EU MEDICAL DEVICES REGULATION UPDATE

FHI MDR update
9 February 2017

Erik Vollebregt
www.axonadvocaten.nl
Medical devices industry faces biggest regulatory game changers in EU since decades

Get it right or get it wrong – mistakes will impact your company severely
Status update: it is on!

- Trilogue negotiated text public (old numbering)
- Translations basically finished
  - Translations have been circulated for consultation among member states and Parliament
  - A lot of turmoil over recital 99 and article 120 (transitional regime)
  - Feedback has been implemented resulting in minor changes
- Coreper approval expected end February
- Council planning 1<sup>st</sup> reading position early March
- 2<sup>nd</sup> Reading Parliament planned for 20 March
- Commission is working on implementation plan
- Publication of final text of MDR in EU Official Journal likely June of
- Entry into force 20 days after publication
- Transitional period three years (plus some specific grace periods)
Status update: this is it

EP JL changes marked in green.

Pre-meeting changes in yellow.

Other changes in turquoise in response to EP/MS comments after the pre-meeting version was sent.

After-meeting changes in light grey and can be filtered (Exp.Meeting 1 & 2, Augustin AfterMeeting and AfterMeeting 2)

The difference between v2 and v3 is in Article 52(4)

REGULATION (EU) 2017/...

OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of ...


(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,
Status update: so what was changed?

I spotted so far:

- Scientific advice also possible for certain IIb devices
- Coordinated assessment in multi-state trials initial period extended to 7 years
- Clarification of vigilance for the devices in the sell-off transition period of 5 years - member states organise vigilance for themselves
- Changes in UDI requirements for custom made devices
- Class IIb and III devices need UDI allocated prior to application for conformity assessment
- Transition regime requirements for MDD/ AIMDD certificates after date of application (no significant changes in the design and intended purpose. However, the requirements of this Regulation relating to post-market surveillance, market surveillance, vigilance, registration of economic operators and of devices shall apply in place of the corresponding requirements in those Directives)
We have a final text, and then?

• Many instances of delegated and implementing acts are necessary to make the MDR operational, many of which impact companies directly

• Commission is working on implementation plan

• Industry is supposed to be consulted on acts in preparation (in practice MedTech Europe / COCIR will be consulted)

e.g.:
• regulatory status of (groups of) products
• Essential Requirements
• Common Specifications
• Summary of Safety and Performance format
• UDI, EUDAMED
• Notified body requirements and assessment procedures
• Clinical performance evaluation requirements
• EU measures against unsafe/non-compliant devices
We have a final text, and then?

- Member states will have to start thinking about national implementation on a large number of points
  - Reprocessing of SUDs
  - Hospital produced devices
  - Implementation of making implant card available to patients by hospitals
  - Custom made devices made available reporting
  - Encourage/require health institutions / HCPs to store UDI of devices other than class III implantables
  - Financing of market surveillance
  - Etc…..
We have a final text, and then?

• Companies have to overcome their inertia and start attacking this thing rather than sit on their hands and find out later that they should have started in time.

Everything was making sense, and now it doesn't.
If I ask companies about their transition plan, they mostly answer:

Oh, I’m currently in deep denial
You do not want to end up here – bankrupt or sold to a competitor
MDR mantra: “WWBBD?”

“What would Brian Boitano do
If he was here right now,
He'd make a plan
And he'd follow through,
That's what Brian Boitano'd do.”
## Key MDR impacts and gaps

<table>
<thead>
<tr>
<th>Item</th>
<th>Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clinical Evidence</td>
<td>More pre- and post-market data, PMS plans, frequently updated CERs</td>
</tr>
<tr>
<td>Limited Equivalence</td>
<td>Discontinuation or fresh clinical data</td>
</tr>
<tr>
<td>Devices with a long history of safe use</td>
<td>Invest in pre- and post-market clinical Discontinue or invest</td>
</tr>
<tr>
<td>Post-Market Monitoring</td>
<td>More PMCF, PSURS, annual CERs New vigilance and annual reporting More transparency, user and patient access</td>
</tr>
<tr>
<td>Scrutiny / ‘clinical evaluation consultation procedure’</td>
<td>Unpredictable launch, delay, conflicting reviews</td>
</tr>
</tbody>
</table>
### Key MDR impacts and gaps (2)

