viruses and other transmissible agents shall be addressed by appropriate methods of sourcing and by implementation of validated methods of elimination or inactivation in the course of the manufacturing process;

(c) the traceability system for those devices shall be complementary and compatible with the traceability and data protection requirements laid down in Directive 2004/23/EC and in Directive 2002/98/EC.

13.2. For devices manufactured utilising tissues or cells of animal origin, or their derivatives, which are non-viable or rendered non-viable the following shall apply:

(a) where feasible taking into account the animal species, tissues and cells of animal origin, or their derivatives, shall originate from animals that have been subjected to veterinary controls that are adapted to the intended use of the tissues. Information on the geographical origin of the animals shall be retained by manufacturers;

(b) sourcing, processing, preservation, testing and handling of tissues, cells and substances of animal origin, or their derivatives, shall be carried out so as to provide safety for patients, users and, where applicable, other persons. In particular safety with regard to viruses and other transmissible agents shall be addressed by implementation of validated methods of elimination or viral inactivation in the course of the manufacturing process, except when the use of such methods would lead to unacceptable degradation compromising the clinical benefit of the device;

(c) in the case of devices manufactured utilising tissues or cells of animal origin, or their derivatives, as referred to in Regulation (EU) No 722/2012 the particular requirements laid down in that Regulation shall apply.

13.3. For devices manufactured utilising non-viable biological substances other than those referred to in Sections 13.1 and 13.2, the processing, preservation, testing and handling of those substances shall be carried out so as to provide safety for patients, users and, where applicable, other persons, including in the waste disposal chain. In particular, safety with regard to viruses and other transmissible agents shall be addressed by appropriate methods of sourcing and by implementation of validated methods of elimination or inactivation in the course of the manufacturing process.

14. Construction of devices and interaction with their environment

14.1. 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 performance 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, such as fluid, gas transfer, electrical or mechanical coupling, shall be designed and constructed in such a way as to minimise all possible risks, such as misconnection.

14.2. Devices shall be designed and manufactured in such a way as to remove or reduce as far as possible:

(a) the risk of injury, in connection with their physical features, including the volume/pressure ratio, dimensional and where appropriate ergonomic features;

(b) risks connected with 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, temperature, variations in pressure and acceleration or radio signal interferences;

(c) 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;

(d) the risks associated with the possible negative interaction between software and the IT environment within which it operates and interacts;

(e) the risks of accidental ingress of substances into the device;

(f) the risks of reciprocal interference with other devices normally used in the investigations or for the treatment given; and

(g) risks arising where maintenance or calibration are not possible (as with implants), from ageing of materials used or loss of accuracy of any measuring or control mechanism.

14.3. 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 the intended use of which includes exposure to or use in association with flammable or explosive substances or substances which could cause combustion.

14.4. Devices shall be designed and manufactured in such a way that adjustment, calibration, and maintenance can be done safely and effectively.

14.5. Devices that are intended to be operated together with other devices or products shall be designed and manufactured in such a way that the interoperability and compatibility are reliable and safe.

14.6 Any measurement, monitoring or display scale shall be designed and manufactured in line with ergonomic principles, taking account of the intended purpose, users and the environmental conditions in which the devices are intended to be used.

14.7. Devices shall be designed and manufactured in such a way as to facilitate their safe disposal and the safe disposal of related waste substances by the user, patient or other person. To that end, manufacturers shall identify and test procedures and measures as

a result of which their devices can be safely disposed after use. Such procedures shall be described in the instructions for use.

15. Devices with a diagnostic or measuring function

15.1. Diagnostic devices and devices with a measuring function, shall be designed and manufactured in such a way as to provide sufficient accuracy, precision and stability for their intended purpose, based on appropriate scientific and technical methods. The limits of accuracy shall be indicated by the manufacturer.

15.2. The measurements made by devices with a measuring function shall be expressed in legal units conforming to the provisions of Council Directive 80/181/EEC[(4)].

16. Protection against radiation

16.1. General

(a) Devices shall be designed, manufactured and packaged in such a way that exposure of patients, users and other persons to radiation is reduced as far as possible, and in a manner that is compatible with the intended purpose, whilst not restricting the application of appropriate specified levels for therapeutic and diagnostic purposes.

(b) The operating instructions for devices emitting hazardous or potentially hazardous radiation shall contain detailed information as to the nature of the emitted radiation, the means of protecting the patient and the user, and on ways of avoiding misuse and of reducing the risks inherent to installation as far as possible and appropriate. Information regarding the acceptance and performance testing, the acceptance criteria, and the maintenance procedure shall also be specified.

16.2. Intended radiation

(a) Where devices are designed to emit hazardous, or potentially hazardous, levels of ionizing and/or non-ionizing radiation necessary for a specific medical purpose the benefit of which is considered to outweigh the risks inherent to the emission, it shall be possible for the user to control the emissions. Such devices shall be designed and manufactured to ensure reproducibility of relevant variable parameters within an acceptable tolerance.

(b) Where devices are intended to emit hazardous, or potentially hazardous, ionizing and/or non-ionizing radiation, they shall be fitted, where possible, with visual displays and/or audible warnings of such emissions.

16.3. Devices shall be designed and manufactured in such a way that exposure of patients, users and other persons to the emission of unintended, stray or scattered radiation is reduced as far as possible. Where possible and appropriate, methods shall be selected which reduce the exposure to radiation of patients, users and other persons who may be affected.

16.4. Ionising radiation

(a) Devices intended to emit ionizing radiation shall be designed and manufactured taking into account the requirements of the Directive 2013/59/Euratom laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation.

(b) Devices intended to emit ionising radiation shall be designed and manufactured in such a way as to ensure that, where possible, taking into account the intended use, the

quantity, geometry and quality of the radiation emitted can be varied and controlled, and, if possible, monitored during treatment.

(c) Devices emitting ionising radiation intended for diagnostic radiology shall be designed and manufactured in such a way as to achieve an image and/or output quality that are appropriate to the intended medical purpose whilst minimising radiation exposure of the patient and user.

(d) Devices that emit ionising radiation and are intended for therapeutic radiology shall be designed and manufactured in such a way as to enable reliable monitoring and control of the delivered dose, the beam type, energy and, where appropriate, the quality of radiation.

17. Electronic programmable systems — devices that incorporate electronic programmable systems and software that are devices in themselves

17.1. Devices that incorporate electronic programmable systems, including software, or software that are devices in themselves, shall be designed to ensure repeatability, reliability and performance in line with their intended use. In the event of a single fault condition, appropriate means shall be adopted to eliminate or reduce as far as possible consequent risks or impairment of performance.

17.2. For devices that incorporate software or for software that are devices in themselves, the software shall be developed and manufactured in accordance with the state of the art taking into account the principles of development life cycle, risk management, including information security, verification and validation.

17.3. Software referred to in this Section that is 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 level of light or noise).

17.4. Manufacturers shall set out minimum requirements concerning hardware, IT networks characteristics and IT security measures, including protection against unauthorised access, necessary to run the software as intended.

18. Active devices and devices connected to them

18.1. For non-implantable active devices, in the event of a single fault condition, appropriate means shall be adopted to eliminate or reduce as far as possible consequent risks.

18.2. Devices where the safety of the patient depends on an internal power supply shall be equipped with a means of determining the state of the power supply and an appropriate warning or indication for when the capacity of the power supply becomes critical. If necessary, such warning or indication shall be given prior to the power supply becoming critical.

18.3. Devices where the safety of the patient depends on an external power supply shall include an alarm system to signal any power failure.

18.4. Devices intended to monitor one or more clinical parameters of a patient shall be equipped with appropriate alarm systems to alert the user of situations which could lead to death or severe deterioration of the patient's state of health.

18.5. 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 the device in question or other devices or equipment in the intended environment.

18.6. Devices shall be designed and manufactured in such a way as to provide a level of intrinsic immunity to electromagnetic interference such that is adequate to enable them to operate as intended.

18.7. 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 patient, user or any 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.

18.8. Devices shall be designed and manufactured in such a way as to protect, as far as possible, against unauthorised access that could hamper the device from functioning as intended.

19. Particular requirements for active implantable devices

19.1. Active implantable devices shall be designed and manufactured in such a way as to remove or minimize as far as possible:

(a) risks connected with the use of energy sources with particular reference, where electricity is used, to insulation, leakage currents and overheating of the devices,

(b) risks connected with medical treatment, in particular those resulting from the use of defibrillators or high-frequency surgical equipment, and

(c) risks which may arise where maintenance and calibration are impossible, including:
- excessive increase of leakage currents,
- ageing of the materials used,
- excess heat generated by the device,
- decreased accuracy of any measuring or control mechanism.

19.2. Active implantable devices shall be designed and manufactured in such a way as to ensure
- if applicable, the compatibility of the devices with the substances they are intended to administer, and
- the reliability of the source of energy.

19.3. Active implantable devices and, if appropriate, their component parts shall be identifiable to allow any necessary measure to be taken following the discovery of a potential risk in connection with the devices or their component parts.

19.4. Active implantable devices shall bear a code by which they and their manufacturer can be unequivocally identified (particularly with regard to the type of device and its year of manufacture); it shall be possible to read this code, if necessary, without the need for a surgical operation.

20. Protection against mechanical and thermal risks

20.1. Devices shall be designed and manufactured in such a way as to protect patients and users against mechanical risks connected with, for example, resistance to movement, instability and moving parts.

20.2. 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.

20.3. 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.

20.4. Terminals and connectors to the electricity, gas or hydraulic and pneumatic energy supplies which the user or other person has to handle, shall be designed and constructed in such a way as to minimise all possible risks.

20.5. Errors likely to be made when fitting or refitting certain parts which could be a source of risk shall 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 shall be given on moving parts and/or their housings where the direction of movement needs to be known in order to avoid a risk.

20.6. Accessible parts of 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.

21. Protection against the risks posed to the patient or user by devices supplying energy or substances

21.1. Devices for supplying the patient with energy or substances shall be designed and constructed in such a way that the amount to be delivered can be set and maintained accurately enough to ensure the safety of the patient and of the user.

21.2. Devices shall be fitted with the means of preventing and/or indicating any inadequacies in the amount of energy delivered or substances delivered which could pose a danger. Devices shall incorporate suitable means to prevent, as far as possible, the accidental release of dangerous levels of energy or substances from an energy and/or substance source.

21.3. The function of the controls and indicators shall be clearly specified on the devices. Where a device bears instructions required for its operation or indicates operating or adjustment parameters by means of a visual system, such information shall be understandable to the user and, as appropriate, the patient.

22. Protection against the risks posed by medical devices intended by the manufacturer for use by lay persons

22.1. Devices for use by lay persons 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 lay persons and the influence resulting from variation that can be reasonably anticipated in the lay person's technique and environment. The information and instructions provided by the manufacturer shall be easy for the lay person to understand and apply.

22.2. Devices for use by lay persons shall be designed and manufactured in such a way as to:

— ensure that the device can be used safely and accurately by the intended user at all stages of the procedure, if necessary after appropriate training and/or information,

— reduce, as far as possible and appropriate, the risk from unintended cuts and pricks such as needle stick injuries, and

— reduce as far as possible the risk of error by the intended user in the handling of the device and, if applicable, in the interpretation of the results.

22.3. Devices for use by lay persons shall, where appropriate, include a procedure by which the lay person:

— can verify that, at the time of use, the device will perform as intended by the manufacturer, and

— if applicable, is warned if the device has failed to provide a valid result.

CHAPTER III

REQUIREMENTS REGARDING THE INFORMATION SUPPLIED WITH THE DEVICE

23. Label and instructions for use

23.1. 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 by any safety and performance information relevant to the user, or any other person, as appropriate. Such information may appear on the device itself, on the packaging or in the instructions for use, and shall, if the manufacturer has a website, be made available and kept up to date on the website, taking into account the following:

(a) 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.

(b) 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.

(c) Labels shall be provided in a human-readable format and may be supplemented by machine-readable information, such as radio-frequency identification (‘RFID’) or bar codes.

(d) Instructions for use shall be provided together with devices. By way of exception, instructions for use shall not be required for class I and class IIa devices if such devices can be used safely without any such instructions and unless otherwise provided for elsewhere in this Section.

(e) 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 free of charge.

(f) Instructions for use may be provided to the user in non-paper format (e.g. electronic) to the extent, and only under the conditions, set out in Regulation (EU) No 207/2012 or in any subsequent implementing rules adopted pursuant to this Regulation.

(g) Residual risks which are required to be communicated to the user and/or other person shall be included as limitations, contra-indications, precautions or warnings in the information supplied by the manufacturer.

(h) Where appropriate, the information supplied by the manufacturer shall take the form of internationally recognised symbols. Any symbol or identification colour used shall conform to the harmonised standards or CS. In areas for which no harmonised standards or CS exist, the symbols and colours shall be described in the documentation supplied with the device.

23.2. Information on the label

The label shall bear all of the following particulars:

(a) the name or trade name of the device;

(b) the details strictly necessary for a user to identify the device, the contents of the packaging and, where it is not obvious for the user, the intended purpose of the device;

(c) the name, registered trade name or registered trade mark of the manufacturer and the address of its registered place of business;

(d) if the manufacturer has its registered place of business outside the Union, the name of the authorised representative and address of the registered place of business of the authorised representative;

(e) where applicable, an indication that the device contains or incorporates:
- a medicinal substance, including a human blood or plasma derivative, or
- tissues or cells, or their derivatives, of human origin, or
- tissues or cells of animal origin, or their derivatives, as referred to in Regulation (EU) No 722/2012;

(f) where applicable, information labelled in accordance with Section 10.4.5.;

(g) the lot number or the serial number of the device preceded by the words LOT NUMBER or SERIAL NUMBER or an equivalent symbol, as appropriate;

(h) the UDI carrier referred to in Article 27(4) and Part C of Annex VII;

(i) an unambiguous indication of t the time limit for using or implanting the device safely, expressed at least in terms of year and month, where this is relevant;

(j) where there is no indication of the date until when it may be used safely, the date of manufacture. This date of manufacture may be included as part of the lot number or serial number, provided the date is clearly identifiable;

(k) an indication of any special storage and/or handling condition that applies;

(l) if the device is supplied sterile, an indication of its sterile state and the sterilisation method;

(m) warnings or precautions to be taken that need to be brought to the immediate attention of the user of the device, and to any other person. This information may be kept to a minimum in which case more detailed information shall appear in the instructions for use, taking into account the intended users;

(n) 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;

(o) if the device is a single-use device that has been reprocessed, an indication of that fact, the number of reprocessing cycles already performed, and any limitation as regards the number of reprocessing cycles;

(p) if the device is custom-made, the words ‘custom-made device’;

(q) an indication that the device is a medical device. If the device is intended for clinical investigation only, the words ‘exclusively for clinical investigation’;

(r) in the case of devices that are composed of substances or of combinations of substances that are intended to be introduced into the human body via a body orifice or applied to the skin and that are absorbed by or locally dispersed in the human body, the overall qualitative composition of the device and quantitative information on the main constituent or constituents responsible for achieving the principal intended action;

(s) for active implantable devices, the serial number, and for other implantable devices, the serial number or the lot number.

23.3. Information on the packaging which maintains the sterile condition of a device (‘sterile packaging’)

The following particulars shall appear on the sterile packaging:

(a) an indication permitting the sterile packaging to be recognised as such,

(b) a declaration that the device is in a sterile condition,

(c) the method of sterilisation,

(d) the name and address of the manufacturer,

(e) a description of the device,

(f) if the device is intended for clinical investigations, the words ‘exclusively for clinical investigations’,

(g) if the device is custom-made, the words ‘custom-made device’,

(h) the month and year of manufacture,

(i) an unambiguous indication of the time limit for using or implanting the device safely expressed at least in terms of year and month, and

(j) an instruction to check the instructions for use for what to do if the sterile packaging is damaged or unintentionally opened before use.

23.4. Information in the instructions for use

The instructions for use shall contain all of the following particulars:

(a) the particulars referred to in points (a), (c), (e), (f), (k), (l), (n) and (r) of Section 23.2;

(b) the device's intended purpose with a clear specification of indications, contra-indications, the patient target group or groups, and of the intended users, as appropriate;

(c) where applicable, a specification of the clinical benefits to be expected.

(d) where applicable, links to the summary of safety and clinical performance referred to in Article 32;

(e) the performance characteristics of the device;

(f) where applicable, information allowing the healthcare professional to verify if the device is suitable and select the corresponding software and accessories;

(g) any residual risks, contra-indications and any undesirable side-effects, including information to be conveyed to the patient in this regard;

(h) specifications the user requires to use the device appropriately, e.g. if the device has a measuring function, the degree of accuracy claimed for it;

(i) details of any preparatory treatment or handling of the device before it is ready for use or during its use, such as sterilisation, final assembly, calibration, etc., including the levels of disinfection required to ensure patient safety and all available methods for achieving those levels of disinfection;

(j) any requirements for special facilities, or special training, or particular qualifications of the device user and/or other persons;

(k) 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 preventive and regular maintenance, and of any preparatory cleaning or 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, and
- methods for eliminating the risks encountered by persons involved in installing, calibrating or servicing devices;

(l) if the device is supplied sterile, instructions in the event of the sterile packaging being damaged or unintentionally opened before use;

(m) if the device is supplied non-sterile with the intention that it is sterilised before use, the appropriate instructions for sterilisation;

(n) if the device is reusable, information on the appropriate processes for allowing reuse, including cleaning, disinfection, packaging and, where appropriate, the validated method of re-sterilisation appropriate to the Member State or Member States in which the device has been placed on the market. 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;

(o) an indication, if appropriate, that a device can be reused only if it is reconditioned under the responsibility of the manufacturer to comply with the general safety and performance requirements;

(p) if the device bears an indication that it is for single use, information on known characteristics and technical factors known to the manufacturer that could pose a risk if the device were to be re-used. This information shall be based on a specific section of the manufacturer's risk management documentation, where such characteristics and technical factors shall be addressed in detail. If in accordance with point (d) of Section 23.1. no instructions for use are required, this information shall be made available to the user upon request;

(q) 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;

(r) if the device emits radiation for medical purposes:
— detailed information as to the nature, type and where appropriate, the intensity and distribution of the emitted radiation,
— the means of protecting the patient, user, or other person from unintended radiation during use of the device;

(s) information that allows the user and/or patient to be informed of any warnings, precautions, contra-indications, measures to be taken and limitations of use regarding the device. That information shall, where relevant, allow the user to brief the patient about any warnings, precautions, contra-indications, measures to be taken and limitations of use regarding the device. The information shall cover, where appropriate:
— warnings, precautions and/or measures to be taken in the event of malfunction of the device or changes in its performance that may affect safety,
— warnings, precautions and/or measures to be taken as regards 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 as regards the risks of interference posed by the reasonably foreseeable presence of the device during specific diagnostic investigations, evaluations, or therapeutic treatment or other procedures such as electromagnetic interference emitted by the device affecting other equipment,
— if the device is intended to administer medicinal products, tissues or cells of human or animal origin, or their derivatives, or biological substances, any limitations or incompatibility in the choice of substances to be delivered,
— warnings, precautions and/or limitations related to the medicinal substance or biological material that is incorporated into the device as an integral part of the device; and
— precautions related to materials incorporated into the device that contain or consist of CMR substances or endocrine-disrupting substances, or that could result in sensitisation or an allergic reaction by the patient or user;

(t) in the case of devices that are composed of substances or of combinations of substances that are intended to be introduced into the human body and that are absorbed by or locally dispersed in the human body, warnings and precautions, where appropriate, related to the general profile of interaction of the device and its products of metabolism with other devices, medicinal products and other substances as well as contra-indications, undesirable side-effects and risks relating to overdose;

(u) in the case of implantable devices, the overall qualitative and quantitative information on the materials and substances to which patients can be exposed;

(v) 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 such as explants, needles or surgical equipment contaminated with potentially infectious substances of human origin, and

— physical hazards such as from sharps.

If in accordance with the point (d) of Section 23.1 no instructions for use are required, this information shall be made available to the user upon request;

(w) for devices intended for use by lay persons, the circumstances in which the user should consult a healthcare professional;

(x) for the devices covered by this Regulation pursuant to Article 1(2), information regarding the absence of a clinical benefit and the risks related to use of the device;

(y) 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;

(z) a notice to the user and/or patient 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 in which the user and/or patient is established;

(aa) information to be supplied to the patient with an implanted device in accordance with Article 18;

(ab) for devices that incorporate electronic programmable systems, including software, or software that are devices in themselves, minimum requirements concerning hardware, IT networks characteristics and IT security measures, including protection against unauthorised access, necessary to run the software as intended.

ANNEX II

TECHNICAL DOCUMENTATION

The technical documentation and, if applicable, the summary thereof to be drawn up by the manufacturer shall be presented in a clear, organised, readily searchable and unambiguous manner and shall include in particular the elements listed in this Annex.

