Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017 on in vitro diagnostic medical devices and repealing Directive 98/79/EC and Commission Decision 2010/227/EU (Text with EEA relevance)

CHAPTER VI

CLINICAL EVIDENCE, PERFORMANCE EVALUATION AND PERFORMANCE STUDIES

Article 59

Informed consent

1 Informed consent shall be written, dated and signed by the person performing the interview referred to in point (c) of paragraph 2, and by the subject or, where the subject is not able to give informed consent, his or her legally designated representative after having been duly informed in accordance with paragraph 2. Where the subject is unable to write, consent may be given and recorded through appropriate alternative means in the presence of at least one impartial witness. In that case, the witness shall sign and date the informed consent document. The subject or, where the subject is not able to give informed consent, his or her legally designated representative shall be provided with a copy of the document or the record, as appropriate, by which informed consent has been given. The informed consent shall be documented. Adequate time shall be given for the subject or his or her legally designated representative to consider his or her decision to participate in the performance study.

2 Information given to the subject or, where the subject is not able to give informed consent, his or her legally designated representative for the purposes of obtaining his or her informed consent shall:

a enable the subject or his or her legally designated representative to understand:

(i) the nature, objectives, benefits, implications, risks and inconveniences of the performance study;

(ii) the subject's rights and guarantees regarding his or her protection, in particular his or her right to refuse to participate in and the right to withdraw from the performance study at any time without any resulting detriment and without having to provide any justification;

(iii) the conditions under which the performance study is to be conducted, including the expected duration of the subject's participation in the performance study; and

(iv) the possible treatment alternatives, including the follow-up measures if the participation of the subject in the performance study is discontinued;

b be kept comprehensive, concise, clear, relevant, and understandable to the subject or his or her legally designated representative;

c be provided in a prior interview with a member of the investigating team who is appropriately qualified under national law; and

d include information about the applicable damage compensation system referred to in Article 65;

e include the Union-wide unique single identification number for the performance study referred to in Article 66(1) and information about the availability of the performance study results in accordance with paragraph 6 of this Article.

3 The information referred to in paragraph 2 shall be prepared in writing and be available to the subject or, where the subject is not able to give informed consent, his or her legally designated representative.

4 In the interview referred to in point (c) of paragraph 2, special attention shall be paid to the information needs of specific patient populations and of individual subjects, as well as to the methods used to give the information.

5 In the interview referred to in point (c) of paragraph 2, it shall be verified that the subject has understood the information.

6 The subject shall be informed that a report of the performance study and a summary presented in terms understandable to the intended user will be made available pursuant to Article 73(5) in the electronic system on performance studies referred to in Article 69, irrespective of the outcome of the performance study, and shall be informed, to the extent possible, when they have become available.

7 This Regulation is without prejudice to national law requiring that, in addition to the informed consent given by the legally designated representative, a minor who is capable of forming an opinion and assessing the information given to him or her, shall also assent in order to participate in a performance study.