<table>
<thead>
<tr>
<th>Item</th>
<th>Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reprocessing Regulation</td>
<td>Increased or decreased industry involvement and level of patient safety pending outcome</td>
</tr>
<tr>
<td>Technical files to be constantly up to date and readily searchable</td>
<td>New content plus IT system with real time data from various systems incl. suppliers</td>
</tr>
<tr>
<td>Economic operators regulated</td>
<td>Integrate in manufacturers QS or duplication of compliance activities</td>
</tr>
</tbody>
</table>
## Key MDR impacts and gaps (3)

<table>
<thead>
<tr>
<th>Item</th>
<th>Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Eudamed / UDI</strong></td>
<td>IT solutions, pre- I post-market data, (re-) registration fees, labeling, national vs. EU database?</td>
</tr>
<tr>
<td><strong>Transitional Period</strong></td>
<td>Prioritize re-launch, MDD I MDR decision, capacity, talent, operational readiness of NB’s</td>
</tr>
<tr>
<td><strong>Restricted Substances Justification</strong></td>
<td>Product- Component Assessment Tracking systems I product design</td>
</tr>
<tr>
<td><strong>Administrative Burden</strong></td>
<td>Eudamed interaction, each and every label to be updated Implant cards for all implants, UDI-DoC link</td>
</tr>
</tbody>
</table>
Good place to start:

How to prepare for and implement the upcoming MDR – Dos and don’ts

Gert Bos, Head of Regulatory and Clinical Affairs, BSI
Erik Vollebregt, Partner at Axon Lawyers
An overall plan could look like this.

Organisation, products and QMS compliant with MDR

2020

Effectiveness check

2019

Control and implementation of master compliance roadmap

Remediation planning and develop master compliance roadmap

2018

Policies and procedures

2017

Organisational changes implemented

Remediate authorised representative

Establish Person Responsible for Regulatory Compliance

Define organisation requirements

Transitional regime MDR

Entry into force Date of application

Mobilise organisation (allocation of resources, training and planning)

Gap assessment for products, QMS and clinical

Impact assessment and portfolio rationalisation

2017

MDD

2018

Last certificate

2019

Last certificate

Regulatory 2 certificate

2020

Last certificate

3rd certificate

2021

Last certificate

4th certificate

Axon Science Based Lawyers
## Rough template transition plan

<table>
<thead>
<tr>
<th>PRODUCT</th>
<th>PROCEDURAL</th>
<th>COMPANY/LEGAL</th>
</tr>
</thead>
</table>
| • Apply new definitions/scope  
• Apply new classification rules  
• Amend technical documentation to new requirements  
• Revisit clinical evidence per device  
• Apply new conformity assessment procedures and obtain new CE certificates from notified body / issue new DoCs  
• Define, design and implement new labelling and information  
• Apply dangerous substances labeling regime  
• Define impact on product lines (invest/discontinue/divest) | • New post market surveillance regime  
• New vigilance requirements  
• Requirements for EUDAMED database interaction  
• New QMS requirements and ISO 13485:2016 implementation dependencies  
• New clinical investigation requirements and pan-EU regime  
• MDR transition plan validation per business unit and with notified body | • New product liability requirements  
• New authorised representative requirements  
• New supply chain actors rules  
• New (required) roles in company (person responsible for regulatory compliance)  
• Monitor national implementation of MDR  
• Set up procedures for dealing with new repacking / relabelling and component supply rules |

### Horizontal items

- Transitional regime opted for  
- Notified Body management for transition  
- Commercial plan to exploit transitional period  
- Define and validate transition plan contingency measures  
- Monitor legal developments  
- Define dependencies with General Data Protection Regulation requirements  
- Define dependencies transition plan with other markets relying on valid CE mark
### Definitions MDR