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 and intended users;

(b) the Basic UDI-DI as referred to in Part C of Annex VI assigned by the manufacturer to the device in question, as soon as identification of this device becomes based on a UDI system, or otherwise a clear identification by means of product code, catalogue number or other unambiguous reference allowing traceability;

(c) the intended patient population and medical conditions to be diagnosed, treated and/or monitored and other considerations such as patient selection criteria, indications, contra-indications, warnings;

(d) principles of operation of the device and its mode of action, scientifically demonstrated if necessary;

(e) the rationale for the qualification of the product as a device;

(f) the risk class of the device and the justification for the classification rule(s) applied in accordance with Annex VIII;

(g) an explanation of any novel features;

(h) a description of the accessories for a device, other devices and other products that are not devices, which are intended to be used in combination with it;

(i) a description or complete list of the various configurations/variants of the device that are intended to be made available on the market;

(j) a general description of the key functional elements, e.g. its parts/components (including software if appropriate), its formulation, its composition, its functionality and, where relevant, its qualitative and quantitative composition. Where appropriate, this shall include labelled pictorial representations (e.g. diagrams, photographs, and drawings), clearly indicating key parts/components, including sufficient explanation to understand the drawings and diagrams;

(k) a description of the raw materials incorporated into key functional elements and those making either direct contact with the human body or indirect contact with the body, e.g., during extracorporeal circulation of body fluids;

(l) technical specifications, such as features, dimensions and performance attributes, of the device and any variants/configurations and accessories that would typically appear in the product specification made available to the user, for example in brochures, catalogues and similar publications.

1.2. Reference to previous and similar generations of the device

(a) an overview of the previous generation or generations of the device produced by the manufacturer, where such devices exist;

(b) an overview of identified similar devices available on the Union or international markets, where such devices exist.

2. INFORMATION TO BE SUPPLIED BY THE MANUFACTURER

A complete set of:

— the label or labels on the device and on its packaging, such as single unit packaging, sales packaging, transport packaging in case of specific management conditions, in the languages accepted in the Member States where the device is envisaged to be sold; and

— the instructions for use in the languages accepted in the Member States where the device is envisaged to be sold.

3. DESIGN AND MANUFACTURING INFORMATION

(a) information to allow the design stages applied to the device to be understood;

(b) complete information and specifications, including the manufacturing processes and their validation, their adjuvants, the continuous monitoring and the final product testing. Data shall be fully included in the technical documentation;

(c) identification of all sites, including suppliers and sub-contractors, where design and manufacturing activities are performed.

4. GENERAL SAFETY AND PERFORMANCE REQUIREMENTS

The documentation shall contain information for the demonstration of conformity with the general safety and performance requirements set out in Annex I that are applicable to the device taking into account its intended purpose, and shall include a justification, validation and verification of the solutions adopted to meet those requirements. The demonstration of conformity shall include:

(a) the general safety and performance requirements that apply to the device and an explanation as to why others do not apply;

(b) the method or methods used to demonstrate conformity with each applicable general safety and performance requirement;

(c) the harmonised standards, CS or other solutions applied; and

(d) the precise identity of the controlled documents offering evidence of conformity with each harmonised standard, CS or other method applied to demonstrate conformity with the general safety and performance requirements. The information referred to under this point shall incorporate a cross-reference to the location of such evidence within the full technical documentation and, if applicable, the summary technical documentation.

5. BENEFIT-RISK ANALYSIS AND RISK MANAGEMENT

The documentation shall contain information on:

(a) the benefit-risk analysis referred to in Sections 1 and 8 of Annex I, and

(b) the solutions adopted and the results of the risk management referred to in Section 3 of Annex I.

6. PRODUCT VERIFICATION AND VALIDATION

The documentation shall contain the results and critical analyses of all verifications and validation tests 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.

6.1. Pre-clinical and clinical data

(a) results of tests, such as engineering, laboratory, simulated use and animal tests, and evaluation of published literature applicable to the device, taking into account its intended purpose, or to similar devices, regarding the pre-clinical safety of the device and its conformity with the specifications;

(b) detailed information regarding test design, complete test or study protocols, methods of data analysis, in addition to data summaries and test conclusions regarding in particular:

— the biocompatibility of the device including the identification of all materials in direct or indirect contact with the patient or user;

— physical, chemical and microbiological characterisation;

— electrical safety and electromagnetic compatibility;

— software verification and validation (describing the software design and development process and 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 both in-house and in a simulated or 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 information supplied by the manufacturer);

— stability, including shelf life; and

— performance and safety.

Where applicable, conformity with the provisions of Directive 2004/10/EC of the European Parliament and of the Council[(5)] shall be demonstrated.

Where no new testing has been undertaken, the documentation shall incorporate a rationale for that decision. An example of such a rationale would be that biocompatibility testing on identical materials was conducted when those materials were incorporated in a previous version of the device that has been legally placed on the market or put into service;

(c) the clinical evaluation report and its updates and the clinical evaluation plan referred to in Article 61(12) and Part A of Annex XIV;

(d) the PMCF plan and PMCF evaluation report referred to in Part B of Annex XIV or a justification why a PMCF is not applicable.

6.2. Additional information required in specific cases

(a) 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 point 2 of Article 1 of Directive 2001/83/EC, including a medicinal product derived from human blood or human plasma, as referred to in the first subparagraph of Article 1(8), a statement indicating this fact. In this case, the documentation shall identify the source of that substance and contain the data of the tests conducted to assess its safety, quality and usefulness, taking account of the intended purpose of the device.

(b) Where a device is manufactured utilising tissues or cells of human or animal origin, or their derivatives, and is covered by this Regulation in accordance with points (f) and (g) of Article 1(6, and where a device incorporates, as an integral part, tissues or cells of human origin or their derivatives that have an action ancillary to that of the device and is covered by this Regulation in accordance with the first subparagraph of Article 1(10), a statement indicating this fact. In such a case, the documentation shall identify all materials of human or animal origin used and provide detailed information concerning the conformity with Sections 13.1. or 13.2., respectively, of Annex I.

(c) In the case of devices that are composed of substances or combinations of substances that are intended to be introduced into the human body and that are absorbed by or locally dispersed in the human body, detailed information, including test design, complete test or study protocols, methods of data analysis, and data summaries and test conclusions, regarding studies in relation to:

— absorption, distribution, metabolism and excretion;

— possible interactions of those substances, or of their products of metabolism in the human body, with other devices, medicinal products or other substances, considering the target population, and its associated medical conditions;

— local tolerance; and

— toxicity, including single-dose toxicity, repeat-dose toxicity, genotoxicity, carcinogenicity and reproductive and developmental toxicity, as applicable depending on the level and nature of exposure to the device.

In the absence of such studies, a justification shall be provided.

(d) In the case of devices containing CMR or endocrine-disrupting substances referred to in Section 10.4.1 of Annex I, the justification referred to in Section 10.4.2 of that Annex.

(e) 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.

(f) 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.

(g) If the device is to be connected to other device(s) in order to operate as intended, a description of this combination/configuration including proof that it conforms to the general safety and performance requirements when connected to any such device(s) having regard to the characteristics specified by the manufacturer.

ANNEX III

TECHNICAL DOCUMENTATION ON POST-MARKET SURVEILLANCE

The technical documentation on post-market surveillance to be drawn up by the manufacturer in accordance with Articles 83 to 86 shall be presented in a clear, organised, readily searchable and unambiguous manner and shall include in particular the elements described in this Annex.

1.1. The post-market surveillance plan drawn up in accordance with Article 84.

The manufacturer shall prove in a post-market surveillance plan that it complies with the obligation referred to in Article 83.

(a) The post-market surveillance plan shall address the collection and utilization of available information, in particular:

— information concerning serious incidents, including information from PSURs, and field safety corrective actions;

— records referring to non-serious incidents and data on any undesirable side-effects;

— information from trend reporting;

— relevant specialist or technical literature, databases and/or registers;

— information, including feedbacks and complaints, provided by users, distributors and importers; and

— publicly available information about similar medical devices.

(b) The post-market surveillance plan shall cover at least:

- a proactive and systematic process to collect any information referred to in point (a). The process shall allow a correct characterisation of the performance of the devices and shall also allow a comparison to be made between the device and similar products available on the market;
- effective and appropriate methods and processes to assess the collected data;
- suitable indicators and threshold values that shall be used in the continuous reassessment of the benefit-risk analysis and of the risk management as referred to in Section 3 of Annex I;
- effective and appropriate methods and tools to investigate complaints and analyse market-related experience collected in the field;
- methods and protocols to manage the events subject to the trend report as provided for in Article 88, including the methods and protocols to be used to establish any statistically significant increase in the frequency or severity of incidents as well as the observation period;
- methods and protocols to communicate effectively with competent authorities, notified bodies, economic operators and users;
- reference to procedures to fulfil the manufacturers obligations laid down in Articles 83, 84 and 86;
- systematic procedures to identify and initiate appropriate measures including corrective actions;
- effective tools to trace and identify devices for which corrective actions might be necessary; and
- a PMCF plan as referred to in Part B of Annex XIV, or a justification as to why a PMCF is not applicable.

1.2. The PSUR referred to in Article 86 and the post-market surveillance report referred to in Article 85.

ANNEX IV

EU DECLARATION OF CONFORMITY

The EU declaration of conformity shall contain all of the following information:

1. Name, registered trade name or registered trade mark and, if already issued, SRN as referred to in Article 31 of the manufacturer, and, if applicable, its 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 EU declaration of conformity is issued under the sole responsibility of the manufacturer;

3. The Basic UDI-DI as referred to in Part C of Annex VI;

4. Product and trade name, product code, catalogue number or other unambiguous reference allowing identification and traceability of the device covered by the EU declaration of conformity, such as a photograph, where appropriate, as well as its intended purpose. Except for the product or trade name, the information allowing identification and traceability may be provided by the Basic UDI-DI referred to in point 3;

5. Risk class of the device in accordance with the rules set out in Annex VIII;

6. A statement that the device that is covered by the present declaration is in conformity with this Regulation and, if applicable, with any other relevant Union legislation that provides for the issuing of an EU declaration of conformity;

7. References to any CS used and in relation to which conformity is declared;

8. Where applicable, the name and identification number of the notified body, a description of the conformity assessment procedure performed and identification of the certificate or certificates issued;

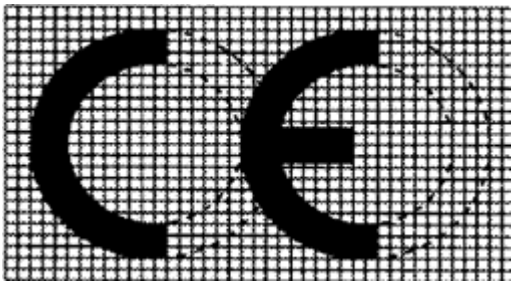
9. Where applicable, additional information;

10. Place and date of issue of the declaration, name and function of the person who signed it as well as an indication for, and on behalf of whom, that person signed, signature.

ANNEX V

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 VI

INFORMATION TO BE SUBMITTED UPON THE REGISTRATION OF DEVICES AND ECONOMIC OPERATORS IN ACCORDANCE WITH ARTICLES 29(4) AND 31, CORE DATA ELEMENTS TO BE

PROVIDED TO THE UDI DATABASE TOGETHER WITH THE UDI-DI IN ACCORDANCE WITH ARTICLES 28 AND 29, AND THE UDI SYSTEM

PART A

INFORMATION TO BE SUBMITTED UPON THE REGISTRATION OF DEVICES AND ECONOMIC OPERATORS IN ACCORDANCE WITH ARTICLES 29(4) AND 31

Manufacturers or, when applicable, authorised representatives, and, when applicable, importers shall submit the information referred to in Section 1 and shall ensure that the information on their devices referred to in Section 2 is complete, correct and updated by the relevant party.

1. Information relating to the economic operator

1.1. type of economic operator(manufacturer, authorised representative, or importer),

1.2. name, address and contact details of the economic operator,

1.3. where submission of information is carried out by another person on behalf of any of the economic operators mentioned under Section 1.1, the name, address and contact details of that person,

1.4. name address and contact details of the person or persons responsible for regulatory compliance referred to in Article 15.

2. Information relating to the device

2.1. Basic UDI-DI,

2.2. type, number and expiry date of the certificate issued by the notified body and the name or identification number of that notified body and the link to the information that appears on the certificate and was entered by the notified body in the electronic system on notified bodies and certificates,

2.3. Member State in which the device is to or has been placed on the market in the Union,

2.4. in the case of class IIa, class IIb or class III devices: Member States where the device is or is to be made available,

2.5. risk class of the device,

2.6. reprocessed single-use device (y/n),

2.7. presence of a substance which, if used separately, may be considered to be a medicinal product and name of that substance,

2.8. presence of a substance which, if used separately, may be considered to be a medicinal product derived from human blood or human plasma and name of this substance,

2.9. presence of tissues or cells of human origin, or their derivatives (y/n),

2.10. presence of tissues or cells of animal origin, or their derivatives, as referred to in Regulation (EU) No 722/2012 (y/n),

2.11. where applicable, the single identification number of the clinical investigation or investigations conducted in relation to the device or a link to the clinical investigation registration in the electronic system on clinical investigations,

2.12. in the case of devices listed in Annex XVI, specification as to whether the intended purpose of the device is other than a medical purpose,

2.13. in the case of devices designed and manufactured by another legal or natural person as referred in Article 10(15), the name, address and contact details of that legal or natural person,

2.14. in the case of class III or implantable devices, the summary of safety and clinical performance,

2.15. status of the device (on the market, no longer placed on the market, recalled, field safety corrective action initiated).

PART B

CORE DATA ELEMENTS TO BE PROVIDED TO THE UDI DATABASE TOGETHER WITH THE UDI-DI IN ACCORDANCE WITH ARTICLES 28 AND 29

The manufacturer shall provide to the UDI database the UDI-DI and all of the following information relating to the manufacturer and the device:

1. quantity per package configuration,

2. the Basic UDI-DI as referred to in Article 29 and any additional UDI-DIs,

3. the manner in which production of the device is controlled (expiry date or manufacturing date, lot number, serial number),

4. if applicable, the unit of use UDI-DI (where a UDI is not labelled on the device at the level of its unit of use, a 'unit of use' DI shall be assigned so as to associate the use of a device with a patient),

5. name and address of the manufacturer (as indicated on the label),

6. the SRN issued in accordance with Article 31(2),

7. if applicable, name and address of the authorised representative (as indicated on the label),

8. the medical device nomenclature code as provided for in Article 26,

9. risk class of the device,

10. if applicable, name or trade name,

11. if applicable, device model, reference, or catalogue number,

12. if applicable, clinical size (including volume, length, gauge, diameter),

13. additional product description (optional),

14. if applicable, storage and/or handling conditions (as indicated on the label or in the instructions for use),

15. if applicable, additional trade names of the device,

16. labelled as a single-use device (y/n),

17. if applicable, the maximum number of reuses,

18. device labelled sterile (y/n),

19. need for sterilisation before use (y/n),

20. containing latex (y/n),

21. where applicable, information labelled in accordance with Section 10.4.5 of Annex I,

22. URL for additional information, such as electronic instructions for use (optional),

23. if applicable, critical warnings or contra-indications,

24. status of the device (on the market, no longer placed on the market, recalled, field safety corrective action initiated).

PART C

THE UDI SYSTEM

1. Definitions

Automatic identification and data capture ('AIDC')

AIDC is a technology used to automatically capture data. AIDC technologies include bar codes, smart cards, biometrics and RFID.

Basic UDI-DI

The Basic UDI-DI is the primary identifier of a device model. It is the DI assigned at the level of the device unit of use. It is the main key for records in the UDI database and is referenced in relevant certificates and EU declarations of conformity.

Unit of Use DI

The Unit of Use DI serves to associate the use of a device with a patient in instances in which a UDI is not labelled on the individual device at the level of its unit of use, for example in the event of several units of the same device being packaged together.

Configurable device

A configurable device is a device that consists of several components which can be assembled by the manufacturer in multiple configurations. Those individual components may be devices in themselves.

Configurable devices include computed tomography (CT) systems, ultrasound systems, anaesthesia systems, physiological Monitoring systems, radiology information systems (RIS).

Configuration

Configuration is a combination of items of equipment, as specified by the manufacturer, that operate together as a device to achieve an intended purpose. The combination of items may be modified, adjusted or customized to meet specific needs.

Configurations include *inter alia*:

— gantries, tubes, tables, consoles and other items of equipment that can be configured/ combined to deliver an intended function in computed tomography.

— ventilators, breathing circuits, vaporizers combined to deliver an intended function in anaesthesia.

UDI-DI

The UDI-DI is a unique numeric or alphanumeric code specific to a model of device and that is also used as the 'access key' to information stored in a UDI database.
Human Readable Interpretation ('HRI')

HRI is a legible interpretation of the data characters encoded in the UDI carrier.
Packaging levels

Packaging levels means the various levels of device packaging that contain a defined quantity of devices, such as a carton or case.
UDI-PI

The UDI-PI is a numeric or alphanumeric code that identifies the unit of device production.

The different types of UDI-PIs include serial number, lot number, software identification and manufacturing or expiry date or both types of date.
Radio Frequency Identification RFID

RFID is a technology that uses communication through the use of radio waves to exchange data between a reader and an electronic tag attached to an object, for the purpose of identification.
Shipping containers

A shipping container is a container in relation to which traceability is controlled by a process specific to logistics systems.
Unique Device Identifier ('UDI')

The UDI is a series of numeric or alphanumeric characters that is created through a globally accepted device identification and coding standard. It allows the unambiguous identification of a specific device on the market. The UDI is comprised of the UDI-DI and the UDI-PI.

The word 'Unique' does not imply serialisation of individual production units.
UDI carrier

The UDI carrier is the means of conveying the UDI by using AIDC and, if applicable, its HRI.

UDI carriers include, *inter alia*, ID/linear bar code, 2D/Matrix bar code, RFID.

2. General requirements

2.1. The affixing of the UDI is an additional requirement — it does not replace any other marking or labelling requirements laid down in Annex I to this Regulation.

2.2. The manufacturer shall assign and maintain unique UDIs for its devices.

2.3. Only the manufacturer may place the UDI on the device or its packaging.

2.4. Only coding standards provided by issuing entities designated by the Commission pursuant to Article 27(2) may be used.

3. The UDI

3.1. A UDI shall be assigned to the device itself or its packaging. Higher levels of packaging shall have their own UDI.

3.2. Shipping containers shall be exempted from the requirement in Section 3.1. By way of example, a UDI shall not be required on a logistics unit; where a healthcare provider orders multiple devices using the UDI or model number of individual devices and the manufacturer places those devices in a container for shipping or to protect the individually packaged devices, the container (logistics unit) shall not be subject to UDI requirements.

3.3. The UDI shall contain two parts: a UDI-DI and a UDI-PI.

3.4. The UDI-DI shall be unique at each level of device packaging.

3.5. If a lot number, serial number, software identification or expiry date appears on the label, it shall be part of the UDI-PI. If there is also a manufacturing date on the label, it does not need to be included in the UDI-PI. If there is only a manufacturing date on the label, this shall be used as the UDI-PI.

3.6. Each component that is considered to be a device and is commercially available on its own shall be assigned a separate UDI unless the components are part of a configurable device that is marked with its own UDI.

3.7. Systems and procedure packs as referred to in Article 22 shall be assigned and bear their own UDI.

3.8. The manufacturer shall assign the UDI to a device following the relevant coding standard.

3.9. A new UDI-DI shall be required whenever there is a change that could lead to misidentification of the device and/or ambiguity in its traceability; in particular, any change of one of the following UDI database data elements shall require a new UDI-DI:

(a) name or trade name,

(b) device version or model,

(c) labelled as single use,

(d) packaged sterile,

(e) need for sterilization before use,

(f) quantity of devices provided in a package,

(g) critical warnings or contra-indications: e.g. containing latex or DEHP.

3.10. Manufacturers that repackage and/or relabel devices, with their own label shall retain a record of the original device manufacturer's UDI.

4. UDI carrier

4.1. The UDI carrier (AIDC and HRI representation of the UDI) shall be placed on the label or on the device itself and on all higher levels of device packaging. Higher levels do not include shipping containers.

4.2. In the event of there being significant space constraints on the unit of use packaging, the UDI carrier may be placed on the next higher packaging level.

4.3. For single-use devices of classes I and IIa packaged and labelled individually, the UDI carrier shall not be required to appear on the packaging but it shall appear on a higher level of packaging, e.g. a carton containing several individually packaged devices. However, when the healthcare provider is not expected to have access, in cases such as in home healthcare settings, to the higher level of device packaging, the UDI shall be placed on the packaging of the individual device.

4.4. For devices exclusively intended for retail point of sale the UDI-PIs in AIDC shall not be required to appear on the point of sale packaging.

4.5. When AIDC carriers other than the UDI carrier are part of the product labelling, the UDI carrier shall be readily identifiable.

4.6. If linear bar codes are used, the UDI-DI and UDI-PI may be concatenated or non-concatenated in two or more bar codes. All parts and elements of the linear bar code shall be distinguishable and identifiable.

4.7. If there are significant constraints limiting the use of both AIDC and HRI on the label, only the AIDC format shall be required to appear on the label. For devices intended to be used outside healthcare facilities, such as devices for home care, the HRI shall however appear on the label even if this results in there being no space for the AIDC.

4.8. The HRI format shall follow the rules of the UDI code-issuing entity.

4.9. If the manufacturer is using RFID technology, a linear or 2D bar code in line with the standard provided by the issuing entities shall also be provided on the label.

4.10. Devices that are reusable shall bear a UDI carrier on the device itself. The UDI carrier for reusable devices that require cleaning, disinfection, sterilisation or refurbishing between patient uses shall be permanent and readable after each process performed to make the device ready for the subsequent use throughout the intended lifetime of the device. The requirement of this Section shall not apply to devices in the following circumstances:

(a) any type of direct marking would interfere with the safety or performance of the device;

(b) the device cannot be directly marked because it is not technologically feasible.

4.11. The UDI carrier shall be readable during normal use and throughout the intended lifetime of the device.

4.12. If the UDI carrier is readily readable or, in the case of AIDC, scannable, through the device's packaging, the placing of the UDI carrier on the packaging shall not be required.

4.13. In the case of single finished devices made up of multiple parts that must be assembled before their first use, it shall be sufficient to place the UDI carrier on only one part of each device.

4.14. The UDI carrier shall be placed in a manner such that the AIDC can be accessed during normal operation or storage.

4.15. Bar code carriers that include both a UDI-DI and a UDI-PI may also include essential data for the device to operate or other data.

5. General principles of the UDI database

5.1. The UDI database shall support the use of all core UDI database data elements referred to in Part B of this Annex.

5.2. Manufacturers shall be responsible for the initial submission and updates of the identifying information and other device data elements in the UDI database.

5.3. Appropriate methods/procedures for validation of the data provided shall be implemented.

5.4. Manufacturers shall periodically verify the correctness of all of the data relevant to devices they have placed on the market, except for devices that are no longer available on the market.

5.5. The presence of the device UDI-DI in the UDI database shall not be assumed to mean that the device is in conformity with this Regulation.

5.6. The database shall allow for the linking of all the packaging levels of the device.

5.7. The data for new UDI-DIs shall be available at the time the device is placed on the market.

5.8. Manufacturers shall update the relevant UDI database record within 30 days of a change being made to an element, which does not require a new UDI-DI.

5.9. Internationally-accepted standards for data submission and updates shall, wherever possible, be used by the UDI database.

5.10. The user interface of the UDI database shall be available in all official languages of the Union. The use of free-text fields shall, however, be minimized in order to reduce translations.

5.11. Data relating to devices that are no longer available on the market shall be retained in the UDI database.

6. Rules for specific device types

6.1. Implantable devices:

6.1.1. Implantable devices shall, at their lowest level of packaging (‘unit packs’), be identified, or marked using AIDC, with a UDI (UDI-DI + UDI-PI);

6.1.2. The UDI-PI shall have at least the following characteristics:

(a) the serial number for active implantable devices,

(b) the serial number or lot number for other implantable devices.

6.1.3. The UDI of the implantable device shall be identifiable prior to implantation.

6.2. Reusable devices requiring cleaning, disinfection, sterilisation or refurbishing between uses

6.2.1. The UDI of such devices shall be placed on the device and be readable after each procedure to make the device ready for the next use.

6.2.2. The UDI-PI characteristics such as the lot or serial number shall be defined by the manufacturer.

6.3. Systems and procedure packs as referred to in Article 22

6.3.1. The natural or legal person referred to in Article 22 shall be responsible for identifying the system or procedure pack with a UDI including both UDI-DI and UDI-PI.

6.3.2. Device contents of system or procedure packs shall bear a UDI carrier on their packaging or on the device itself.

Exemptions:

(a) individual single-use disposable devices, the uses of which are generally known to the persons by whom they are intended to be used, which are contained within a system or procedure pack, and which are not intended for individual use outside the context of the system or procedure pack, shall not be required to bear their own UDI carrier;

(b) devices that are exempted from bearing a UDI carrier on the relevant level of packaging shall not be required to bear a UDI carrier when included within a system or procedure pack.

6.3.3. Placement of the UDI carrier on systems or procedure packs

(a) The system or procedure pack UDI carrier shall as a general rule be affixed to the outside of the packaging.

(b) The UDI carrier shall be readable, or, in the case of AIDC, scannable, whether placed on the outside of the packaging of the system or procedure pack or inside transparent packaging.

6.4. Configurable devices:

6.4.1. A UDI shall be assigned to the configurable device in its entirety and shall be called the configurable device UDI.

6.4.2. The configurable device UDI-DI shall be assigned to groups of configurations, not per configuration within the group. A group of configurations is defined as the collection of possible configurations for a given device as described in the technical documentation.

6.4.3. A configurable device UDI-PI shall be assigned to each individual configurable device.

6.4.4. The carrier of the configurable device UDI shall be placed on the assembly that is most unlikely to be exchanged during the lifetime of the system and shall be identified as the configurable device UDI.

6.4.5. Each component that is considered a device and is commercially available on its own shall be assigned a separate UDI.

6.5. Device Software

6.5.1. UDI assignment Criteria

The UDI shall be assigned at the system level of the software. Only software which is commercially available on its own and software which constitutes a device in itself shall be subject to that requirement.

The software identification shall be considered to be the manufacturing control mechanism and shall be displayed in the UDI-PI.

6.5.2. A new UDI-DI shall be required whenever there is a modification that changes:

(a) the original performance;

(b) the safety or the intended use of the software;

(c) interpretation of data.

Such modifications include new or modified algorithms, database structures, operating platform, architecture or new user interfaces or new channels for interoperability.

6.5.3. Minor software revisions shall require a new UDI-PI and not a new UDI-DI.

Minor software revisions are generally associated with bug fixes, usability enhancements that are not for safety purposes, security patches or operating efficiency.

Minor software revisions shall be identified by a manufacturer-specific form of identification.

6.5.4. UDI placement criteria for software

(a) where the software is delivered on a physical medium, e.g. CD or DVD, each packaging level shall bear the human readable and AIDC representation of the complete UDI. The UDI that is applied to the physical medium containing the software and its packaging shall be identical to the UDI assigned to the system level software;

(b) the UDI shall be provided on a readily accessible screen for the user in an easily-readable plain-text format, such as an 'about' file, or included on the start-up screen;

(c) software lacking a user interface such as middleware for image conversion, shall be capable of transmitting the UDI through an application programming interface (API);

(d) only the human readable portion of the UDI shall be required in electronic displays of the software. The marking of UDI using AIDC shall not be required in the electronic displays, such as 'about' menu, splash screen etc.;

(e) the human readable format of the UDI for the software shall include the Application Identifiers (AI) for the standard used by the issuing entities, so as to assist the user in identifying the UDI and determining which standard is being used to create the UDI.

ANNEX VII

REQUIREMENTS TO BE MET BY NOTIFIED BODIES

1. ORGANISATIONAL AND GENERAL REQUIREMENTS

1.1. Legal status and organisational structure

1.1.1. Each 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. Its legal personality and status shall be fully documented. Such documentation 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 that organisation as well as its organisational structure and governance, and the relationship with the notified body shall be clearly documented. In such cases, the requirements of Section 1.2 are applicable to both the notified body and the organisation to which it belongs.

1.1.3. If a notified body wholly or partly owns legal entities established in a Member State or in a third country or is owned by another legal entity, 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. Personnel of those entities

performing conformity assessment activities under this Regulation shall be subject to the applicable requirements of this Regulation.

1.1.4. The organisational structure, allocation of responsibilities, reporting lines and operation of the notified body shall be such that they ensure that there is confidence in the performance by the notified body and in the results of the conformity assessment activities it conducts.

1.1.5. The notified body shall clearly document its organisational structure and the functions, responsibilities and authority of its top-level management and of other personnel who may have an influence upon the performance by the notified body and upon the results of its conformity assessment activities.

1.1.6. The notified body shall identify the persons in top-level management that have overall authority and responsibility for each of the following:

— the provision of adequate resources for conformity assessment activities;

— the development of procedures and policies for the operation of the notified body;

— the supervision of implementation of the procedures, policies and quality management systems of the notified body;

— the supervision of the notified body's finances;

— the activities and decisions taken by the notified body, including contractual agreements;

— the delegation of authority to personnel and/or committees, where necessary, for the performance of defined activities;

— the interaction with the authority responsible for notified bodies and the obligations regarding communications with other competent authorities, the Commission and other notified bodies.

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 device 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 device as well as of any competitors of the manufacturer. This does not preclude the notified body from carrying out conformity assessment activities for competing manufacturers.

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 document and implement a structure and procedures for safeguarding impartiality and for promoting and applying the principles of impartiality throughout its organisation, personnel and assessment activities. Such procedures shall provide for the identification, investigation and resolution of any case in which a conflict of interest may arise, including involvement in consultancy services in the field of devices prior to taking up employment with the notified body. The investigation, outcome and its resolution shall be documented.

1.2.3. The notified body, its top-level management and the personnel responsible for carrying out the conformity assessment tasks shall not:

(a) be the designer, manufacturer, supplier, installer, purchaser, owner or maintainer of devices which they assess, nor the authorised representative of any of those parties. Such restriction shall not preclude the purchase and use of assessed devices that are

necessary for the operations of the notified body and the conduct of the conformity assessment, or the use of such devices for personal purposes;

(b) be involved in the design, manufacture or construction, marketing, installation and use, or maintenance of the devices for which they are designated, nor represent the parties engaged in those activities;

(c) engage in any activity that may conflict with their independence of judgement or integrity in relation to conformity assessment activities for which they are designated;

(d) 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, its authorised representative, a supplier or a commercial competitor as regards the design, construction, marketing or maintenance of devices or processes under assessment, and

(e) be linked to any organisation which itself provides consultancy services as referred to in point (d). Such restriction does not preclude general training activities that are not client specific and that relate to regulation of devices or to related standards.

1.2.4. Involvement in consultancy services in the field of devices prior to taking up employment with a notified body shall be fully documented at the time of employment and potential conflicts of interest shall be monitored and resolved in accordance with this Annex. Personnel who were formerly employed by a specific client, or provided consultancy services in the field of devices to that specific client prior to taking up employment with a notified body, shall not be assigned for conformity assessment activities for that specific client or companies belonging to the same group for a period of three years.

1.2.5. The impartiality of notified bodies, of their top-level management and of the assessment personnel shall be guaranteed. The level of the remuneration of the top-level management and assessment personnel of a notified body and subcontractors, involved in assessment activities shall not depend on the results of the assessments. Notified bodies shall make publicly available the declarations of interest of their top-level management.

1.2.6. If a notified body is owned by a public entity or institution, independence and absence of any conflict of interest shall be ensured and documented between, on the one hand, the authority responsible for notified bodies and/or the competent authority and, on the other hand, the notified body.

1.2.7. The notified body shall ensure and document that the activities of its subsidiaries or subcontractors, or of any associated body, including the activities of its owners do not affect its independence, impartiality or the objectivity of its conformity assessment activities.

1.2.8. 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 in Recommendation 2003/361/EC in relation to fees.

1.2.9. The requirements laid down in this Section in no way preclude exchanges of technical information and regulatory guidance between a notified body and a manufacturer applying for conformity assessment.

1.3. Confidentiality

1.3.1. The notified body shall have documented procedures in place ensuring that its personnel, committees, subsidiaries, subcontractors, and any associated body or personnel of external bodies respect the confidentiality of the information which comes into its possession during the performance of conformity assessment activities, except when disclosure is required by law.

1.3.2. The personnel of a notified body shall observe professional secrecy in carrying out their tasks under this Regulation or any provision of national law giving effect to it, except in relation to the authorities responsible for notified bodies, competent authorities for medical devices in the Member States or the Commission. Proprietary rights shall be protected. The notified body shall have documented procedures in place in respect of the requirements of this Section.

1.4. Liability

1.4.1. The notified body shall take out appropriate liability insurance for its conformity assessment activities, unless liability is assumed by the Member State in question in accordance with national law or that Member State is directly responsible for the conformity assessment.

1.4.2. The scope and overall financial value of the liability insurance shall correspond to the level and geographic scope of activities of the notified body and be commensurate with the risk profile of the devices certified by the notified body. The liability insurance shall cover cases where the notified body may be obliged to withdraw, restrict or suspend certificates.

1.5. Financial requirements

The notified body shall have at its disposal the financial resources required to conduct its conformity assessment activities within its scope of designation and related business operations. It shall document and provide evidence of its financial capacity and its long-term economic viability, taking into account, where relevant, any 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, any relevant standardisation activities and in the activities of the notified body coordination group referred to in Article 49 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 take into consideration guidance and best practice documents.

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 is capable of supporting and demonstrating the consistent fulfilment of the requirements of this Regulation.

2.2. The quality management system of the notified body shall address at least the following:

— management system structure and documentation, including policies and objectives for its activities;

— policies for assignment of activities and responsibilities to personnel;

— assessment and decision-making processes in accordance with the tasks, responsibilities and role of the notified body's personnel and top-level management;
— the planning, conduct, evaluation and, if necessary, adaptation of its conformity assessment procedures;
— control of documents;
— control of records;
— management reviews;
— internal audits;
— corrective and preventive actions;
— complaints and appeals; and
— continuous training.

Where documents are used in various languages, the notified body shall ensure and control that they have the same content.

2.3. The top-level management of the notified body shall ensure that the quality management system is fully understood, implemented and maintained throughout the notified body organisation including subsidiaries and subcontractors involved in conformity assessment activities pursuant to this Regulation.

2.4. The notified body shall require all personnel to formally commit themselves by a signature or equivalent to comply with the procedures defined by the notified body. That commitment shall cover aspects relating to confidentiality and to independence from commercial and other interests, and any existing or prior association with clients. The personnel shall be required to complete written statements indicating their compliance with confidentiality, independence and impartiality principles.

3. RESOURCE REQUIREMENTS

3.1. General

3.1.1. Notified bodies shall be capable of carrying out all the tasks falling to them under this Regulation with the highest degree of professional integrity and the requisite competence in the specific field, whether those tasks are carried out by notified bodies themselves or on their behalf and under their responsibility.

In particular, notified bodies shall have the necessary personnel and possess or have access to all equipment, facilities and competence needed to perform properly the technical, scientific and administrative tasks entailed in the conformity assessment activities in relation to which they have been designated.

Such requirement presupposes at all times and for each conformity assessment procedure and each type of devices in relation to which they have been designated, that the notified body has permanent availability of sufficient administrative, technical and scientific personnel who possess experience and knowledge relating to the relevant devices and the corresponding technologies. Such personnel shall be in sufficient numbers to ensure that the notified body in question can perform the conformity assessment tasks, including the assessment of the medical functionality, clinical evaluations and the performance and safety of devices, for which it has been designated, having regard to the requirements of this Regulation, in particular, those set out in Annex I.

A notified body's cumulative competences shall be such as to enable it to assess the types of devices for which it is designated. The notified body shall have sufficient internal competence

to critically evaluate assessments conducted by external expertise. Tasks which a notified body is precluded from subcontracting are set out in Section 4.1.

Personnel involved in the management of the operation of a notified body's conformity assessment activities for devices shall have appropriate knowledge to set up and operate a system for the selection of assessment and verification staff, for verification of their competence, for authorisation and allocation of their tasks, for organisation of their initial and ongoing training and for the assignment of their duties and the monitoring of those staff, in order to ensure that personnel who carry out and perform assessment and verification operations are competent to fulfil the tasks required of them.

The notified body shall identify at least one individual within its top-level management as having overall responsibility for all conformity assessment activities in relation to devices.

3.1.2. The notified body shall ensure that personnel involved in conformity assessment activities maintain their qualification and expertise by implementing a system for exchange of experience and a continuous training and education programme.

3.1.3. The notified body shall clearly document the extent and limits of duties and responsibilities and the level of authorisation of the personnel, including any subcontractors and external experts, involved in conformity assessment activities and inform those personnel accordingly.

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, including as regards knowledge, experience and other competence required, and the required initial and ongoing training. The qualification criteria shall address the various functions within the conformity assessment process, such as auditing, product evaluation or testing, technical documentation review and decision-making, as well as the devices, technologies and areas, such as biocompatibility, sterilisation, tissues and cells of human and animal origin and clinical evaluation, covered by the scope of designation.

3.2.2. The qualification criteria referred to in Section 3.2.1 shall refer to the scope of a notified body's designation in accordance with the scope description used by the Member State for the notification referred to in Article 42(3), providing a sufficient level of detail for the required qualification within the subdivisions of the scope description.

Specific qualification criteria shall be defined at least for the assessment of:

— the pre-clinical evaluation,
— clinical evaluation,
— tissues and cells of human and animal origin,
— functional safety,
— software,
— packaging,
— devices that incorporate as an integral part a medicinal product,
— devices that are composed of substances or of combinations of substances that are absorbed by or locally dispersed in the human body and
— the different types of sterilisation processes.

3.2.3. The personnel responsible for establishing qualification criteria and for authorising other personnel to perform specific conformity assessment activities shall be employed by the notified body itself and shall not be external experts or subcontracted. They shall have proven knowledge and experience in all of the following:

— Union devices legislation and relevant guidance documents;

— the conformity assessment procedures provided for in this Regulation;

— a broad base of knowledge of device technologies and the design and manufacture of devices;

— the notified body's quality management system, related procedures and the required qualification criteria;

— training relevant to personnel involved in conformity assessment activities in relation to devices;

— adequate experience in conformity assessments under this Regulation or previously applicable law within a notified body.

3.2.4. The notified body shall have permanent availability of personnel with relevant clinical expertise and where possible such personnel shall be employed by the notified body itself. Such personnel shall be integrated throughout the notified body's assessment and decision-making process 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, CS, guidance and harmonised standards and ensure that the external clinical experts are fully aware of the context and implications of their assessment and the advice they provide;

— be able to review and scientifically challenge the clinical data contained within the clinical evaluation, and any associated clinical investigations, and appropriately guide external clinical experts in the assessment of the clinical evaluation presented by the manufacturer;

— be able to scientifically evaluate and, if necessary, challenge the clinical evaluation 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 assessments of clinical evaluations conducted by clinical experts;

— be able to make an assessment of the manufacturer's clinical evaluation and a clinical judgement of the opinion provided by any external expert and make a recommendation to the notified body's decision maker; and

— be able to draw up records and reports demonstrating that the relevant conformity assessment activities have been appropriately carried out.

3.2.5. The personnel responsible for carrying out product-related reviews (product reviewers), such as technical documentation reviews or type examination, including aspects such as clinical evaluation, biological safety, sterilisation and software validation, shall have all of the following proven qualifications:

— successful completion of a university or a technical college degree or equivalent qualification in relevant studies, e.g. medicine, pharmacy, engineering or other relevant sciences;

— four years' professional experience in the field of healthcare products or related activities, such as in manufacturing, auditing or research, of which two years 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;

— knowledge of device legislation, including the general safety and performance requirements set out in Annex I;

— appropriate knowledge and experience of relevant harmonised standards, CS and guidance documents;

— appropriate knowledge and experience of risk management and related device standards and guidance documents;

— appropriate knowledge and experience of clinical evaluation;

— appropriate knowledge of the devices which they are assessing;

— appropriate knowledge and experience of the conformity assessment procedures laid down in Annexes IX to XI, in particular of the aspects of those procedures for which they are responsible, and adequate authorisation for carrying out those assessments;

— the ability to draw up records and reports demonstrating that the relevant conformity assessment activities have been appropriately carried out.

3.2.6. The personnel responsible for carrying out audits of the manufacturer's quality management system (site auditors) shall have all of the following proven qualifications:

— successful completion of a university or a technical college degree or equivalent qualification in relevant studies, such as medicine, pharmacy, engineering or other relevant sciences;

— four years' professional experience in the field of healthcare products or related activities, such as in manufacturing, auditing or research, of which two years shall be in the area of quality management;

— appropriate knowledge of devices legislation as well as related harmonised standards, CS and guidance documents;

— appropriate knowledge and experience of risk management and related 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 IX to XI, in particular of the aspects of those procedures for which they are responsible, and adequate authorisation for carrying out those audits;

— training in auditing techniques enabling them to challenge quality management systems;

— the ability to draw up records and reports demonstrating that the relevant conformity assessment activities have been appropriately carried out.

3.2.7. The personnel with overall responsibility for final reviews and decision-making on certification shall be employed by the notified body itself and shall not be external experts or be subcontracted. Those personnel shall, as a group, have proven knowledge and comprehensive experience of all of the following:

— devices legislation and relevant guidance documents;

— the device conformity assessments relevant to this Regulation;

— the types of qualifications, experience and expertise relevant to device conformity assessment;

— a broad base of knowledge of device technologies, including sufficient experience of conformity assessment of devices being reviewed for certification, the device industry and the design and manufacture of devices;

— the notified body's quality management system, related procedures and the required qualifications for personnel involved;
— the ability to draw up records and reports demonstrating that the conformity assessment activities have been appropriately carried out.

3.3. Documentation of qualification, training and authorisation of personnel

3.3.1. The notified body shall have a procedure in place to fully document the qualification of each member of 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 justify to the authority responsible for notified bodies the authorisation of those members of personnel to carry out specific conformity assessment activities.

3.3.2. For all of its personnel referred to in Sections 3.2.3 to 3.2.7, the notified body shall establish and maintain up to date:
— a matrix detailing the authorisations and responsibilities of the personnel in respect of conformity assessment activities; and
— records attesting to the required knowledge and experience for the conformity assessment activity for which they are authorised. The records shall contain a rationale for defining the scope of the responsibilities for each of the assessment personnel and records of the conformity assessment activities carried out by each of them.

3.4. Subcontractors and external experts

3.4.1. Notified bodies may, without prejudice to Section 3.2, subcontract certain clearly defined component parts of a conformity assessment activity.