<table>
<thead>
<tr>
<th>Subject</th>
<th>Before entry into force</th>
<th>During</th>
<th>After</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chapter I Definitions</td>
<td>Check if cosmetic implant or other product is on Annex XV list</td>
<td>Look out for Common Specifications for Annex XV devices and implement them</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Check if devices fall in enlarged scope of &quot;accessory&quot;</td>
<td>Obtain CE mark for accessory under new regime</td>
<td>Obtain CE mark for accessory under new regime</td>
</tr>
<tr>
<td></td>
<td>Check if custom device is still custom device under new definition</td>
<td>Obtain CE mark if changed to regular medical device</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Products specifically intended for the cleaning, disinfection or sterilisation of medical devices and devices for the purpose of control or support of conception will be considered medical devices. Make gap assessment for information required for CE marking of devices concerned.</td>
<td>Develop and implement transition strategy for devices concerned into CE marking, generate information needed for CE marking.</td>
<td>Obtain CE mark for devices concerned under new regime.</td>
</tr>
<tr>
<td></td>
<td>Standalone software is no longer classified as active medical device: revisit classification of software currently on the market as medical device and make gap assessment for additional technical file requirements for software classified in higher risk class.</td>
<td>Amend technical files for software in accordance with requirements for higher risk class, have software CE marked by notified body if class IIa or higher.</td>
<td>Apply classification rules for new software</td>
</tr>
</tbody>
</table>

### ANNEX XV

| ANNEX XV LIST OF GROUPS OF PRODUCTS WITHOUT AN INTENDED MEDICAL PURPOSE | Identify Annex XV candidate devices in company’s portfolio | Watch for Common Specifications becoming available for devices concerned | Start building up technical documentation and if necessary QMS | CE mark Annex XV devices using Common Specifications |
Chapter II – Making available of devices, obligations of economic operators, reprocessing, CE marking, free movement
Core article of MDR: article 8 (gen. obligations manufacturer) (1)

1. designed and manufactured in accordance with the requirements of this Regulation
2. establish, execute, maintain and document a system for risk management as described in Section 1a in Annex I
3. conduct a clinical evaluation in accordance with the requirements set out in Article 49 and Annex XIII, including post-market clinical follow-up
4. draw up and keep up to date the technical documentation which shall allow assessment of the conformity of the device with the requirements of this Regulation. The technical documentation shall include the elements set out in Annexes II and IIa.
5. custom-made devices: draw up, keep up to date and keep available to competent authorities documentation pursuant to Section 2 of Annex XI
6. draw up an EU declaration of conformity in accordance with Article 17, and affix the CE marking of conformity in accordance with Article 18
7. comply with the obligations related to the UDI system
8. comply with registration obligations
Core article of MDR: article 8 (gen. obligations manufacturer) (2)

9. keep the technical documentation, the EU declaration of conformity and, if applicable, a copy of the relevant certificate including any amendments and supplements, available to the competent authorities for at least ten years after the last device covered by the declaration of conformity has been placed on the market (15 for implantable devices)
10. Have and maintain QMS that takes standards and CS into account, addressing the minimum requirements in the MDR
11. implement and keep up to date the post-market surveillance system
12. ensure that the device is accompanied by the information to be supplied in accordance with Section 19 of Annex I in an official Union language(s) determined by the Member State where the device is made available to the user or patient
13. In case of non-conformity take the necessary corrective action to bring device into conformity, withdraw it or recall it
14. have a system for recording and reporting of incidents and field safety corrective actions as set out in MDR
15. Cooperate with authority in information requests for product liability claims
Core article of MDR: article 8 (gen. obligations manufacturer) (3)

16. Where manufacturers have their devices designed and manufactured by another legal or natural person the information on the identity of that person shall be part of the information to be submitted in accordance with Article 25.