The subcontracting of the auditing of quality management systems or of product related reviews as a whole shall not be permitted; nevertheless parts of those activities may be conducted by subcontractors and external auditors and experts working on behalf of the notified body. The notified body in question shall retain full responsibility for being able to produce appropriate evidence of the competence of subcontractors and experts to fulfil their specific tasks, for making a decision based on a subcontractor's assessment and for the work conducted by subcontractors and experts on its behalf.

The following activities may not be subcontracted by notified bodies:
— review of the qualifications and monitoring of the performance of external experts;
— auditing and certification activities where the subcontracting in question is to auditing or certification organisations;
— allocation of work to external experts for specific conformity assessment activities; and
— final review and decision making functions.

3.4.2. Where a notified body subcontracts certain conformity assessment activities either to an organisation or an individual, it shall have a policy describing the conditions under which subcontracting may take place, and shall ensure that:
— the subcontractor meets the relevant requirements of this Annex;
— subcontractors and external experts do not further subcontract work to organisations or personnel; and
— the natural or legal person that applied for conformity assessment has been informed of the requirements referred to in the first and second indent.

Any subcontracting or consultation of external personnel shall be properly documented, shall not involve any intermediaries and shall be subject to a written agreement covering, among other things, confidentiality and conflicts of interest. The notified body in question shall take full responsibility for the tasks performed by subcontractors.

3.4.3. Where subcontractors or external experts are used in the context of a conformity assessment, in particular regarding novel, invasive and implantable devices or technologies, the notified body in question shall have internal competence in each product area for which it is designated that is adequate for the purpose of leading the overall conformity assessment, verifying the appropriateness and validity of expert opinions and making decisions on certification.

3.5. Monitoring of competences, training and exchange of experience

3.5.1. The notified body shall establish procedures for the initial evaluation and on-going monitoring of the competence, conformity assessment activities and performance of all internal and external personnel, and subcontractors, involved in conformity assessment activities.

3.5.2. Notified bodies shall review at regular intervals, the competence of their personnel, identify training needs and draw up a training plan to maintain the required level of qualification and knowledge of individual personnel. That review shall at a minimum, verify that personnel:

— are aware of Union and national law in force on devices, relevant harmonised standards, CS, guidance documents and the results of the coordination activities referred to in Section 1.6; and

— take part in the internal exchange of experience and the continuous training and education programme referred to in Section 3.1.2.

4. PROCESS REQUIREMENTS

4.1. General

The notified body shall have in place documented processes and sufficiently detailed procedures for the conduct of each conformity assessment activity for which it is designated, comprising the individual steps from pre-application activities up to decision making and surveillance and taking into account, when necessary, the respective specificities of the devices.

The requirements laid down in Sections 4.3, 4.4, 4.7 and 4.8 shall be fulfilled as part of the internal activities of notified bodies and shall not be subcontracted.

4.2. Notified body quotations and pre-application activities

The notified body shall:

(a) publish a publicly available description of the application procedure by which manufacturers can obtain certification from it. That description shall include which languages are acceptable for submission of documentation and for any related correspondence;

(b) have documented procedures relating to, and documented details about, fees charged for specific conformity assessment activities and any other financial conditions relating to notified bodies' assessment activities for devices;

(c) have documented procedures in relation to advertising of their conformity assessment services. Those procedures shall ensure that advertising or promotional activities in no way imply or are capable of leading to an inference that their conformity assessment

will offer manufacturers earlier market access or be quicker, easier or less stringent than that of other notified bodies;

(d) have documented procedures requiring the review of pre-application information, including the preliminary verification that the product is covered by this Regulation and its classification, prior to issuing any quotation to the manufacturer relating to a specific conformity assessment; and

(e) ensure that all contracts relating to the conformity assessment activities covered by this Regulation are concluded directly between the manufacturer and the notified body and not with any other organisation.

4.3. Application review and contract

The notified body shall require a formal application signed by a manufacturer or an authorised representative containing all of the information and the manufacturer's declarations required by the relevant conformity assessment as referred to in Annexes IX to XI.

The contract between a notified body and a manufacturer shall take the form of a written agreement signed by both parties. It shall be kept by the notified body. This contract shall have clear terms and conditions and contain obligations that enable the notified body to act as required under this Regulation, including an obligation on the manufacturer to inform the notified body of vigilance reports, the right of the notified body to suspend, restrict or withdraw certificates issued and the duty of the notified body to fulfil its information obligations.

The notified body shall have documented procedures to review applications, addressing:

(a) the completeness of those applications with respect to the requirements of the relevant conformity assessment procedure, as referred to in the corresponding Annex, under which approval has been sought,

(b) the verification of the qualification of products covered by those applications as devices and their respective classifications,

(c) whether the conformity assessment procedures chosen by the applicant are applicable to the device in question under this Regulation,

(d) the ability of the notified body to assess the application based on its designation, and

(e) the availability of sufficient and appropriate resources.

The outcome of each review of an application shall be documented. Refusals or withdrawals of applications shall be notified to the electronic system referred to in Article 57 and shall be accessible to other notified bodies.

4.4. Allocation of resources

The notified body shall have documented procedures to ensure that all conformity assessment activities are conducted by appropriately authorised and qualified personnel who are sufficiently experienced in the evaluation of the devices, systems and processes and related documentation that are subject to conformity assessment.

For each application, the notified body shall determine the resources needed and identify one individual responsible for ensuring that the assessment of that application is conducted in accordance with the relevant procedures and for ensuring that the appropriate resources including personnel are utilised for each of the tasks of the assessment. The allocation of tasks required to be carried out as part of the conformity assessment and any changes subsequently made to this allocation shall be documented.

4.5. Conformity assessment activities

4.5.1. General

The notified body and its personnel shall carry out the conformity assessment activities with the highest degree of professional integrity and the requisite technical and scientific competence in the specific fields.

The notified body shall have expertise, facilities and documented procedures that are sufficient to effectively conduct the conformity assessment activities for which the notified body in question is designated, taking account of the relevant requirements set out in Annexes IX to XI, and in particular all of the following requirements:

— appropriately plan the conduct of each individual project,

— ensure that the composition of the assessment teams is such that there is sufficient experience in relation to the technology concerned, and that there is continuous objectivity and independence, and to provide for rotation of the members of the assessment team at appropriate intervals,

— specify the rationale for fixing time limits for completion of conformity assessment activities,

— assess the manufacturer's technical documentation and the solutions adopted to meet the requirements laid down in Annex I,

— review the manufacturer's procedures and documentation relating to the evaluation of pre-clinical aspects,

— review the manufacturer's procedures and documentation relating to clinical evaluation,

— address the interface between the manufacturer's risk management process and its appraisal and analysis of the pre-clinical and clinical evaluation and to evaluate their relevance for the demonstration of conformity with the relevant requirements in Annex I,

— carry out the specific procedures referred to in Sections 5.2 to 5.4 of Annex IX,

— in the case of class IIa or class IIb devices, assess the technical documentation of devices selected on a representative basis,

— plan and periodically carry out appropriate surveillance audits and assessments, carry out or request certain tests to verify the proper functioning of the quality management system and to perform unannounced on site audits,

— relating to the sampling of devices, verify that the manufactured device is in conformity with the technical documentation; such requirements shall define the relevant sampling criteria and testing procedure prior to sampling,

— evaluate and verify a manufacturer's compliance with relevant Annexes.

The notified body shall, where relevant, take into consideration available CS, guidance and best practice documents and harmonised standards, even if the manufacturer does not claim to be in compliance.

4.5.2. Quality management system auditing

(a) As part of the assessment of the quality management system, a notified body shall prior to an audit and in accordance with its documented procedures:

— assess the documentation submitted in accordance with the relevant conformity assessment Annex, and draw up an audit programme which clearly identifies the number and sequence of activities required to demonstrate complete coverage of a manufacturer's quality management

system and to determine whether it meets the requirements of this Regulation,

— identify links between, and allocation of responsibilities among, the various manufacturing sites, and identify relevant suppliers and/or subcontractors of the manufacturer, and consider the need to specifically audit any of those suppliers or subcontractors or both,

— clearly define, for each audit identified in the audit programme, the objectives, criteria and scope of the audit, and draw up an audit plan that adequately addresses and takes account of the specific requirements for the devices, technologies and processes involved,

— draw up and keep up to date, for class IIa and class IIb devices, a sampling plan for the assessment of technical documentation as referred to in Annexes II and III covering the range of such devices covered by the manufacturer's application. That plan shall ensure that all devices covered by the certificate are sampled over the period of validity of the certificate, and

— select and assign appropriately qualified and authorised personnel for conducting the individual audits. The respective roles, responsibilities and authorities of the team members shall be clearly defined and documented.

(b) Based on the audit programme it has drawn up, the notified body shall, in accordance with its documented procedures:

— audit the manufacturer's quality management system, in order to verify that the quality management system ensures that the devices covered conform to the relevant provisions of this Regulation which apply to devices at every stage, from design through final quality control to ongoing surveillance, and shall determine whether the requirements of this Regulation are met,

— based on relevant technical documentation and in order to determine whether the manufacturer meets the requirements referred to in the relevant conformity assessment Annex, review and audit the manufacturer's processes and subsystems, in particular for:

  — design and development,

  — production and process controls,

  — product documentation,

  — purchasing controls including verification of purchased devices,

  — corrective and preventive actions, including for post-market surveillance, and

  — PMCF,

  and review and audit requirements and provisions adopted by the manufacturer, including those in relation to fulfilling the general safety and performance requirements set out in Annex I.

  The documentation shall be sampled in such a manner as to reflect the risks associated with the intended use of the device, the complexity of the manufacturing technologies, the range and classes of devices produced and any available post-market surveillance information,

— if not already covered by the audit programme, audit the control of processes on the premises of the manufacturer's suppliers, when the conformity of finished devices is significantly influenced by the activity of suppliers and, in particular when the manufacturer cannot demonstrate sufficient control over its suppliers,

— conduct assessments of the technical documentation based on its sampling plan and taking account of Sections 4.5.4. and 4.5.5. for pre-clinical and clinical evaluations, and

— the notified body shall ensure that audit findings are appropriately and consistently classified in accordance with the requirements of this Regulation and with relevant standards, or with best practice documents developed or adopted by the MDCG.

4.5.3. Product verification

Assessment of the technical documentation

For assessment of the technical documentation conducted in accordance with Chapter II of Annex IX, notified bodies shall have sufficient expertise, facilities and documented procedures for:

— the allocation of appropriately qualified and authorised personnel for the examination of individual aspects such as use of the device, biocompatibility, clinical evaluation, risk management, and sterilisation, and

— the assessment of conformity of the design with this Regulation, and for taking account of Sections 4.5.4. to 4.5.6. That assessment shall include examination of the implementation by manufacturers of incoming, in-process and final checks and the results thereof. If further tests or other evidence is required for the assessment of conformity with the requirements of this Regulation, the notified body in question shall carry out adequate physical or laboratory tests in relation to the device or request the manufacturer to carry out such tests.

Type-examinations

The notified body shall have documented procedures, sufficient expertise and facilities for the type-examination of devices in accordance with Annex X including the capacity to:

— examine and assess the technical documentation taking account of Sections 4.5.4. to 4.5.6., and verify that the type has been manufactured in conformity with that documentation;

— establish a test plan identifying all relevant and critical parameters which need to be tested by the notified body or under its responsibility;

— document its rationale for the selection of those parameters;

— carry out the appropriate examinations and tests in order to verify that the solutions adopted by the manufacturer meet the general safety and performance requirements set out in Annex I. Such examinations and tests shall include all tests necessary to verify that the manufacturer has in fact applied the relevant standards it has opted to use;

— agree with the applicant as to where the necessary tests will be performed if they are not to be carried out directly by the notified body; and

— assume full responsibility for test results. Test reports submitted by the manufacturer shall only be taken into account if they have been issued by conformity assessment bodies which are competent and independent of the manufacturer.

Verification by examination and testing of every product

The notified body shall:

(a) have documented procedures, sufficient expertise and facilities for the verification by examination and testing of every product in accordance with Part B of Annex XI;

(b) establish a test plan identifying all relevant and critical parameters which need to be tested by the notified body or under its responsibility in order to:

— verify, for class IIb devices, the conformity of the device with the type described in the EU type-examination certificate and with the requirements of this Regulation which apply to those devices,

— confirm, for class IIa devices, the conformity with the technical documentation referred to in Annexes II and III and with the requirements of this Regulation which apply to those devices;

(c) document its rationale for the selection of the parameters referred to in point (b);

(d) have documented procedures to carry out the appropriate assessments and tests in order to verify the conformity of the device with the requirements of this Regulation by examining and testing every product as specified in Section 15 of Annex XI;

(e) have documented procedures providing for the reaching of an agreement with the applicant concerning when and where necessary tests that are not to be carried out by the notified body itself are to be performed; and

(f) assume full responsibility for test results in accordance with documented procedures; test reports submitted by the manufacturer shall only be taken into account if they have been issued by conformity assessment bodies which are competent and independent of the manufacturer.

4.5.4. Pre-clinical evaluation assessment

The notified body shall have documented procedures in place for the review of the manufacturer's procedures and documentation relating to the evaluation of pre-clinical aspects. The notified body shall examine, validate and verify that the manufacturer's procedures and documentation adequately address:

(a) the planning, conduct, assessment, reporting and, where appropriate, updating of the pre-clinical evaluation, in particular of

— the scientific pre-clinical literature search, and

— the pre-clinical testing, for example laboratory testing, simulated use testing, computer modelling, the use of animal models,

(b) the nature and duration of body contact and the specific associated biological risks,

(c) the interface with the risk management process, and

(d) the appraisal and analysis of the available pre-clinical data and its relevance with regard to demonstrating conformity with the relevant requirements in Annex I.

The notified body's assessment of pre-clinical evaluation procedures and documentation shall address the results of literature searches and all validation, verification and testing performed and conclusions drawn, and shall typically include considering the use of alternative materials and substances and take account of the packaging, stability, including shelf life, of the finished device. Where no new testing has been undertaken by a manufacturer or where there are deviations from procedures, the notified body in question shall critically examine the justification presented by the manufacturer.

4.5.5. Clinical evaluation assessment

The notified body shall have documented procedures in place relating to the assessment of a manufacturer's procedures and documentation relating to clinical evaluation both for initial conformity assessment and on an ongoing basis. The notified body shall examine, validate and verify that manufacturers' procedures and documentation adequately address:

— the planning, conduct, assessment, reporting and updating of the clinical evaluation as referred to in Annex XIV,
— post-market surveillance and PMCF,
— the interface with the risk management process,
— the appraisal and analysis of the available data and its relevance with regard to demonstrating conformity with the relevant requirements in Annex I, and
— the conclusions drawn with regard to the clinical evidence and drawing up of the clinical evaluation report.

These procedures referred to in the first paragraph shall take into consideration available CS, guidance and best practice documents.

The notified body's assessment of clinical evaluations as referred to in Annex XIV shall cover:
— the intended use specified by the manufacturer and claims for the device defined by it,
— the planning of the clinical evaluation,
— the methodology for the literature search,
— relevant documentation from the literature search,
— the clinical investigation,
— validity of equivalence claimed in relation to other devices, the demonstration of equivalence, the suitability and conclusions data from equivalent and similar devices,
— post-market surveillance and PMCF,
— the clinical evaluation report, and
— justifications in relation to non-performance of clinical investigations or PMCF.

In relation to clinical data from clinical investigations included within the clinical evaluation, the notified body in question shall ensure that the conclusions drawn by the manufacturer are valid in the light of the approved clinical investigation plan.

The notified body shall ensure that the clinical evaluation adequately addresses the relevant safety and performance requirements provided for in Annex I, that it is appropriately aligned with the risk management requirements, that it is conducted in accordance with Annex XIV and that it is appropriately reflected in the information provided relating to the device.

4.5.6. Specific Procedures

The notified body shall have documented procedures, sufficient expertise and facilities for the procedures referred to in Sections 5 and 6 of Annex IX, Section 6 of Annex X and Section 16 of Annex XI, for which they are designated.

In the case of devices manufactured utilising tissues or cells of animal origin or their derivatives, such as from TSE susceptible species, as referred to in Regulation (EU) No 722/2012, the notified body shall have documented procedures in place that fulfil the requirements laid down in that Regulation, including for the preparation of a summary evaluation report for the relevant competent authority.

4.6. Reporting

The notified body shall:
— ensure that all steps of the conformity assessment are documented so that the conclusions of the assessment are clear and demonstrate compliance with the requirements of this Regulation and can represent objective evidence of such compliance to persons that are not themselves involved in the assessment, for example personnel in designating authorities,

— ensure that records that are sufficient to provide a discernible audit trail are available for quality management system audits,
— clearly document the conclusions of its assessment of clinical evaluation in a clinical evaluation assessment report, and
— for each specific project, provide a detailed report which shall be based on a standard format containing a minimum set of elements determined by the MDCG.

The report of the notified body shall:
— clearly document the outcome of its assessment and draw clear conclusions from the verification of the manufacturer's conformity with the requirements of this Regulation,
— make a recommendation for a final review and for a final decision to be taken by the notified body; this recommendation shall be signed off by the member of personnel responsible in the notified body, and
— be provided to the manufacturer in question.

4.7. Final review

The notified body shall prior to making a final decision:
— ensure that the personnel assigned for the final review and decision-making on specific projects are appropriately authorised and are different from the personnel who have conducted the assessments,
— verify that the report or reports and supporting documentation needed for decision making, including concerning resolution of non-conformities noted during assessment, are complete and sufficient with respect to the scope of the application, and
— verify whether there are any unresolved non-conformities preventing issuance of a certificate.

4.8. Decisions and Certifications

The notified body shall have documented procedures for decision-making including as regards the allocation of responsibilities for the issuance, suspension, restriction and withdrawal of certificates. Those procedures shall include the notification requirements laid down in Chapter V of this Regulation. The procedures shall allow the notified body in question to:
— decide, based on the assessment documentation and additional information available, whether the requirements of this Regulation are fulfilled,
— decide, based on the results of its assessment of the clinical evaluation and risk management, whether the post-market surveillance plan, including the PMCF plan, is adequate,
— decide on specific milestones for further review by the notified body of the up to date clinical evaluation,
— decide whether specific conditions or provisions need to be defined for the certification,
— decide, based on the novelty, risk classification, clinical evaluation and conclusions from the risk analysis of the device, on a period of certification not exceeding five years,
— clearly document decision making and approval steps including approval by signature of the members of personnel responsible,
— clearly document responsibilities and mechanisms for communication of decisions, in particular, where the final signatory of a certificate differs from the decision maker or decision makers or does not fulfil the requirements laid down in Section 3.2.7,

— issue a certificate or certificates in accordance with the minimum requirements laid down in Annex XII for a period of validity not exceeding five years and shall indicate whether there are specific conditions or limitations associated with the certification,
— issue a certificate or certificates for the applicant alone and shall not issue certificates covering multiple entities, and
— ensure that the manufacturer is notified of the outcome of the assessment and the resultant decision and that they are entered into the electronic system referred to in Article 57.

4.9. Changes and modifications

The notified body shall have documented procedures and contractual arrangements with manufacturers in place relating to the manufacturers' information obligations and the assessment of changes to:
— the approved quality management system or systems or to the product-range covered,
— the approved design of a device,
— the intended use of or claims made for the device,
— the approved type of a device, and
— any substance incorporated in or utilised for the manufacturing of a device and being subject to the specific procedures in accordance with Section 4.5.6.

The procedures and contractual arrangements referred to in the first paragraph shall include measures for checking the significance of the changes referred to in the first paragraph.

In accordance with its documented procedures, the notified body in question shall:
— ensure that manufacturers submit for prior approval plans for changes as referred to in the first paragraph and relevant information relating to such changes,
— assess the changes proposed and verify whether, after these changes, the quality management system, or the design of a device or type of a device, still meets the requirements of this Regulation, and
— notify the manufacturer of its decision and provide a report or as applicable a supplementary report, which shall contain the justified conclusions of its assessment.

4.10. Surveillance activities and post-certification monitoring

The notified body shall have documented procedures:
— defining how and when surveillance activities of manufacturers are to be conducted. Those procedures shall include arrangements for unannounced on-site audits of manufacturers and, where applicable, subcontractors and suppliers carrying out product tests and the monitoring of compliance with any conditions binding manufacturers and associated with certification decisions, such as updates to clinical data at defined intervals,
— for screening relevant sources of scientific and clinical data and post-market information relating to the scope of their designation. Such information shall be taken into account in the planning and conduct of surveillance activities, and
— to review vigilance data to which they have access under Article 92(2) in order to estimate its impact, if any, on the validity of existing certificates. The results of the evaluation and any decisions taken shall be thoroughly documented.

The notified body in question shall, upon receipt of information about vigilance cases from a manufacturer or competent authorities, decide which of the following options to apply:
— not to take action on the basis that the vigilance case is clearly not related to the certification granted,

— observe the manufacturer's and competent authority's activities and the results of the manufacturer's investigation so as to determine whether the certification granted is at risk or whether adequate corrective action has been taken,
— perform extraordinary surveillance measures, such as document reviews, short-notice or unannounced audits and product testing, where it is likely that the certification granted is at risk,
— increase the frequency of surveillance audits,
— review specific products or processes on the occasion of the next audit of the manufacturer, or
— take any other relevant measure.

In relation to surveillance audits of manufacturers, the notified body shall have documented procedures to:
— conduct surveillance audits of the manufacturer on at least an annual basis which shall be planned and conducted in line with the relevant requirements in Section 4.5,
— ensure adequate assessment of the manufacturer's documentation on, and application of the provisions on, vigilance, the post-market surveillance, and PMCF,
— sample and test devices and technical documentation, during audits, according to pre-defined sampling criteria and testing procedures to ensure that the manufacturer continuously applies the approved quality management system,
— ensure that the manufacturer complies with the documentation and information obligations laid down in the relevant Annexes and that its procedures take into account best practices in the implementation of quality management systems,
— ensure that the manufacturer does not use quality management system or device approvals in a misleading manner,
— gather sufficient information to determine if the quality management system continues to comply with the requirements of this Regulation,
— ask the manufacturer, if non-conformities are detected, for corrections, corrective actions and, where applicable, preventive actions, and
— where necessary, impose specific restrictions on the relevant certificate, or suspend or withdraw it.

The notified body shall, if listed as part of the conditions for certification:
— conduct an in-depth review of the clinical evaluation as most recently updated by the manufacturer based on the manufacturer's post-market surveillance, on its PMCF and on clinical literature relevant to the condition being treated with the device or on clinical literature relevant to similar devices,
— clearly document the outcome of the in-depth review and address any specific concerns to the manufacturer or impose any specific conditions on it, and
— ensure that the clinical evaluation as most recently updated, is appropriately reflected in the instructions for use and, where applicable, the summary of safety and performance.

4.11. Re-certification

The notified body shall have documented procedures in place relating to the re-certification reviews and the renewal of certificates. Re-certification of approved quality management systems or EU technical documentation assessment certificates or EU type-examination certificates shall occur at least every five years.

The notified body shall have documented procedures relating to renewals of EU technical documentation assessment certificates and EU type-examination certificates and those

procedures shall require the manufacturer in question to submit a summary of changes and scientific findings for the device, including:

(a) all changes to the originally approved device, including changes not yet notified,

(b) experience gained from post-market surveillance,

(c) experience from risk management,

(d) experience from updating the proof of compliance with the general safety and performance requirements set out in Annex I,

(e) experience from reviews of the clinical evaluation, including the results of any clinical investigations and PMCF,

(f) changes to the requirements, to components of the device or to the scientific or regulatory environment,

(g) changes to applied or new harmonised standards, CS or equivalent documents, and

(h) changes in medical, scientific and technical knowledge, such as:
- new treatments,
- changes in test methods,
- new scientific findings on materials and components, including findings on their biocompatibility,
- experience from studies on comparable devices,
- data from registers and registries,
- experience from clinical investigations with comparable devices.

The notified body shall have documented procedures to assess the information referred to in the second paragraph and shall pay particular attention to clinical data from post-market surveillance and PMCF activities undertaken since the previous certification or re-certification, including appropriate updates to manufacturers' clinical evaluation reports.

For the decision on re-certification, the notified body in question shall use the same methods and principles as for the initial certification decision. If necessary, separate forms shall be established for re-certification taking into account the steps taken for certification such as application and application review.

ANNEX VIII

CLASSIFICATION RULES

CHAPTER I

DEFINITIONS SPECIFIC TO CLASSIFICATION RULES

1. DURATION OF USE

1.1. ‘Transient’ means normally intended for continuous use for less than 60 minutes.

1.2. ‘Short term’ means normally intended for continuous use for between 60 minutes and 30 days.

1.3. ‘Long term’ means normally intended for continuous use for more than 30 days.

2. INVASIVE AND ACTIVE DEVICES

2.1. ‘Body orifice’ means any natural opening in the body, as well as the external surface of the eyeball, or any permanent artificial opening, such as a stoma.

2.2. ‘Surgically invasive device’ means:

(a) an invasive device which penetrates inside the body through the surface of the body, including through mucous membranes of body orifices with the aid or in the context of a surgical operation; and

(b) a device which produces penetration other than through a body orifice.

2.3. ‘Reusable surgical instrument’ means an instrument intended for surgical use in cutting, drilling, sawing, scratching, scraping, clamping, retracting, clipping or similar procedures, without a connection to an active device and which is intended by the manufacturer to be reused after appropriate procedures such as cleaning, disinfection and sterilisation have been carried out.

2.4. ‘Active therapeutic device’ means any active device used, whether alone or in combination with other devices, to support, modify, replace or restore biological functions or structures with a view to treatment or alleviation of an illness, injury or disability.

2.5. ‘Active device intended for diagnosis and monitoring’ means any active device used, whether alone or in combination with other devices, to supply information for detecting, diagnosing, monitoring or treating physiological conditions, states of health, illnesses or congenital deformities.

2.6. ‘Central circulatory system’ means the following blood vessels: *arteriae pulmonales*, *aorta ascendens*, *arcus aortae, aorta descendens* to the *bifurcatio aortae*, *arteriae coronariae*, *arteria carotis communis*, *arteria carotis externa*, *arteria carotis interna*, *arteriae cerebrales*, *truncus brachiocephalicus*, *venae cordis*, *venae pulmonales*, *vena cava superior* and *vena cava inferior*.

2.7. ‘Central nervous system’ means the brain, meninges and spinal cord.

2.8. ‘Injured skin or mucous membrane’ means an area of skin or a mucous membrane presenting a pathological change or change following disease or a wound.

CHAPTER II

IMPLEMENTING RULES

3.1. Application of the classification rules shall be governed by the intended purpose of the devices.

3.2. If the device in question is intended to be used in combination with another device, the classification rules shall apply separately to each of the devices. Accessories for a medical device and for a product listed in Annex XVI shall be classified in their own right separately from the device with which they are used.

3.3. Software, which drives a device or influences the use of a device, shall fall within the same class as the device.

If the software is independent of any other device, it shall be classified in its own right.

3.4. If the device is not intended to be used solely or principally in a specific part of the body, it shall be considered and classified on the basis of the most critical specified use.

3.5. If several rules, or if, within the same rule, several sub-rules, apply to the same device based on the device's intended purpose, the strictest rule and sub-rule resulting in the higher classification shall apply.

3.6. In calculating the duration referred to in Section 1, continuous use shall mean:

(a) the entire duration of use of the same device without regard to temporary interruption of use during a procedure or temporary removal for purposes such as cleaning or disinfection of the device. Whether the interruption of use or the removal is temporary shall be established in relation to the duration of the use prior to and after the period when the use is interrupted or the device removed; and

(b) the accumulated use of a device that is intended by the manufacturer to be replaced immediately with another of the same type.

3.7. A device is considered to allow direct diagnosis when it provides the diagnosis of the disease or condition in question by itself or when it provides decisive information for the diagnosis.

CHAPTER III

CLASSIFICATION RULES

4. NON-INVASIVE DEVICES

4.1. Rule 1

All non-invasive devices are classified as class I, unless one of the rules set out hereinafter applies.

4.2. Rule 2

All non-invasive devices intended for channelling or storing blood, body liquids, cells or tissues, liquids or gases for the purpose of eventual infusion, administration or introduction into the body are classified as class IIa:

— if they may be connected to a class IIa, class IIb or class III active device; or

— if they are intended for use for channelling or storing blood or other body liquids or for storing organs, parts of organs or body cells and tissues, except for blood bags; blood bags are classified as class IIb.

In all other cases, such devices are classified as class I.

4.3. Rule 3

All non-invasive devices intended for modifying the biological or chemical composition of human tissues or cells, blood, other body liquids or other liquids intended for implantation or administration into the body are classified as class IIb, unless the treatment for which the device is used consists of filtration, centrifugation or exchanges of gas, heat, in which case they are classified as class IIa.

All non-invasive devices consisting of a substance or a mixture of substances intended to be used *in vitro* in direct contact with human cells, tissues or organs taken from the human body or used *in vitro* with human embryos before their implantation or administration into the body are classified as class III.

4.4. Rule 4

All non-invasive devices which come into contact with injured skin or mucous membrane are classified as:

— class I if they are intended to be used as a mechanical barrier, for compression or for absorption of exudates;

— class IIb if they are intended to be used principally for injuries to skin which have breached the dermis or mucous membrane and can only heal by secondary intent;

— class IIa if they are principally intended to manage the micro-environment of injured skin or mucous membrane; and

— class IIa in all other cases.

This rule applies also to the invasive devices that come into contact with injured mucous membrane.

5. INVASIVE DEVICES

5.1. Rule 5

All invasive devices with respect to body orifices, other than surgically invasive devices, which are not intended for connection to an active device or which are intended for connection to a class I active device are classified as:

— class I if they are intended for transient use;

— class IIa if they are intended for short-term use, except if they are used in the oral cavity as far as the pharynx, in an ear canal up to the ear drum or in the nasal cavity, in which case they are classified as class I; and

— class IIb if they are intended for long-term use, except if they are used in the oral cavity as far as the pharynx, in an ear canal up to the ear drum or in the nasal cavity and are not liable to be absorbed by the mucous membrane, in which case they are classified as class IIa.

All invasive devices with respect to body orifices, other than surgically invasive devices, intended for connection to a class IIa, class IIb or class III active device, are classified as class IIa.

5.2. Rule 6

All surgically invasive devices intended for transient use are classified as class IIa unless they:

— are intended specifically to control, diagnose, monitor or correct a defect of the heart or of the central circulatory system through direct contact with those parts of the body, in which case they are classified as class III;

— are reusable surgical instruments, in which case they are classified as class I;

— are intended specifically for use in direct contact with the heart or central circulatory system or the central nervous system, in which case they are classified as class III;

— are intended to supply energy in the form of ionising radiation in which case they are classified as class IIb;

— have a biological effect or are wholly or mainly absorbed in which case they are classified as class IIb; or

— are intended to administer medicinal products by means of a delivery system, if such administration of a medicinal product is done in a manner that is potentially hazardous taking account of the mode of application, in which case they are classified as class IIb.

5.3. Rule 7

All surgically invasive devices intended for short-term use are classified as class IIa unless they:

— are intended specifically to control, diagnose, monitor or correct a defect of the heart or of the central circulatory system through direct contact with those parts of the body, in which case they are classified as class III;

— are intended specifically for use in direct contact with the heart or central circulatory system or the central nervous system, in which case they are classified as class III;

— are intended to supply energy in the form of ionizing radiation in which case they are classified as class IIb;

— have a biological effect or are wholly or mainly absorbed in which case they are classified as class III;

— are intended to undergo chemical change in the body in which case they are classified as class IIb, except if the devices are placed in the teeth; or

— are intended to administer medicines, in which case they are classified as class IIb.

5.4. Rule 8

All implantable devices and long-term surgically invasive devices are classified as class IIb unless they:

— are intended to be placed in the teeth, in which case they are classified as class IIa;

— are intended to be used in direct contact with the heart, the central circulatory system or the central nervous system, in which case they are classified as class III;

— have a biological effect or are wholly or mainly absorbed, in which case they are classified as class III;

— are intended to undergo chemical change in the body in which case they are classified as class III, except if the devices are placed in the teeth;

— are intended to administer medicinal products, in which case they are classified as class III;

— are active implantable devices or their accessories, in which cases they are classified as class III;

— are breast implants or surgical meshes, in which cases they are classified as class III;

— are total or partial joint replacements, in which case they are classified as class III, with the exception of ancillary components such as screws, wedges, plates and instruments; or

— are spinal disc replacement implants or are implantable devices that come into contact with the spinal column, in which case they are classified as class III with the exception of components such as screws, wedges, plates and instruments.

6. ACTIVE DEVICES

6.1. Rule 9

All active therapeutic devices intended to administer or exchange energy are classified as class IIa unless their characteristics are such that they may administer energy to or exchange energy with the human body in a potentially hazardous way, taking account of the nature, the density and site of application of the energy, in which case they are classified as class IIb.

All active devices intended to control or monitor the performance of active therapeutic class IIb devices, or intended directly to influence the performance of such devices are classified as class IIb.

All active devices intended to emit ionizing radiation for therapeutic purposes, including devices which control or monitor such devices, or which directly influence their performance, are classified as class IIb.

All active devices that are intended for controlling, monitoring or directly influencing the performance of active implantable devices are classified as class III.

6.2. Rule 10

Active devices intended for diagnosis and monitoring are classified as class IIa:

— if they are intended to supply energy which will be absorbed by the human body, except for devices intended to illuminate the patient's body, in the visible spectrum, in which case they are classified as class I;

— if they are intended to image *in vivo* distribution of radiopharmaceuticals; or

— if they are intended to allow direct diagnosis or monitoring of vital physiological processes, unless they are specifically intended for monitoring of vital physiological parameters and the nature of variations of those parameters is such that it could result in immediate danger to the patient, for instance variations in cardiac performance, respiration, activity of the central nervous system, or they are intended for diagnosis in clinical situations where the patient is in immediate danger, in which cases they are classified as class IIb.

Active devices intended to emit ionizing radiation and intended for diagnostic or therapeutic radiology, including interventional radiology devices and devices which control or monitor such devices, or which directly influence their performance, are classified as class IIb.

6.3. Rule 11

Software intended to provide information which is used to take decisions with diagnosis or therapeutic purposes is classified as class IIa, except if such decisions have an impact that may cause:

— death or an irreversible deterioration of a person's state of health, in which case it is in class III; or

— a serious deterioration of a person's state of health or a surgical intervention, in which case it is classified as class IIb.

Software intended to monitor physiological processes is classified as class IIa, except if it is intended for monitoring of vital physiological parameters, where the nature of variations of those parameters is such that it could result in immediate danger to the patient, in which case it is classified as class IIb.

All other software is classified as class I.

6.4. Rule 12

All active devices intended to administer and/or remove medicinal products, body liquids or other substances to or from the body are classified as class IIa, unless this is done in a manner that is potentially hazardous, taking account of the nature of the substances involved, of the part of the body concerned and of the mode of application in which case they are classified as class IIb.

6.5. Rule 13

All other active devices are classified as class I.

7. SPECIAL RULES

7.1. Rule 14

All devices incorporating, as an integral part, a substance which, if used separately, can be considered to be a medicinal product, as defined in point 2 of Article 1 of Directive 2001/83/EC, including a medicinal product derived from human blood or human plasma, as defined in point 10 of Article 1 of that Directive, and that has an action ancillary to that of the devices, are classified as class III.

7.2. Rule 15

All devices used for contraception or prevention of the transmission of sexually transmitted diseases are classified as class IIb, unless they are implantable or long term invasive devices, in which case they are classified as class III.

7.3. Rule 16

All devices intended specifically to be used for disinfecting, cleaning, rinsing or, where appropriate, hydrating contact lenses are classified as class IIb.

All devices intended specifically to be used for disinfecting or sterilising medical devices are classified as class IIa, unless they are disinfecting solutions or washer-disinfectors intended specifically to be used for disinfecting invasive devices, as the end point of processing, in which case they are classified as class IIb.

This rule does not apply to devices that are intended to clean devices other than contact lenses by means of physical action only.

7.4. Rule 17

Devices specifically intended for recording of diagnostic images generated by X-ray radiation are classified as class IIa.

7.5. Rule 18

All devices manufactured utilising tissues or cells of human or animal origin, or their derivatives, which are non-viable or rendered non-viable, are classified as class III, unless such devices are manufactured utilising tissues or cells of animal origin, or their derivatives, which are non-viable or rendered non-viable and are devices intended to come into contact with intact skin only.

7.6. Rule 19

All devices incorporating or consisting of nanomaterial are classified as:

— class III if they present a high or medium potential for internal exposure;

— class IIb if they present a low potential for internal exposure; and

— class IIa if they present a negligible potential for internal exposure.

7.7. Rule 20

All invasive devices with respect to body orifices, other than surgically invasive devices, which are intended to administer medicinal products by inhalation are classified as class IIa, unless their mode of action has an essential impact on the efficacy and safety of the administered medicinal product or they are intended to treat life-threatening conditions, in which case they are classified as class IIb.

7.8. Rule 21

Devices that are composed of substances or of combinations of substances that are intended to be introduced into the human body via a body orifice or applied to the skin and that are absorbed by or locally dispersed in the human body are classified as:

— class III if they, or their products of metabolism, are systemically absorbed by the human body in order to achieve the intended purpose;

— class III if they achieve their intended purpose in the stomach or lower gastrointestinal tract and they, or their products of metabolism, are systemically absorbed by the human body;

— class IIa if they are applied to the skin or if they are applied in the nasal or oral cavity as far as the pharynx, and achieve their intended purpose on those cavities; and

— class IIb in all other cases.

7.9. Rule 22

Active therapeutic devices with an integrated or incorporated diagnostic function which significantly determines the patient management by the device, such as closed loop systems or automated external defibrillators, are classified as class III.

ANNEX IX

CONFORMITY ASSESSMENT BASED ON A QUALITY MANAGEMENT SYSTEM AND ON ASSESSMENT OF TECHNICAL DOCUMENTATION

CHAPTER I

QUALITY MANAGEMENT SYSTEM

1. The manufacturer shall establish, document and implement a quality management system as described in Article 10(9) and maintain its effectiveness throughout the life cycle of the devices concerned. The manufacturer shall ensure the application of the quality management system as specified in Section 2 and shall be subject to audit, as laid down in Sections 2.3 and 2.4, and to surveillance as specified in Section 3.

2. Quality management system assessment

2.1. The manufacturer shall lodge an application for assessment of its quality management system with a notified body. The application shall include:

— the name of the manufacturer and address of its registered place of business and any additional manufacturing site covered by the quality management system, and, if the manufacturer's application is lodged by its authorised representative, the name of the authorised representative and the address of the authorised representative's registered place of business,

— all relevant information on the device or group of devices covered by the quality management system,

— 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,

— a draft of an EU declaration of conformity in accordance with Article 19 and Annex IV for the device model covered by the conformity assessment procedure,
— the documentation on the manufacturer's quality management system,
— a documented description of the procedures in place to fulfil the obligations arising from the quality management system and required under this Regulation and the undertaking by the manufacturer in question to apply those procedures,
— a description of the procedures in place to ensure that the quality management system remains adequate and effective, and the undertaking by the manufacturer to apply those procedures,
— the documentation on the manufacturer's post-market surveillance system and, where applicable, on the PMCF plan, and the procedures put in place to ensure compliance with the obligations resulting from the provisions on vigilance set out in Articles 87 to 92,
— a description of the procedures in place to keep up to date the post-market surveillance system, and, where applicable, the PMCF plan, and the procedures ensuring compliance with the obligations resulting from the provisions on vigilance set out in Articles 87 to 92, as well as the undertaking by the manufacturer to apply those procedures,
— documentation on the clinical evaluation plan, and
— a description of the procedures in place to keep up to date the clinical evaluation plan, taking into account the state of the art.

2.2. Implementation of the quality management system shall ensure compliance with this Regulation. All the elements, requirements and provisions adopted by the manufacturer for its quality management system shall be documented in a systematic and orderly manner in the form of a quality manual and written policies and procedures such as quality programmes, quality plans 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 with the assignment of staff responsibilities in relation to critical procedures, the responsibilities of the managerial staff and their organisational authority,
— the methods of monitoring whether the operation of the quality management system is efficient and in particular the ability of that system to achieve the desired design and device quality, including control of devices which fail to conform,
— where the design, manufacture and/or final verification and testing of the devices, or parts of any of those processes, 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, and
— 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 from the authorised representative to accept the mandate;

(c) the procedures and techniques for monitoring, verifying, validating and controlling the design of the devices and the corresponding documentation as well as the data

and records arising from those procedures and techniques. Those procedures and techniques shall specifically cover:

— the strategy for regulatory compliance, including processes for identification of relevant legal requirements, qualification, classification, handling of equivalence, choice of and compliance with conformity assessment procedures,

— identification of applicable general safety and performance requirements and solutions to fulfil those requirements, taking applicable CS and, where opted for, harmonised standards or other adequate solutions into account,

— risk management as referred to in Section 3 of Annex I,

— the clinical evaluation, pursuant to Article 61 and Annex XIV, including post-market clinical follow-up,

— solutions for fulfilling the applicable specific requirements regarding design and construction, including appropriate pre-clinical evaluation, in particular the requirements of Chapter II of Annex I,

— solutions for fulfilling the applicable specific requirements regarding the information to be supplied with the device, in particular the requirements of Chapter III of Annex I,

— the device identification procedures drawn up and kept up to date from drawings, specifications or other relevant documents at every stage of manufacture, and

— management of design or quality management system changes; and

(d) the verification and quality assurance techniques at the manufacturing stage and in particular the processes and procedures which are to be used, particularly as regards sterilisation and the relevant documents; and

(e) the appropriate tests and trials which are to be carried out before, during and after manufacture, the frequency with which they are to take place, and the test equipment to be used; it shall be possible to trace back adequately the calibration of that test equipment.

In addition, the manufacturer shall grant the notified body access to the technical documentation referred to in Annexes II and III.

2.3. Audit

The notified body shall audit the quality management system to determine whether it meets the requirements referred to in Section 2.2. Where the manufacturer uses a harmonised standard or CS related to a quality management system, the notified body shall assess conformity with those standards or CS. The notified body shall assume that a quality management system which satisfies the relevant harmonised standards or CS conforms to the requirements covered by those standards or CS, unless it duly substantiates not doing so.

The audit team of the notified body shall include at least one member with past experience of assessments of the technology concerned in accordance with Sections 4.3. to 4.5. of Annex VII. In circumstances where such experience is not immediately obvious or applicable, the notified body shall provide a documented rationale for the composition of that team. 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 verify the manufacturing and other relevant processes.