17. Have measures in place to provide sufficient financial coverage in respect of their potential liability under Directive 85/374/EEC proportionate to the risk class, type of device and the size of the enterprise (without prejudice to more protective measures under national law)
Supply chain controls

Verify compliance

Verify compliance

Manufacturer

Importer

Distributor

End User

Post market surveillance and vigilance

Regulatory compliance of device

Unannounced NB inspections
## Making available & obligations

<table>
<thead>
<tr>
<th>Chapter II Making available of devices, obligations of economic operators, reprocessing, CE marking, free movement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assess potential effect of reprocessing and home brews under new hospital produced (so called ‘home brew’) devices rules on company business model</td>
</tr>
<tr>
<td>Manufacturers must establish, execute, maintain and document a system for risk management as described in Section 1a in Annex I.</td>
</tr>
<tr>
<td>Assess medical devices provided as service via internet (article 5)</td>
</tr>
<tr>
<td>Assess Own Brand Labelling consequences of the requirements that a full technical file must be present at each manufacturer (Article 8(4)).</td>
</tr>
<tr>
<td>Review new manufacturer responsibilities and make gap assessment against QMS</td>
</tr>
<tr>
<td>Make gap assessment against new recall requirements (article 8 (8)); amend procedures and distribution agreements – adopt new [8a. Manufacturers shall have a system for reporting of incidents and field safety corrective actions as described in Article 61.</td>
</tr>
<tr>
<td>Make gap assessment against new QMS criteria in article 8 (5); amend procedures</td>
</tr>
<tr>
<td>Art. 8 (13) mandatory insurance for product liability: monitor developments</td>
</tr>
<tr>
<td>New authorised representative (AR) requirements article 9-10 – amend AR agreement and procedures – expect AR renegotiations or AR to cease activities if liability requirements are adopted</td>
</tr>
</tbody>
</table>
## Making available & obligations
### MDR

<table>
<thead>
<tr>
<th>Review autonomous general obligations of importers and distributors (articles 11-12, e.g. verify compliance of the device, inform competent authority of non-compliance of the device and implement corrective action) and amend contracts accordingly</th>
<th>Implement SOPs, amend agreements in supply chain</th>
</tr>
</thead>
<tbody>
<tr>
<td>Select and mandate candidate for person responsible for regulatory compliance (art. 13)</td>
<td>Make and keep available in the organisation a person responsible for regulatory compliance; ensure training and where appropriate take out personal liability insurance</td>
</tr>
<tr>
<td>Prepare for new relabelling / repackaging regime (art. 14), - draft SOP for new regime</td>
<td>Implement and apply SOP</td>
</tr>
</tbody>
</table>
| New regime for reprocessing (art 15) - design traceability that can show if an incoming complaint is about a new or reprocessed single use device. | □ Determine what Member States will allow reprocessing  
□ Implement traceability that can show if an incoming complaint is about a new or reprocessed single use device.  
□ Ensure any reprocessing is resulting in patient safety to stay on level of first time use | Ensure any reprocessing is resulting in patient safety to stay on level of first time use  
Continue to monitor changed allowance per country |
| Implant card (art 16 + implementing acts) | Define system of implant cards, or alternative allowed systems |
| Declaration of conformity model (art 17 annex III) – check for gaps against current model used | Amend existing DoC’s upon transfer per product (group) into the new requirements aligned with transfer plan agreed with notified body. | Use MDR provided model of DoC |
| Parts manufacturers to ensure that the part does not adversely affect the safety and performance of the device. (art 21) | Parts manufacturers must generate supporting evidence for this. Supporting evidence shall be kept available to the competent authorities of the Member States. | Parts manufacturers to generate supporting evidence for each new part placed on the market and to be kept available to the competent authorities of the Member States. |
MDR mirrors IVDR home brew regime

Article 4 (4a). With the exception of the relevant general safety and performance requirements set out in Annex I, the requirements of this Regulation shall not apply to devices, manufactured and used only within health institutions established in the Union, provided that the following conditions are met:

(aa) the device is not transferred to another legal entity,
(a) manufacture and use of the devices occur under appropriate quality management systems,
(b) the health institution justifies in its documentation that the target patient group’s specific needs cannot be met or cannot be met at the appropriate level of performance by an equivalent device available on the market,
(c) the health institution provides information upon request on the use of such devices to their competent authority, which shall include a justification of their manufacturing, modification and use;
(d) the health institution draws up a declaration, that it shall make publicly available, including:
- the name and address of the manufacturing health institution;
- the details necessary to identify the devices;
- a declaration that the devices meet the general safety and performance requirements set out in Annex I of this Regulation and, where applicable, information on which requirements are not fully met with reasoned justification,
(da) the health institution draws up documentation, allowing an understanding of the manufacturing facility, the manufacturing process, the design and performance data of the devices, including the intended purpose, sufficiently detailed to enable the competent authority to ascertain that the general safety and performance requirements set out in Annex I of this Regulation are met;
(e) the health institution takes all necessary measures to ensure that all devices are manufactured in accordance with the documentation referred to in point (da), and
(f) the health institution reviews experience gained from clinical use of the devices and takes all necessary corrective actions.

Member States may require that the health institutions submit to the competent authority any further relevant information about such devices which have been manufactured and used on their territory. Member States shall retain the right to restrict the manufacture and the use of any specific type of such devices and shall be permitted access to inspect the activities of the health institutions.

These provisions do not apply to devices which are manufactured on an industrial scale.
Hospital Produced Devices

• New concepts in hospital produced devices
  • not transferred to another legal entity
  • appropriate QMS
  • justification of need for target population
  • publicly available declaration by manufacturer regarding safety and performance
  • production control
  • post market surveillance
  • vigilance
Implant cards

• Implant cards in lay man language required for dental implants containing device information (information allowing the identification of the device, including the device name, serial number, batch code or lot number, the Unique Device Identification, the device model, as well as the name, address and the URL of the website of the manufacturer)

• Except for sutures, staples, dental fillings, dental braces, tooth crowns, screws, wedges, plates wires, pins, clips and connectors (article 16 (1ab)) – (list may be amended)

• Provided by manufacturer, made available by health institution
  • information allowing the identification of the device, including the device name, serial number, batch code or lot number, the Unique Device Identification, the device model, as well as the name, address and the URL of the website of the manufacturer;
  • any warnings, precautions or measures to be taken by the patient or a healthcare professional with regard to reciprocal interference with reasonably foreseeable external influences, medical examinations or environmental conditions;
  • any information about the expected lifetime of the device and any necessary follow-up;
  • any other information to assure a safe use of the device by the patient, including the information in Annex I, Section 19.3. Point (ob).
Chapter III – Identification and traceability of devices, registration of devices and of economic operators, summary of safety and clinical performance, European databank on medical devices
The Eudamed “cathedral”

- Will Eudamed realistically be ready to support
  - all these functions
  - in time?

“Who knows where the road may lead us, only the fool would say
Who knows if we'll meet along the way
Follow the brightest star as far as the brave may dare
What will we find when we get there”
[Alan Parsons Project – La Sagrada Familia]
Eudamed future
MDR and Eudamed

- Eudamed will contain integrated electronic systems on
  - European UDI
  - Registration of devices and economic operators
  - Scrutiny applications (possibly other conformity assessments)
  - Certificates issued by notified bodies
  - Clinical investigations
  - Vigilance
  - Market surveillance activities
  - Registration of subsidiaries and subcontractors of notified bodies

- A large part of the information in Eudamed will become *publicly available* in accordance with the provisions regarding each part of the electronic system

- Plan for interaction strategy with Eudamed and national authorities (latter for obtaining manufacturer and economic operator SRNs)
UDI obligation introduced in phases

- For implantable devices and Class III devices [affixing UDI] shall apply one year after the date of application.
- For Class IIa and Class IIb devices [affixing UDI] shall apply three years after the date of application.
- For Class I devices [affixing UDI] shall apply five years after the date of application.
## Traceability, registration, Eudamed MDR and