Moreover, in the case of class IIa and class IIb devices, the quality management system assessment shall be accompanied by the assessment of technical documentation for devices

selected on a representative basis in accordance with Sections 4.4 to 4.8. In choosing representative samples, the notified body shall take into account the published guidance developed by the MDCG pursuant to Article 105 and in particular the novelty of the technology, similarities in design, technology, manufacturing and sterilisation methods, the intended purpose and the results of any previous relevant assessments such as with regard to physical, chemical, biological or clinical properties, that have been carried out in accordance with this Regulation. The notified body in question shall document its rationale for the samples taken.

If the quality management system conforms to the relevant provisions of this Regulation, the notified body shall issue an EU quality management system certificate. The notified body shall notify the manufacturer of its decision to issue the certificate. The decision shall contain the conclusions of the audit and a reasoned report.

2.4. The manufacturer in question shall inform the notified body which approved the quality management system of any plan for substantial changes to the quality management system, or the device-range covered. The notified body shall assess the changes proposed, determine the need for additional audits and verify whether after those changes the quality management system still meets the requirements referred to in Section 2.2. It shall notify the manufacturer of its decision which shall contain the conclusions of the assessment, and where applicable, conclusions of additional audits. The approval of any substantial change to the quality management system or the device-range covered shall take the form of a supplement to the EU quality management system certificate.

3. Surveillance assessment applicable to class IIa, class IIb and class III devices

3.1. The aim of surveillance is to ensure that the manufacturer duly fulfils the obligations arising from the approved quality management system.

3.2. The manufacturer shall give authorisation to the notified body to carry out all the necessary audits, including on-site audits, and supply it with all relevant information, in particular:

— the documentation on its quality management system,

— documentation on any findings and conclusions resulting from the application of the post-market surveillance plan, including the PMCF plan, for a representative sample of devices, and of the provisions on vigilance set out in Articles 87 to 92,

— 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 4 of Annex I, and

— the data stipulated in the part of the quality management system relating to manufacture, such as quality control reports and test data, calibration data, and records on the qualifications of the personnel concerned.

3.3. Notified bodies shall periodically, at least once every 12 months, carry out appropriate audits and assessments to make sure that the manufacturer in question applies the approved quality management system and the post-market surveillance plan. Those audits and assessments shall include audits on the premises of the manufacturer and, if appropriate, of the manufacturer's suppliers and/or subcontractors. At the time of such on-site audits, 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 a surveillance audit report and, if a test has been carried out, with a test report.

3.4. The notified body shall randomly perform at least once every five years unannounced audits on the site of the manufacturer and, where appropriate, of the manufacturer's suppliers and/or subcontractors, which may be combined with the periodic surveillance assessment referred to in Section 3.3. or be performed in addition to that surveillance assessment. The notified body shall establish a plan for such unannounced on-site audits but shall not disclose it to the manufacturer.

Within the context of such unannounced on-site audits, the notified body shall test an adequate sample of the devices produced or an adequate sample from the manufacturing process to verify that the manufactured device is in conformity with the technical documentation, with the exception of the devices referred to in the second subparagraph of Article 52(8). Prior to unannounced on-site audits, the notified body shall specify the relevant sampling criteria and testing procedure.

Instead of, or in addition to, sampling referred to in the second paragraph, the notified body shall take samples of devices from the market to verify that the manufactured device is in conformity with the technical documentation, with the exception of the devices referred to in the second subparagraph of Article 52(8). Prior to the sampling, the notified body in question shall specify the relevant sampling criteria and testing procedure.

The notified body shall provide the manufacturer in question with an on-site audit report which shall include, if applicable, the result of the sample test.

3.5. In the case of class IIa and class IIb devices, the surveillance assessment shall also include an assessment of the technical documentation as referred to in Sections 4.4 to 4.8 for the device or devices concerned on the basis of further representative samples chosen in accordance with the rationale documented by the notified body in accordance with the second paragraph of Section 2.3.

In the case of class III devices, the surveillance assessment shall also include a test of the approved parts and/or materials that are essential for the integrity of the device, including, where appropriate, a check that the quantities of produced or purchased parts and/or materials correspond to the quantities of finished devices.

3.6. The notified body shall ensure that the composition of the assessment team is such that there is sufficient experience with the evaluation of the devices, systems and processes 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 neither lead nor attend audits for more than three consecutive years in respect of the same manufacturer.

3.7. If the notified body finds a divergence between the sample taken from the devices produced 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

ASSESSMENT OF THE TECHNICAL DOCUMENTATION

4. Assessment of the technical documentation applicable to class III devices and to the class IIb devices referred to in the second subparagraph of Article 52(4)

4.1. In addition to the obligations laid down in Section 2, the manufacturer shall lodge with the notified body an application for assessment of the technical documentation relating to the device which it plans to place on the market or put into service and which is covered by the quality management system referred to in Section 2.

4.2. The application shall describe the design, manufacture and performance of the device in question. It shall include the technical documentation as referred to in Annexes II and III.

4.3. The notified body shall examine the application by using staff, employed by it, with proven knowledge and experience regarding the technology concerned and its clinical application. The notified body may require the application to be completed by having further tests carried out or requesting further evidence to be provided to allow assessment of conformity with the relevant requirements of the 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.

4.4. The notified body shall review the clinical evidence presented by the manufacturer in the clinical evaluation report and the related clinical evaluation that was conducted. The notified body shall employ device reviewers with sufficient clinical expertise and, if necessary, use external clinical experts with direct and current experience relating to the device in question or the clinical condition in which it is utilised, for the purposes of that review.

4.5. The notified body shall, in circumstances in which the clinical evidence is based partly or totally on data from devices which are claimed to be equivalent to the device under assessment, assess the suitability of using such data, taking into account factors such as new indications and innovation. The notified body shall clearly document its conclusions on the claimed equivalence, and on the relevance and adequacy of the data for demonstrating conformity. For any characteristic of the device claimed as innovative by the manufacturer or for new indications, the notified body shall assess to what extent specific claims are supported by specific pre-clinical and clinical data and risk analysis.

4.6. The notified body shall verify that the clinical evidence and the clinical evaluation are adequate and shall verify the conclusions drawn by the manufacturer on the conformity with the relevant general safety and performance requirements. That verification shall include consideration of the adequacy of the benefit-risk determination, the risk management, the instructions for use, the user training and the manufacturer's post-market surveillance plan, and include a review of the need for, and the adequacy of, the PMCF plan proposed, where applicable.

4.7. Based on its assessment of the clinical evidence, the notified body shall consider the clinical evaluation and the benefit-risk determination, and whether specific milestones need to be defined to allow the notified body to review updates to the clinical evidence that result from post-market surveillance and PMCF data.

4.8. The notified body shall clearly document the outcome of its assessment in the clinical evaluation assessment report.

4.9. The notified body shall provide the manufacturer with a report on the technical documentation assessment, including a clinical evaluation assessment report. If the device conforms to the relevant provisions of this Regulation, the notified body shall issue an EU technical documentation assessment certificate. The certificate shall contain the conclusions of the technical documentation assessment, the conditions of

the certificate's validity, the data needed for identification of the approved design, and, where appropriate, a description of the intended purpose of the device.

4.10. Changes to the approved device shall require approval from the notified body which issued the EU technical documentation assessment certificate where such changes could affect the safety and performance of the device or the conditions prescribed for use of the device. Where the manufacturer plans to introduce any of the above-mentioned changes it shall inform the notified body which issued the EU technical documentation assessment certificate thereof. The notified body shall assess the planned changes and decide whether the planned changes require a new conformity assessment in accordance with Article 52 or whether they could be addressed by means of a supplement to the EU technical documentation assessment certificate. In the latter case, the notified body shall assess the changes, notify the manufacturer of its decision and, where the changes are approved, provide it with a supplement to the EU technical documentation assessment certificate.

5. Specific additional procedures

5.1. Assessment procedure for certain class III and class IIb devices

(a) For class III implantable devices, and for class IIb active devices intended to administer and/or remove a medicinal product as referred to in Section 6.4. of Annex VIII (Rule 12), the notified body shall, having verified the quality of clinical data supporting the clinical evaluation report of the manufacturer referred to in Article 61(12), prepare a clinical evaluation assessment report which sets out its conclusions concerning the clinical evidence provided by the manufacturer, in particular concerning the benefit-risk determination, the consistency of that evidence with the intended purpose, including the medical indication or indications and the PMCF plan referred to in Article 10(3) and Part B of Annex XIV.

The notified body shall transmit its clinical evaluation assessment report, along with the manufacturer's clinical evaluation documentation, referred to in points (c) and (d) of Section 6.1 of Annex II, to the Commission.

The Commission shall immediately transmit those documents to the relevant expert panel referred to in Article 106.

(b) The notified body may be requested to present its conclusions as referred to in point (a) to the expert panel concerned.

(c) The expert panel shall decide, under the supervision of the Commission, on the basis of all of the following criteria:

(i) the novelty of the device or of the related clinical procedure involved, and the possible major clinical or health impact thereof;

(ii) a significantly adverse change in the benefit-risk 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 the case of failure of the device;

(iii) a significantly increased rate of serious incidents reported in accordance with Article 87 in respect of a specific category or group of devices,

whether to provide a scientific opinion on the clinical evaluation assessment report of the notified body based on the clinical evidence provided by the manufacturer, in particular concerning the benefit-risk determination, the consistency of that evidence

with the medical indication or indications and the PMCF plan. That scientific opinion shall be provided within a period of 60 days, starting on the day of receipt of the documents from the Commission as referred to in point (a). The reasons for the decision to provide a scientific opinion on the basis of the criteria in points (i), (ii) and (iii) shall be included in the scientific opinion. Where the information submitted is not sufficient for the expert panel to reach a conclusion, this shall be stated in the scientific opinion.

(d) The expert panel may decide, under the supervision of the Commission, on the basis of the criteria laid down in point (c) not to provide a scientific opinion, in which case it shall inform the notified body as soon as possible and in any event within 21 days of receipt of the documents as referred to in point (a) from the Commission. The expert panel shall within that time limit provide the notified body and the Commission with the reasons for its decision, whereupon the notified body may proceed with the certification procedure of that device.

(e) The expert panel shall within 21 days of receipt of the documents from the Commission notify the Commission, through Eudamed whether it intends to provide a scientific opinion, pursuant to point (c), or whether it intends not to provide a scientific opinion, pursuant to point (d).

(f) Where no opinion has been delivered within a period of 60 days, the notified body may proceed with the certification procedure of the device in question.

(g) The notified body shall give due consideration to the views expressed in the scientific opinion of the expert panel. Where the expert panel finds that the level of clinical evidence is not sufficient or otherwise gives rise to serious concerns about the benefit-risk determination, the consistency of that evidence with the intended purpose, including the medical indication(s), and with the PMCF plan, the notified body shall, if necessary, advise the manufacturer to restrict the intended purpose of the device to certain groups of patients or certain medical indications and/or to impose a limit on the duration of validity of the certificate, to undertake specific PMCF studies, to adapt the instructions for use or the summary of safety and performance, or to impose other restrictions in its conformity assessment report, as appropriate. The notified body shall provide a full justification where it has not followed the advice of the expert panel in its conformity assessment report and the Commission shall without prejudice to Article 109 make both the scientific opinion of the expert panel and the written justification provided by the notified body publicly available via Eudamed.

(h) The Commission, after consultation with the Member States and relevant scientific experts shall provide guidance for expert panels for consistent interpretation of the criteria in point (c) before 26 May 2020.

5.2. Procedure in the case of devices incorporating a medicinal substance

(a) 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 point 2 of Article 1 of Directive 2001/83/EC, including a medicinal product derived from human blood or human plasma and that has an action ancillary to that of the device, the quality, safety and usefulness of the substance shall be verified by analogy with the methods specified in Annex I to Directive 2001/83/EC.

(b) Before issuing an EU technical documentation assessment certificate, the notified body shall, having verified the usefulness of the substance as part of the device and taking account of the intended purpose of the device, seek a scientific opinion from

one of the competent authorities designated by the Member States in accordance with Directive 2001/83/EC or from the EMA, either of which to be referred to in this Section as 'the medicinal products authority consulted' depending on which has been consulted under this point, on the quality and safety of the substance including the benefit or risk of the incorporation of the substance into the device. Where the device incorporates a human blood or plasma derivative or a substance that, if used separately, may be considered to be a medicinal product falling exclusively within the scope of the Annex to Regulation (EC) No 726/2004, the notified body shall seek the opinion of the EMA.

(c) When issuing its opinion, the medicinal products authority consulted shall take into account the manufacturing process and the data relating to the usefulness of incorporation of the substance into the device as determined by the notified body.

(d) The medicinal products authority consulted shall provide its opinion to the notified body within 210 days of receipt of all the necessary documentation.

(e) The scientific opinion of the medicinal products authority consulted, and any possible update of that opinion, 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 and shall convey its final decision to the medicinal products authority consulted.

(f) Before any change is made with respect to an ancillary substance incorporated in a device, in particular related to its manufacturing process, the manufacturer shall inform the notified body of the changes. That notified body shall seek the opinion of the medicinal products authority consulted, in order to confirm that the quality and safety of the ancillary substance remain unchanged. The medicinal products authority consulted shall take into account the data relating to the usefulness of incorporation of the substance into the device as determined by the notified body, in order to ensure that the changes have no negative impact on the risk or benefit previously established concerning the incorporation of the substance into the device. The medicinal products authority consulted shall provide its opinion within 60 days after receipt of all the necessary documentation regarding the changes. The notified body shall not deliver the supplement to the EU technical documentation assessment certificate if the scientific opinion provided by the medicinal products authority consulted is unfavourable. The notified body shall convey its final decision to the medicinal products authority consulted.

(g) Where the medicinal products authority consulted obtains information on the ancillary substance, which could have an impact on the risk or benefit previously established concerning the incorporation of the substance into the device, it shall advise the notified body as to whether this information has an impact on the risk or benefit previously established concerning the incorporation of the substance into the device. The notified body shall take that advice into account in reconsidering its assessment of the conformity assessment procedure.

5.3. Procedure in the case of devices manufactured utilising, or incorporating, tissues or cells of human or animal origin, or their derivatives, that are non-viable or rendered non-viable

5.3.1. Tissues or cells of human origin or their derivatives

(a) For devices manufactured utilising derivatives of tissues or cells of human origin that are covered by this Regulation in accordance with point (g) of Article 1(6) and for devices that incorporate, as an integral part, tissues or cells of human origin, or their derivatives, covered by Directive 2004/23/EC, that have an action ancillary to that of the device, the notified body shall, prior to issuing an EU technical documentation assessment certificate, seek a scientific opinion from one of the competent authorities designated by the Member States in accordance with Directive 2004/23/EC ('human tissues and cells competent authority') on the aspects relating to the donation, procurement and testing of tissues or cells of human origin or their derivatives. The notified body shall submit a summary of the preliminary conformity assessment which provides, among other things, information about the non-viability of the human tissues or cells in question, their donation, procurement and testing and the risk or benefit of the incorporation of the tissues or cells of human origin or their derivatives into the device.

(b) Within 120 days of receipt of all the necessary documentation, the human tissues and cells competent authority shall provide to the notified body its opinion.

(c) The scientific opinion of the human tissues and cells competent authority, 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 of the human tissues and cells competent authority when making its decision. The notified body shall not deliver the certificate if that scientific opinion is unfavourable. It shall convey its final decision to the human tissues and cells competent authority concerned.

(d) Before any change is made with respect to non-viable tissues or cells of human origin or their derivatives incorporated in a device, in particular relating to their donation, testing or procurement, the manufacturer shall inform the notified body of the intended changes. The notified body shall consult the authority that was involved in the initial consultation, in order to confirm that the quality and safety of the tissues or cells of human origin or their derivatives incorporated in the device are maintained. The human tissues and cells competent authority concerned shall take into account the data relating to the usefulness of incorporation of the tissues or cells of human origin or their derivatives into the device as determined by the notified body, in order to ensure that the changes have no negative impact on the established benefit-risk ratio of the addition of the tissues or cells of human origin or their derivatives in the device. It shall provide its opinion within 60 days of receipt of all the necessary documentation regarding the intended changes. The notified body shall not deliver a supplement to the EU technical documentation assessment certificate if the scientific opinion is unfavourable and shall convey its final decision to the human tissues and cells competent authority concerned.

5.3.2. Tissues or cells of animal origin or their derivatives

In the case of devices manufactured utilising animal tissue which is rendered non-viable or utilising non-viable products derived from animal tissue, as referred to in Regulation (EU) No 722/2012, the notified body shall apply the relevant requirements laid down in that Regulation.

5.4. Procedure in the case of devices that are composed of substances or of combinations of substances that are absorbed by or locally dispersed in the human body

(a) The quality and safety of devices that are composed of substances or of combinations of substances that are intended to be introduced into the human body via a body orifice

or applied to the skin and that are absorbed by, or locally dispersed in, the human body, shall be verified where applicable and only in respect of the requirements not covered by this Regulation, in accordance with the relevant requirements laid down in Annex I to Directive 2001/83/EC for the evaluation of absorption, distribution, metabolism, excretion, local tolerance, toxicity, interaction with other devices, medicinal products or other substances and potential for adverse reactions.

(b) In addition, for devices, or their products of metabolism, that are systemically absorbed by the human body in order to achieve their intended purpose, the notified body shall seek a scientific opinion from one of the competent authorities designated by the Member States in accordance with Directive 2001/83/EC or from the EMA, either of which to be referred to in this Section as 'the medicinal products authority consulted' depending on which has been consulted under this point, on the compliance of the device with the relevant requirements laid down in Annex I to Directive 2001/83/EC.

(c) The opinion of the medicinal products authority consulted shall be drawn up within 150 days of receipt of all the necessary documentation.

(d) The scientific opinion of the medicinal products authority consulted, 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 and shall convey its final decision to the medicinal products authority consulted.

6. Batch verification in the case of devices incorporating, as an integral part, a medicinal substance which, if used separately, would be considered to be a medicinal product derived from human blood or human plasma as referred to in Article 1(8)

Upon completing the manufacture of each batch of devices that incorporate, as an integral part, a medicinal substance which, if used separately, would be considered to be a medicinal product derived from human blood or human plasma as referred to in the first subparagraph of Article 1(8), the manufacturer shall inform the notified body of the release of the batch of devices and send it the official certificate concerning the release of the batch of human blood or plasma derivative used in the device, issued by a Member State laboratory or a laboratory designated for that purpose by a Member State in accordance with Article 114(2) of Directive 2001/83/EC.

CHAPTER III

ADMINISTRATIVE PROVISIONS

7. The manufacturer or, where the manufacturer does not have a registered place of business in a Member State, its authorised representative shall, for a period ending no sooner than 10 years, and in the case of implantable devices no sooner than 15 years, after the last device has been placed on the market, keep at the disposal of the competent authorities:

— the EU declaration of conformity,

— the documentation referred to in the fifth indent of Section 2.1 and in particular the data and records arising from the procedures referred to in point (c) of the second paragraph of Section 2.2,

— information on the changes referred to in Section 2.4,

— the documentation referred to in Section 4.2, and

— the decisions and reports from the notified body as referred to in this Annex.

8. Each Member State shall require that the documentation referred to in Section 7 is kept at the disposal of competent authorities for the period indicated in that Section in case a manufacturer, or its authorised representative, established within its territory goes bankrupt or ceases its business activity prior to the end of that period.

ANNEX X

CONFORMITY ASSESSMENT BASED ON TYPE-EXAMINATION

1. EU type-examination is the procedure whereby a notified body ascertains and certifies that a device, including its technical documentation and relevant life cycle processes and a corresponding representative sample of the device production envisaged, fulfils the relevant provisions of this Regulation.

2. Application

The manufacturer shall lodge an application for assessment with a notified body. The application shall include:

— the name of the manufacturer and address of the registered place of business of the manufacturer and, if the application is lodged by the authorised representative, the name of the authorised representative and the address of its registered place of business,

— the technical documentation referred to in Annexes II and III. The applicant shall make a representative sample of the device production envisaged ('type') available to the notified body. The notified body may request other samples as necessary, and

— 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 was refused by another notified body or was withdrawn by the manufacturer or its authorised representative before that other notified body made its final assessment.

3. Assessment

The notified body shall:

(a) examine the application by using staff with proven knowledge and experience regarding the technology concerned and its clinical application. The notified body may require the application to be completed by having further tests carried out or requesting further evidence to be provided to allow assessment of conformity with the relevant 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;

(b) examine and assess the technical documentation for conformity with the requirements of this Regulation that are applicable to the device 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 standards referred to in Article 8 or with applicable CS, and record the items not designed on the basis of the relevant standards referred to in Article 8 or of the relevant CS;

(c) review the clinical evidence presented by the manufacturer in the clinical evaluation report in accordance with Section 4 of Annex XIV. The notified body shall employ device reviewers with sufficient clinical expertise and, if necessary, use external

clinical experts with direct and current experience relating to the device in question or to the clinical condition in which it is utilised, for the purposes of that review;

(d) in circumstances in which the clinical evidence is based partly or totally on data from devices which are claimed to be similar or equivalent to the device under assessment, assess the suitability of using such data, taking into account factors such as new indications and innovation. The notified body shall clearly document its conclusions on the claimed equivalence, and on the relevance and adequacy of the data for demonstrating conformity;

(e) clearly document the outcome of its assessment in a pre-clinical and clinical evaluation assessment report as part of the EU type examination report referred to in point (i);

(f) 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 laid down in this Regulation, in the event that the standards referred to in Article 8 or the CS have not been applied. Where the device has to be connected to another device or devices 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 device or devices having the characteristics specified by the manufacturer;

(g) carry out or arrange for the appropriate assessments and the physical or laboratory tests necessary to verify whether, in the event that the manufacturer has chosen to apply the relevant harmonised standards, those standards have actually been applied;

(h) agree with the applicant on the place where the necessary assessments and tests are to be carried out; and

(i) draw up an EU type-examination report on the results of the assessments and tests carried out under points (a) to (g).

4. Certificate

If the type conforms to 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 type examination assessment, the conditions of the certificate's validity and the data needed for identification of the type approved. The certificate shall be drawn up in accordance with Annex XII. 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 or of its intended purpose and conditions of use.

5.2. Changes to the approved device including limitations of its intended purpose and conditions of use shall require approval from the notified body which issued the EU type-examination certificate where such 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 EU type-examination certificate.

5.3. Changes to the intended purpose and conditions of use of the approved device, with the exception of limitations of the intended purpose and conditions of use, shall necessitate a new application for a conformity assessment.

6. Specific additional procedures

Section 5 of Annex IX shall apply with the proviso that any reference to an EU technical documentation assessment certificate shall be understood as a reference to an EU type-examination certificate.

7. Administrative provisions

The manufacturer or, where the manufacturer does not have a registered place of business in a Member State, its authorised representative shall, for a period ending no sooner than 10 years, and in the case of implantable devices no sooner than 15 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,

— information on the changes referred to in Section 5, and

— copies of EU type-examination certificates, scientific opinions and reports and their additions/supplements.

Section 8 of Annex IX shall apply.

ANNEX XI

CONFORMITY ASSESSMENT BASED ON PRODUCT CONFORMITY VERIFICATION

1. The objective of the conformity assessment based on product conformity verification is to ensure that devices conform to the type for which an EU type-examination certificate has been issued, and that they meet the provisions of this Regulation which apply to them.

2. Where an EU type-examination certificate has been issued in accordance with Annex X, the manufacturer may either apply the procedure set out in Part A (production quality assurance) or the procedure set out in Part B (product verification) of this Annex.

3. By way of derogation from Sections 1 and 2 above, the procedures in this Annex coupled with the drawing up of technical documentation as set out in Annexes II and III may also be applied by manufacturers of class IIa devices.

PART A

PRODUCTION QUALITY ASSURANCE

4. The manufacturer shall ensure that the quality management system approved for the manufacture of the devices concerned is implemented, shall carry out a final verification, as specified in Section 6, and shall be subject to the surveillance referred to in Section 7.

5. When the manufacturer fulfils the obligations laid down in Section 4, it shall draw up and keep an EU declaration of conformity in accordance with Article 19 and Annex IV for the device covered by the conformity assessment procedure. By issuing an EU declaration of conformity, the manufacturer shall be deemed to ensure and to declare that the device concerned conforms to the type described in the EU type-examination certificate and meets the requirements of this Regulation which apply to the device.

6. Quality management system

6.1. The manufacturer shall lodge an application for assessment of its quality management system with a notified body. The application shall include:

— all elements listed in Section 2.1 of Annex IX,

— the technical documentation referred to in Annexes II and III for the types approved, and

— a copy of the EU type-examination certificates referred to in Section 4 of Annex X; 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 its updates and the certificates issued shall also be included in the application.

6.2. Implementation of the quality management system shall be such as to ensure that there is compliance with the type described in the EU type-examination certificate and with the provisions of this Regulation which apply to the devices at each stage. All the elements, requirements and provisions adopted by the manufacturer for its quality management system shall be documented in a systematic and orderly manner in the form of a quality manual and written policies and procedures, such as quality programmes, quality plans and quality records.

That documentation shall, in particular, include an adequate description of all elements listed in points (a), (b), (d) and (e) of Section 2.2 of Annex IX.

6.3. The first and second paragraph of Section 2.3 of Annex IX shall apply.

If the quality management system is such that it ensures that the devices conform to the type described in the EU type-examination certificate and that it conforms to the relevant provisions of this Regulation, the notified body shall issue an EU quality assurance certificate. The notified body shall notify the manufacturer of its decision to issue the certificate. That decision shall contain the conclusions of the notified body's audit and a reasoned assessment.

6.4. Section 2.4 of Annex IX shall apply.

7. Surveillance

Section 3.1, the first, second and fourth indents of Section 3.2, Sections 3.3, 3.4, 3.6 and 3.7 of Annex IX shall apply.

In the case of class III devices, surveillance shall also include a check that the quantities of produced or purchased raw material or crucial components approved for the type and correspond to the quantities of finished devices.

8. Batch verification in the case of devices incorporating, as an integral part, a medicinal substance which, if used separately, would be considered to be a medicinal product derived from human blood or human plasma referred to in Article 1(8).

Upon completing the manufacture of each batch of devices that incorporate, as an integral part, a medicinal substance which, if used separately, would be considered to be a medicinal product derived from human blood or human plasma referred to in the first subparagraph of Article 1(8),

the manufacturer shall inform the notified body of the release of the batch of devices and send it the official certificate concerning the release of the batch of human blood or plasma derivative used in the device, issued by a Member State laboratory or a laboratory designated for that purpose by a Member State in accordance with Article 114(2) of Directive 2001/83/EC.

9. Administrative provisions

The manufacturer or, where the manufacturer does not have a registered place of business in a Member State, its authorised representative shall, for a period ending no sooner than 10 years, and in the case of implantable devices no sooner than 15 years, after the last device has been placed on the market, keep at the disposal of the competent authorities:

— the EU declaration of conformity,

— the documentation referred to in the fifth indent of Section 2.1 of Annex IX,

— the documentation referred to in the eighth indent of Section 2.1 of Annex IX, including the EU type-examination certificate referred to in Annex X,

— information on the changes referred to in Section 2.4 of Annex IX, and

— the decisions and reports from the notified body as referred to in Sections 2.3, 3.3 and 3.4 of Annex IX.

Section 8 of Annex IX shall apply.

10. Application to class IIa devices

10.1. By way of derogation from Section 5, by virtue of the EU declaration of conformity the manufacturer shall be deemed to ensure and to declare that the class IIa devices in question are manufactured in conformity with the technical documentation referred to in Annexes II and III and meet the requirements of this Regulation which apply to them.

10.2. For class IIa devices the notified body shall assess, as part of the assessment referred to in Section 6.3, whether the technical documentation as referred to in Annexes II and III for the devices selected on a representative basis is compliant with this Regulation.

In choosing a representative sample or samples of devices, the notified body shall take into account the novelty of the technology, similarities in design, technology, manufacturing and sterilisation methods, the intended use and the results of any previous relevant assessments (e.g. with regard to physical, chemical, biological or clinical properties) that have been carried out in accordance with this Regulation. The notified body shall document its rationale for the sample or samples of devices taken.

10.3. Where the assessment under Section 10.2. confirms that the class IIa devices in question conform to the technical documentation referred to in Annexes II and III and meet the requirements of this Regulation which apply to them, the notified body shall issue a certificate pursuant to this Part of this Annex.

10.4. Samples additional to those taken for the initial conformity assessment of devices shall be assessed by the notified body as part of the surveillance assessment referred to in Section 7.

10.5. By way of derogation from Section 6, the manufacturer or its authorised representative shall, for a period ending no sooner than 10 years after the last device has been placed on the market, keep at the disposal of the competent authorities:

— the EU declaration of conformity,

— the technical documentation referred to in Annexes II and III, and

— the certificate referred to in Section 10.3.

Section 8 of Annex IX shall apply.

PART B

PRODUCT VERIFICATION

11. Product verification shall be understood to be the procedure whereby after examination of every manufactured device, the manufacturer, by issuing an EU declaration of conformity in accordance with Article 19 and Annex IV, shall be deemed to ensure and to declare that the devices which have been subject to the procedure set out in Sections 14 and 15 conform to the type described in the EU type-examination certificate and meet the requirements of this Regulation which apply to them.

12. The manufacturer shall take all the measures necessary to ensure that the manufacturing process produces devices which conform to the type described in the EU type-examination certificate and to the requirements of the Regulation which apply to them. Prior to the start of manufacture, the manufacturer shall prepare documents defining the manufacturing process, in particular as regards sterilisation where necessary, together with all routine, pre-established procedures to be implemented to ensure homogeneous production and, where appropriate, conformity of the devices with the type described in the EU type-examination certificate and with the requirements of this Regulation which apply to them.

In addition, for devices placed on the market in a sterile condition, and only for those aspects of the manufacturing process designed to secure and maintain sterility, the manufacturer shall apply the provisions of Sections 6 and 7.

13. The manufacturer shall undertake to institute and keep up to date a post-market surveillance plan, including a PMCF plan, and the procedures ensuring compliance with the obligations of the manufacturer resulting from the provisions on vigilance and post-market surveillance system set out in Chapter VII.

14. The notified body shall carry out the appropriate examinations and tests in order to verify the conformity of the device with the requirements of the Regulation by examining and testing every product as specified in Section 15.

The examinations and tests referred to in the first paragraph of this Section shall not apply to aspects of the manufacturing process designed to secure sterility.

15. Verification by examination and testing of every product

15.1. Every device shall be examined individually and the appropriate physical or laboratory tests as defined in the relevant standard or standards referred to in Article 8, or equivalent tests and assessments, shall be carried out in order to verify, where appropriate, the conformity of the devices with the type described in the EU type-examination certificate and with the requirements of this Regulation which apply to them.

15.2. The notified body shall affix, or have affixed, its identification number to each approved device and shall draw up an EU product verification certificate relating to the tests and assessments carried out.

16. Batch verification in the case of devices incorporating, as an integral part, a medicinal substance which, if used separately, would be considered to be a medicinal product derived from human blood or human plasma referred to in Article 1(8).

Upon completing the manufacture of each batch of devices that incorporate, as an integral part, a medicinal substance which, if used separately, would be considered to be a medicinal product derived from human blood or human plasma referred to in the first subparagraph of Article 1(8), the manufacturer shall inform the notified body of the release of the batch of devices and send it the official certificate concerning the release of the batch of human blood or plasma derivative used in the device, issued by a Member State laboratory or a laboratory designated for that purpose by a Member State in accordance with Article 114(2) of Directive 2001/83/EC.

17. Administrative provisions

The manufacturer or its authorised representative shall, for a period ending no sooner than 10 years, and in the case of implantable devices no sooner than 15 years, after the last device has been placed on the market, keep at the disposal of the competent authorities:

— the EU declaration of conformity,
— the documentation referred to in Section 12,
— the certificate referred to in Section 15.2, and
— the EU type-examination certificate referred to in Annex X.

Section 8 of Annex IX shall apply.

18. Application to class IIa devices

18.1. By way of derogation from Section 11, by virtue of the EU declaration of conformity the manufacturer shall be deemed to ensure and to declare that the class IIa devices in question are manufactured in conformity with the technical documentation referred to in Annexes II and III and meet the requirements of this Regulation which apply to them.

18.2. The verification conducted by the notified body in accordance with Section 14 is intended to confirm the conformity of the class IIa devices in question with the technical documentation referred to in Annexes II and III and with the requirements of this Regulation which apply to them.

18.3. If the verification referred to in Section 18.2 confirms that the class IIa devices in question conform to the technical documentation referred to in Annexes II and III and meet the requirements of this Regulation which apply to them, the notified body shall issue a certificate pursuant to this Part of this Annex.

18.4. By way of derogation from Section 17, the manufacturer or its authorised representative shall, for a period ending no sooner than 10 years after the last device has been placed on the market, keep at the disposal of the competent authorities:

— the EU declaration of conformity,
— the technical documentation referred to in Annexes II and III, and
— the certificate referred to in Section 18.3.

Section 8 of Annex IX shall apply.

ANNEX XII

CERTIFICATES ISSUED BY A NOTIFIED BODY

CHAPTER I

GENERAL REQUIREMENTS

1. Certificates shall be drawn up in one of the official languages of the Union.

2. Each certificate shall refer to only one conformity assessment procedure.

3. Certificates shall only be issued to one manufacturer. The name and address of the manufacturer included in the certificate shall be the same as that registered in the electronic system referred to in Article 30.

4. The scope of the certificates shall unambiguously identify the device or devices covered:

(a) EU technical documentation assessment certificates, EU type-examination certificates and EU product verification certificates shall include a clear identification, including the name, model and type, of the device or devices, the intended purpose, as included by the manufacturer in the instructions for use and in relation to which the device has been assessed in the conformity assessment procedure, risk classification and the Basic UDI-DI as referred to in Article 27(6);

(b) EU quality management system certificates and EU quality assurance certificates shall include the identification of the devices or groups of devices, the risk classification, and, for class IIb devices, the intended purpose.

5. The notified body shall be able to demonstrate on request, which (individual) devices are covered by the certificate. The notified body shall set up a system that enables the determination of the devices, including their classification, covered by the certificate.

6. Certificates shall contain, if applicable, a note that, for the placing on the market of the device or devices it covers, another certificate issued in accordance with this Regulation is required.

7. EU quality management system certificates and EU quality assurance certificates for class I devices for which the involvement of a notified body is required pursuant to Article 52(7) shall include a statement that the audit by the notified body of the quality management system was limited to the aspects required under that paragraph.

8. Where a certificate is supplemented, modified or re-issued, the new certificate shall contain a reference to the preceding certificate and its date of issue with identification of the changes.

CHAPTER II

MINIMUM CONTENT OF THE CERTIFICATES

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. if already issued, the SRN of the manufacturer referred to in to Article 31(2);

5. date of issue;

6. date of expiry;

7. data needed for the unambiguous identification of the device or devices where applicable as specified in Section 4 of Part I;

8. if applicable, reference to any previous certificate as specified in Section 8 of Chapter I;

9. reference to this Regulation and the relevant Annex in accordance with which the conformity assessment has been carried out;

10. examinations and tests performed, e.g. reference to relevant CS, harmonised standards, test reports and audit report(s);

11. if applicable, reference to the relevant parts of the technical documentation or other certificates required for the placing on the market of the device or devices covered;

12. if applicable, information about the surveillance by the notified body;

13. conclusions of the notified body's conformity assessment with regard to the relevant Annex;

14. conditions for or limitations to the validity of the certificate;

15. legally binding signature of the notified body in accordance with the applicable national law.

ANNEX XIII

PROCEDURE FOR CUSTOM-MADE DEVICES

1. For custom-made devices, the manufacturer or its authorised representative shall draw up a statement containing all of the following information:

— the name and address of the manufacturer, and of all manufacturing sites,

— if applicable, the name and address of the authorised representative,

— data allowing identification of the device in question,

— a statement that the device is intended for exclusive use by a particular patient or user, identified by name, an acronym or a numerical code,

— the name of the person who made out the prescription and who is authorised by national law by virtue of their professional qualifications to do so, and, where applicable, the name of the health institution concerned,

— the specific characteristics of the product as indicated by the prescription,

— a statement that the device in question conforms to the general safety and performance requirements set out in Annex I and, where applicable, indicating which general safety and performance requirements have not been fully met, together with the grounds,

— where applicable, an indication that the device contains or incorporates a medicinal substance, including a human blood or plasma derivative, or tissues or cells of human origin, or of animal origin as referred to in Regulation (EU) No 722/2012.

2. The manufacturer shall undertake to keep available for the competent national authorities documentation that indicates its manufacturing site or sites and allows an understanding to be formed of the design, manufacture and performance of the device, including the expected performance, so as to allow assessment of conformity with the requirements of this Regulation.

3. The manufacturer shall take all the measures necessary to ensure that the manufacturing process produces devices which are manufactured in accordance with the documentation referred to in Section 2.

4. The statement referred to in the introductory part of Section 1 shall be kept for a period of at least 10 years after the device has been placed on the market. In the case of implantable devices, the period shall be at least 15 years.

Section 8 of Annex IX shall apply.

5. The manufacturer shall review and document experience gained in the post-production phase, including from PMCF as referred to in Part B of Annex XIV, and implement appropriate means to apply any necessary corrective action, In that context, it shall report in accordance with Article 87(1) to the competent authorities any serious incidents or field safety corrective actions or both as soon as it learns of them.

ANNEX XIV

CLINICAL EVALUATION AND POST-MARKET CLINICAL FOLLOW-UP

PART A

CLINICAL EVALUATION

1. To plan, continuously conduct and document a clinical evaluation, manufacturers shall:

(a) establish and update a clinical evaluation plan, which shall include at least:

- an identification of the general safety and performance requirements that require support from relevant clinical data;
- a specification of the intended purpose of the device;
- a clear specification of intended target groups with clear indications and contra-indications;
- a detailed description of intended clinical benefits to patients with relevant and specified clinical outcome parameters;
- a specification of methods to be used for examination of qualitative and quantitative aspects of clinical safety with clear reference to the determination of residual risks and side-effects;
- an indicative list and specification of parameters to be used to determine, based on the state of the art in medicine, the acceptability of the benefit-risk ratio for the various indications and for the intended purpose or purposes of the device;

— an indication how benefit-risk issues relating to specific components such as use of pharmaceutical, non-viable animal or human tissues, are to be addressed; and

— a clinical development plan indicating progression from exploratory investigations, such as first-in-man studies, feasibility and pilot studies, to confirmatory investigations, such as pivotal clinical investigations, and a PMCF as referred to in Part B of this Annex with an indication of milestones and a description of potential acceptance criteria;

(b) identify available clinical data relevant to the device and its intended purpose and any gaps in clinical evidence through a systematic scientific literature review;

(c) appraise all relevant clinical data by evaluating their suitability for establishing the safety and performance of the device;

(d) generate, through properly designed clinical investigations in accordance with the clinical development plan, any new or additional clinical data necessary to address outstanding issues; and

(e) analyse all relevant clinical data in order to reach conclusions about the safety and clinical performance of the device including its clinical benefits.

2. The clinical evaluation shall be thorough and objective, and take into account both favourable and unfavourable data. Its depth and extent shall be proportionate and appropriate to the nature, classification, intended purpose and risks of the device in question, as well as to the manufacturer's claims in respect of the device.

3. A clinical evaluation may be based on clinical data relating to a device for which equivalence to the device in question can be demonstrated. The following technical, biological and clinical characteristics shall be taken into consideration for the demonstration of equivalence:

— Technical: the device is of similar design; is used under similar conditions of use; has similar specifications and properties including physicochemical properties such as intensity of energy, tensile strength, viscosity, surface characteristics, wavelength and software algorithms; uses similar deployment methods, where relevant; has similar principles of operation and critical performance requirements;

— Biological: the device uses the same materials or substances in contact with the same human tissues or body fluids for a similar kind and duration of contact and similar release characteristics of substances, including degradation products and leachables;

— Clinical: the device is used for the same clinical condition or purpose, including similar severity and stage of disease, at the same site in the body, in a similar population, including as regards age, anatomy and physiology; has the same kind of user; has similar relevant critical performance in view of the expected clinical effect for a specific intended purpose.

The characteristics listed in the first paragraph shall be similar to the extent that there would be no clinically significant difference in the safety and clinical performance of the device. Considerations of equivalence shall be based on proper scientific justification. It shall be clearly demonstrated that manufacturers have sufficient levels of access to the data relating to devices with which they are claiming equivalence in order to justify their claims of equivalence.

4. The results of the clinical evaluation and the clinical evidence on which it is based shall be documented in a clinical evaluation report which shall support the assessment of the conformity of the device.

The clinical evidence together with non-clinical data generated from non-clinical testing methods and other relevant documentation shall allow the manufacturer to demonstrate conformity with the general safety and performance requirements and shall be part of the technical documentation for the device in question.

Both favourable and unfavourable data considered in the clinical evaluation shall be included in the technical documentation.

PART B

POST-MARKET CLINICAL FOLLOW-UP

5. PMCF shall be understood to be a continuous process that updates the clinical evaluation referred to in Article 61 and Part A of this Annex and shall be addressed in the manufacturer's post-market surveillance plan. When conducting PMCF, the manufacturer shall proactively collect and evaluate clinical data from the use in or on humans of a device which bears the CE marking and is placed on the market or put into service within its intended purpose as referred to in the relevant conformity assessment procedure, with the aim of confirming the safety and performance throughout the expected lifetime of the device, of ensuring the continued acceptability of identified risks and of detecting emerging risks on the basis of factual evidence.

6. PMCF shall be performed pursuant to a documented method laid down in a PMCF plan.

6.1. The PMCF plan shall specify the methods and procedures for proactively collecting and evaluating clinical data with the aim of:

(a) confirming the safety and performance of the device throughout its expected lifetime,

(b) identifying previously unknown side-effects and monitoring the identified side-effects and contraindications,

(c) identifying and analysing emergent risks on the basis of factual evidence,

(d) ensuring the continued acceptability of the benefit-risk ratio referred to in Sections 1 and 9 of Annex I, and

(e) identifying possible systematic misuse or off-label use of the device, with a view to verifying that the intended purpose is correct.

6.2. The PMCF plan shall include at least:

(a) the general methods and procedures of the PMCF to be applied, such as gathering of clinical experience gained, feedback from users, screening of scientific literature and of other sources of clinical data;

(b) the specific methods and procedures of PMCF to be applied, such as evaluation of suitable registers or PMCF studies;

(c) a rationale for the appropriateness of the methods and procedures referred to in points (a) and (b);

(d) a reference to the relevant parts of the clinical evaluation report referred to in Section 4 and to the risk management referred to in Section 3 of Annex I;

(e) the specific objectives to be addressed by the PMCF;

(f) an evaluation of the clinical data relating to equivalent or similar devices;

(g) reference to any relevant CS, harmonised standards when used by the manufacturer, and relevant guidance on PMCF; and

(h) a detailed and adequately justified time schedule for PMCF activities (e.g. analysis of PMCF data and reporting) to be undertaken by the manufacturer.

7. The manufacturer shall analyse the findings of the PMCF and document the results in a PMCF evaluation report that shall be part of the clinical evaluation report and the technical documentation.

8. The conclusions of the PMCF evaluation report shall be taken into account for the clinical evaluation referred to in Article 61 and Part A of this Annex and in the risk management referred to in Section 3 of Annex I. If, through the PMCF, the need for preventive and/or corrective measures has been identified, the manufacturer shall implement them.

ANNEX XV

CLINICAL INVESTIGATIONS

CHAPTER I

GENERAL REQUIREMENTS

1. Ethical principles

Each step in the clinical investigation, from the initial consideration of the need for and justification of the study to the publication of the results, shall be carried out in accordance with recognised ethical principles.

2. Methods

2.1. Clinical investigations shall be performed on the basis of an appropriate plan of investigation reflecting the latest scientific and technical knowledge and defined in such a way as to confirm or refute the manufacturer's claims regarding the safety, performance and aspects relating to benefit-risk of devices as referred to in Article 62(1); the clinical investigations shall include an adequate number of observations to guarantee the scientific validity of the conclusions. The rationale for the design and chosen statistical methodology shall be presented as further described in Section 3.6 of Chapter II of this Annex.

2.2. The procedures used to perform the clinical investigation shall be appropriate to the device under investigation.

2.3. The research methodologies used to perform the clinical investigation shall be appropriate to the device under investigation.

2.4. Clinical investigations shall be performed in accordance with the clinical investigation plan by a sufficient number of intended users and in a clinical environment that is representative of the intended normal conditions of use of the device in the target

patient population. Clinical investigations shall be in line with the clinical evaluation plan as referred to in Part A of Annex XIV.

2.5. All the appropriate technical and functional features of the device, in particular those involving safety and performance, and their expected clinical outcomes shall be appropriately addressed in the investigational design. A list of the technical and functional features of the device and the related expected clinical outcomes shall be provided.

2.6. The endpoints of the clinical investigation shall address the intended purpose, clinical benefits, performance and safety of the device. The endpoints shall be determined and assessed using scientifically valid methodologies. The primary endpoint shall be appropriate to the device and clinically relevant.

2.7. Investigators shall have access to the technical and clinical data regarding the device. Personnel involved in the conduct of an investigation shall be adequately instructed and trained in the proper use of the investigational device, and as regards the clinical investigation plan and good clinical practice. This training shall be verified and where necessary arranged by the sponsor and documented appropriately.

2.8. The clinical investigation report, signed by the investigator, shall contain a critical evaluation of all the data collected during the clinical investigation, and shall include any negative findings.

CHAPTER II

DOCUMENTATION REGARDING THE APPLICATION FOR CLINICAL INVESTIGATION

For investigational devices covered by Article 62, the sponsor shall draw up and submit the application in accordance with Article 70 accompanied by the following documents:

1. Application form

The application form shall be duly filled in, containing information regarding:

1.1. name, address and contact details of the sponsor and, if applicable, name, address and contact details of its contact person or legal representative in accordance with Article 62(2) established in the Union;

1.2. if different from those in Section 1.1, name, address and contact details of the manufacturer of the device intended for clinical investigation and, if applicable, of its authorised representative;

1.3. title of the clinical investigation;

1.4. status of the clinical investigation application (i.e. first submission, resubmission, significant amendment);

1.5. details and/or reference to the clinical evaluation plan;

1.6. If the application is a resubmission with regard to a device for which an application has been already submitted, the date or dates and reference number or numbers of the earlier application or in the case of significant amendment, reference to the original application. The sponsor shall identify all of the changes from the previous application together with a rationale for those changes, in particular, whether any changes have

been made to address conclusions of previous competent authority or ethics committee reviews;

1.7. if the application is submitted in parallel with an application for a clinical trial in accordance with Regulation (EU) No 536/2014, reference to the official registration number of the clinical trial;

1.8. identification of the Member States and third countries in which the clinical investigation is to be conducted as part of a multicentre or multinational study at the time of application;

1.9. a brief description of the investigational device, its classification and other information necessary for the identification of the device and device type;

1.10. information as to whether the device incorporates a medicinal substance, including a human blood or plasma derivative or whether it is manufactured utilising non-viable tissues or cells of human or animal origin, or their derivatives;

1.11. summary of the clinical investigation plan including the objective or objectives of the clinical investigation, the number and gender of subjects, criteria for subject selection, whether there are subjects under 18 years of age, design of the investigation such as controlled and/or randomised studies, planned dates of commencement and of completion of the clinical investigation;

1.12. if applicable, information regarding a comparator device, its classification and other information necessary for the identification of the comparator device;

1.13. evidence from the sponsor that the clinical investigator and the investigational site are capable of conducting the clinical investigation in accordance with the clinical investigation plan;

1.14. details of the anticipated start date and duration of the investigation;

1.15. details to identify the notified body, if already involved at the stage of application for a clinical investigation;

1.16. confirmation that the sponsor is aware that the competent authority may contact the ethics committee that is assessing or has assessed the application; and

1.17. the statement referred to in Section 4.1.

2. Investigator's Brochure

The investigator's brochure (IB) shall contain the clinical and non-clinical information on the investigational device that is relevant for the investigation and available at the time of application. Any updates to the IB or other relevant information that is newly available shall be brought to the attention of the investigators in a timely manner. The IB 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 pursuant to Annex VIII, design and manufacturing of the device and reference to previous and similar generations of the device.

2.2. Manufacturer's instructions for installation, maintenance, maintaining hygiene standards and for use, including storage and handling requirements, as well as, to the extent that such information is available, information to be placed on the label, and

instructions for use to be provided with the device when placed on the market. In addition, information relating to any relevant training required.

2.3. Pre-clinical evaluation based on relevant pre-clinical testing and experimental data, in particular regarding in-design calculations, *in vitro* tests, *ex vivo* tests, animal tests, mechanical or electrical tests, reliability tests, sterilisation validation, software verification and validation, performance tests, evaluation of biocompatibility and biological safety, as applicable.

2.4. Existing clinical data, in particular:

— from relevant scientific literature available relating to the safety, performance, clinical benefits to patients, 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, clinical benefits to patients, 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, clinical benefit and safety-related issues and any corrective actions taken.

2.5. Summary of the benefit-risk analysis and the risk management, including information regarding known or foreseeable risks, any undesirable effects, contraindications and warnings.

2.6. In the case of devices that incorporate a medicinal substance, including a human blood or plasma derivative or devices manufactured utilising non-viable tissues or cells of human or animal origin, or their derivatives, detailed information on the medicinal substance or on the tissues, cells or their derivatives, and on the compliance with the relevant general safety and performance requirements and the specific risk management in relation to the substance or tissues, cells or their derivatives, as well as evidence for the added value of incorporation of such constituents in relation to the clinical benefit and/or safety of the device.

2.7. A list detailing the fulfilment of the relevant general safety and performance requirements set out in Annex I, including the standards and CS applied, in full or in part, as well as a description of the solutions for fulfilling the relevant general safety and performance requirements, in so far as those standards and CS have not or have only been partly fulfilled or are lacking.

2.8. A detailed description of the clinical procedures and diagnostic tests used in the course of the clinical investigation and in particular information on any deviation from normal clinical practice.

3. Clinical Investigation Plan

The clinical investigation plan (CIP) shall set out the rationale, objectives, design methodology, monitoring, conduct, record-keeping and the method of analysis for the clinical investigation. It shall contain in particular the information as laid down in this Annex. If part of this information is submitted in a separate document, it shall be referenced in the CIP.

3.1. General

3.1.1. Single identification number of the clinical investigation, as referred to in Article 70(1).

3.1.2. Identification of the sponsor — name, address and contact details of the sponsor and, where applicable, the name, address and contact details of the sponsor's contact person or legal representative in accordance with Article 62(2) established in the Union.

3.1.3. Information on the principal investigator at each investigational site, the coordinating investigator for the investigation, the address details for each investigational site and the emergency contact details for the principal investigator at each site. The roles, responsibilities and qualifications of the various kinds of investigators shall be specified in the CIP.

3.1.4. A brief description of how the clinical investigation is financed and a brief description of the agreement between the sponsor and the site.

3.1.5. Overall synopsis of the clinical investigation, in an official Union language determined by the Member State concerned.

3.2. Identification and description of the device, including its intended purpose, its manufacturer, its traceability, the target population, materials coming into contact with the human body, the medical or surgical procedures involved in its use and the necessary training and experience for its use, background literature review, the current state of the art in clinical care in the relevant field of application and the proposed benefits of the new device.

3.3. Risks and clinical benefits of the device to be examined, with justification of the corresponding expected clinical outcomes in the clinical investigation plan.

3.4. Description of the relevance of the clinical investigation in the context of the state of the art of clinical practice.

3.5. Objectives and hypotheses of the clinical investigation.

3.6. Design of the clinical investigation with evidence of its scientific robustness and validity.

3.6.1. General information such as type of investigation with rationale for choosing it, for its endpoints and for its variables as set out in the clinical evaluation plan.

3.6.2. Information on the investigational device, on any comparator and on any other device or medication to be used in the clinical investigation.

3.6.3. Information on subjects, selection criteria, size of investigation population, representativeness of investigation population in relation to target population and, if applicable, information on vulnerable subjects involved such as children, pregnant women, immuno-compromised or, elderly subjects.

3.6.4. Details of measures to be taken to minimise bias, such as randomisation, and management of potential confounding factors.

3.6.5. Description of the clinical procedures and diagnostic methods relating to the clinical investigation and in particular highlighting any deviation from normal clinical practice.

3.6.6. Monitoring plan.

3.7. Statistical considerations, with justification, including a power calculation for the sample size, if applicable.

3.8. Data management.

3.9. Information about any amendments to the CIP.

3.10. Policy regarding follow-up and management of any deviations from the CIP at the investigational site and clear prohibition of use of waivers from the CIP.

3.11. Accountability regarding the device, in particular control of access to the device, follow-up in relation to the device used in the clinical investigation and the return of unused, expired or malfunctioning devices.

3.12. Statement of compliance with the recognised ethical principles for medical research involving humans, and the principles of good clinical practice in the field of clinical investigations of devices, as well as with the applicable regulatory requirements.

3.13. Description of the Informed consent process.

3.14. Safety reporting, including definitions of adverse events and serious adverse events, device deficiencies, procedures and timelines for reporting.

3.15. Criteria and procedures for follow-up of subjects following the end, temporary halt or early termination of an investigation, for follow-up of subjects who have withdrawn their consent and procedures for subjects lost to follow-up. Such procedures shall for implantable devices, cover as a minimum traceability.

3.16. A description of the arrangements for taking care of the subjects after their participation in the clinical investigation has ended, where such additional care is necessary because of the subjects' participation in the clinical investigation and where it differs from that normally expected for the medical condition in question.

3.17. Policy as regards the establishment of the clinical investigation report and publication of results in accordance with the legal requirements and the ethical principles referred to in Section 1 of Chapter I.

3.18. List of the technical and functional features of the device, with specific mention of those covered by the investigation.

3.19. Bibliography.

4. Other information

4.1. A signed statement by the natural or legal person responsible for the manufacture of the investigational device that the device in question conforms to the general safety and performance requirements apart from the aspects covered by the clinical investigation and that, with regard to those aspects, every precaution has been taken to protect the health and safety of the subject.

4.2. Where applicable according to national law, copy of the opinion or opinions of the ethics committee or committees concerned. Where according to national law the opinion or opinions of the ethics committee or committees is not required at the time of the submission of the application, a copy of the opinion or opinions shall be submitted as soon as available.

4.3. Proof of insurance cover or indemnification of subjects in case of injury, pursuant to Article 69 and the corresponding national law.

4.4. Documents to be used to obtain informed consent, including the patient information sheet and the informed consent document.

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; and

— a description of measures that will be implemented in case of a data security breach in order to mitigate the possible adverse effects.

4.6. Full details of the available technical documentation, for example detailed risk analysis/management documentation or specific test reports, shall, upon request, be submitted to the competent authority reviewing an application.

CHAPTER III

OTHER OBLIGATIONS OF THE SPONSOR

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 II of this Annex. If the sponsor is not the natural or legal person responsible for the manufacture of the investigational device, that obligation may be fulfilled by that person on behalf of the sponsor.

2. The Sponsor shall have an agreement in place to ensure that any serious adverse events or any other event as referred to in Article 80(2) are reported by the investigator or investigators to the sponsor in a timely manner.

3. The documentation mentioned in this Annex shall be kept for a period of at least 10 years after the clinical investigation with the device in question has ended, or, in the event that the device is subsequently placed on the market, at least 10 years after the last device has been placed on the market. In the case of implantable devices, the period shall be at least 15 years.

Each Member State shall require that this documentation is kept at the disposal of the competent authorities for the period referred to in the first subparagraph in case the sponsor, or its contact person or legal representative as referred to in Article 62(2) established within its territory, goes bankrupt or ceases its activity prior to the end of this period.

4. The Sponsor shall appoint a monitor that is independent from the investigational site to ensure that the investigation is conducted in accordance with the CIP, the principles of good clinical practice and this Regulation.

5. The Sponsor shall complete the follow-up of investigation subjects.

6. The Sponsor shall provide evidence that the investigation is being conducted in line with good clinical practice, for instance through internal or external inspection.

7. The Sponsor shall prepare a clinical investigation report which includes at least the following:

— Cover/introductory page or pages indicating the title of the investigation, the investigational device, the single identification number, the CIP number and the details with signatures of the coordinating investigators and the principal investigators from each investigational site.
— Details of the author and date of the report.
— A summary of the investigation covering the title, purpose of the investigation, description of the investigation, investigational design and methods used, the results of the investigation and conclusion of the investigation. The completion date of the investigation, and in particular details of early termination, temporary halts or suspensions of investigations.
— Investigational device description, in particular clearly defined intended purpose.
— A summary of the clinical investigation plan covering objectives, design, ethical aspects, monitoring and quality measures, selection criteria, target patient populations, sample size, treatment schedules, follow-up duration, concomitant treatments, statistical plan, including hypothesis, sample size calculation and analysis methods, as well as a justification.
— Results of the clinical investigation covering, with rationale and justification, subject demographics, analysis of results related to chosen endpoints, details of subgroup analysis, as well as compliance with the CIP, and covering follow-up of missing data and of patients withdrawing from the clinical investigation, or lost to follow-up.
— Summary of serious adverse events, adverse device effects, device deficiencies and any relevant corrective actions.
— Discussion and overall conclusions covering safety and performance results, assessment of risks and clinical benefits, discussion of clinical relevance in accordance with clinical state of the art, any specific precautions for specific patient populations, implications for the investigational device, limitations of the investigation.

ANNEX XVI

LIST OF GROUPS OF PRODUCTS WITHOUT AN INTENDED MEDICAL PURPOSE REFERRED TO IN ARTICLE 1(2)

1. Contact lenses or other items intended to be introduced into or onto the eye.

2. Products intended to be totally or partially introduced into the human body through surgically invasive means for the purpose of modifying the anatomy or fixation of body parts with the exception of tattooing products and piercings.

3. Substances, combinations of substances, or items intended to be used for facial or other dermal or mucous membrane filling by subcutaneous, submucous or intradermal injection or other introduction, excluding those for tattooing.

4. Equipment intended to be used to reduce, remove or destroy adipose tissue, such as equipment for liposuction, lipolysis or lipoplasty.

5. High intensity electromagnetic radiation (e.g. infra-red, visible light and ultra-violet) emitting equipment intended for use on the human body, including coherent and non-coherent sources, monochromatic and broad spectrum, such as lasers and intense pulsed light equipment, for skin resurfacing, tattoo or hair removal or other skin treatment.

6. Equipment intended for brain stimulation that apply electrical currents or magnetic or electromagnetic fields that penetrate the cranium to modify neuronal activity in the brain.

ANNEX XVII

CORRELATION TABLE

Council Directive 90/385/ EEC	**Council Directive 93/42/ EEC**	**This Regulation**
Article 1(1)	Article 1(1)	Article 1(1)
Article 1(2)	Article 1(2)	Article 2
Article 1(3)	Article 1(3) first subparagraph	Article 1(9) first subparagraph
—	Article 1(3) second subparagraph	Article 1(9) second subparagraph
Article 1(4) and (4a)	Article 1(4) and (4a)	Article 1(8) first subparagraph
Article 1(5)	Article 1(7)	Article 1(11)
Article 1(6)	Article 1(5)	Article 1(6)
—	Article 1(6)	—
—	Article 1(8)	Article 1(13)
Article 2	Article 2	Article 5(1)
Article 3 first paragraph	Article 3 first paragraph	Article 5(2)
Article 3 second paragraph	Article 3 second paragraph	Article 1(12)
Article 4(1)	Article 4(1)	Article 24
Article 4(2)	Article 4(2)	Article 21(1) and (2)
Article 4(3)	Article 4(3)	Article 21(3)
Article 4(4)	Article 4(4)	Article 10(11)
Article 4(5)(a)	Article 4(5) first subparagraph	Article 20(6)
Article 4(5)(b)	Article 4(5) second subparagraph	—
Article 5(1)	Article 5(1)	Article 8(1)
Article 5(2)	Article 5(2)	Article 8(2)
Article 6(1)	Articles 5(3) and 6	—
Article 6(2)	Article 7(1)	Article 114
Article 7	Article 8	Articles 94 to 97

—	Article 9	Article 51
Article 8(1)	Article 10(1)	Articles 87(1) and 89 (2)
Article 8(2)	Article 10(2)	Article 87(10) and Article 87(11) first subparagraph
Article 8(3)	Article 10(3)	Article 89(7)
Article 8(4)	Article 10(4)	Article 91
Article 9(1)	Article 11(1)	Article 52(3)
—	Article 11(2)	Article 52(6)
—	Article 11(3)	Article 52(4) and (5)
—	Article 11(4)	—
—	Article 11(5)	Article 52(7)
Article 9(2)	Article 11 (6)	Article 52(8)
Article 9(3)	Article 11(8)	Article 11(3)
Article 9(4)	Article 11(12)	Article 52(12)
Article 9(5)	Article 11(7)	—
Article 9(6)	Article 11(9)	Article 53(1)
Article 9(7)	Article 11(10)	Article 53(4)
Article 9(8)	Article 11(11)	Article 56(2)
Article 9(9)	Article 11(13)	Article 59
Article 9(10)	Article 11(14)	Article 4(5) and Article 122 third paragraph
—	Article 12	Article 22
—	Article 12a	Article 17
Article 9a(1) first indent	Article 13(1)(c)	—
Article 9a(1) second indent	Article 13(1)(d)	Article 4(1)
—	Article 13(1)(a)	Article 51(3)(a) and Article 51(6)
—	Article 13(1)(b)	Article 51(3)(b) and Article 51(6)
Article 10	Article 15	Articles 62 to 82
Article 10a(1), second sentence of Article 10a(2) and Article 10a(3)	Article 14(1), second sentence of Article 14(2) and Article 14(3)	Articles 29(4), 30 and 31
Article 10a(2), first sentence	Article 14(2) first sentence	Article 11(1)
Article 10b	Article 14a	Articles 33 and 34
Article 10c	Article 14b	Article 98

Article 11(1)	Article 16(1)	Articles 42 and 43
Article 11(2)	Article 16(2)	Article 36
Article 11(3)	Article 16(3)	Article 46(4)
Article 11(4)	Article 16(4)	—
Article 11(5)	Article 16(5)	Article 56(5)
Article 11(6)	Article 16(6)	Article 56(4)
Article 11(7)	Article 16(7)	Articles 38(2) and 44(2)
Article 12	Article 17	Article 20
Article 13	Article 18	Articles 94 to 97
Article 14	Article 19	Article 99
Article 15	Article 20	Article 109
Article 15a	Article 20a	Article 102
Article 16	Article 22	—
Article 17	Article 23	—
—	Article 21	—

(**1**) 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 (OJ L 353, 31.12.2008, p. 1).

(**2**) 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) (OJ L 396, 30.12.2006, p. 1).

(**3**) Regulation (EU) No 528/2012 of the European Parliament and the Council of 22 May 2012 concerning the making available on the market of and use of biocidal products (OJ L 167, 27.6.2012, p. 1).

(**4**) Council Directive 80/181/EEC of 20 December 1979 on the approximation of the laws of the Member States relating to units of measurement and on the repeal of Directive 71/354/EEC (OJ L 39, 15.2.1980, p. 40).

(**5**) Directive 2004/10/EC of the European Parliament and of the Council of 11 February 2004 on the harmonisation of laws, regulations and administrative provisions relating to the application of the principles of good laboratory practice and the verification of their applications for tests on chemical substances (OJ L 50, 20.2.2004, p. 44).