<table>
<thead>
<tr>
<th>Chapter III</th>
<th>Identification and traceability of devices, registration of devices and of economic operators, summary of safety and clinical performance, European databank on medical devices</th>
</tr>
</thead>
<tbody>
<tr>
<td>UDI (art 23 (1) MDR)</td>
<td>Distributors and importers shall cooperate with the manufacturer or authorized representative to achieve an appropriate level of traceability of devices. – implement changes to distribution agreements</td>
</tr>
<tr>
<td>Article 23 (2) MDR</td>
<td>For devices, other than custom-made or investigational devices, economic operators shall be able to identify the following to the competent authority, for the period referred to in Article 8(4): (a) any economic operator to whom they have supplied a device; (b) any economic operator who has supplied them with a device; (c) any health institution or healthcare professional to whom they have supplied a device. – implement and improve traceability</td>
</tr>
<tr>
<td>Article 24 (3) MDR</td>
<td>Assign UDI to device and higher levels of packaging and (24 (4)) place that on the label and higher levels of packaging and (24a-c + (5)) keep UDI administration for reporting and tech file.</td>
</tr>
<tr>
<td>If possible, manufacturers may (Article 24b MDR)</td>
<td>Apply new process for registration of devices prior to placing on the market</td>
</tr>
<tr>
<td>When implemented, companies may apply process for registration of manufacturers, and authorised representatives and importers, to obtain a single registration number to identify them for the purposes of UDI and traceability.</td>
<td>Apply process for registration of manufacturers, authorised representatives and importers, single registration number (Article 25a)</td>
</tr>
<tr>
<td>Identify information that must be reflected in summary of safety and performance for each device and conceive plan for generating summaries for each class III and implantable device (article 26).</td>
<td>Execute plan for producing summaries for each device. Make available summaries for implantable and class III certified under MDR (Article 26 MDR / 25 IVDR)</td>
</tr>
<tr>
<td>If available: Article 27 MDR</td>
<td>Article 27 – enter data into EUDAMED</td>
</tr>
<tr>
<td>If possible: Article 27 MDR</td>
<td>Article 27 – enter data into EUDAMED</td>
</tr>
</tbody>
</table>
Traceability, registration, Eudamed

| INFORMATION TO BE SUBMITTED WITH THE REGISTRATION OF DEVICES AND ECONOMIC OPERATORS | • Perform gap analysis of information to be provided in EUDAMED database and for UDI purposes  
• Prepare for implementation for EU-UDI | • Implement EU-UDI for existing and new devices and register them in EUDAMED database | • Use EU-UDI and register new devices in EUDAMED |
Chapter IV – Notified bodies
Notified bodies

• Stronger supervision on Notified Bodies
• Continuation of joint assessment; handbook transcribed into NB annex in MDR
• Scrutiny on high risk devices
• Review of notified body assessment of technical documentation and clinical evaluation

• Thorough testing and regular checks on manufacturers
• Unannounced factory inspections
• Rotation of notified body staff involved in assessment
• Adoption of common technical specifications

• Notified Body numbers continue to drop
• Resources will become critical in transition
Most important for manufacturer

- Article 29-31: Requirements relating to Notified Bodies
  - All Notified Bodies must be re-designated
  - Joint Assessment

- Article 42: Conformity Assessment Procedure
  - Unannounced Audits and testing of samples

- Article 44: Mechanism for scrutiny of certain conformity assessments
  - For class III products and class IIb active devices that supply medicines to the human body
  - Peer-review of an expert panel on an European level

- Article 60: Post-market surveillance system of the manufacturer
  - Periodic post-market surveillance reports for class III products and class IIb active devices that supply medicines to the human body
  - Reviewed by Notified Body and make available to Competent Authorities
Most important for manufacturer

• From the date of application of this Regulation any publication of a notification in respect of a notified body in accordance with Directives 90/385/EEC and 93/42/EEC shall become void.

• Notified bodies can start to issue certificates under MDR once application for notification under MDR has been approved.
Most important for manufacturer: certificates

Entry into force

Date of notification under MDR

[1 year expectation]

Certificates can be granted under MDD / AIMDD (but mind the transitional regime limitations on their duration)

Certificates under MDR (normal duration)

Transitional period (3 years)

Date of application
Most important for manufacturer

- Annex IIa: Technical Documentation on post-market surveillance
  - Establish post-market surveillance plan
  - Periodic safety update report reviewed by Notified Body and available to CA
- Annex VI Requirements to be met by Notified Body
  - Pay particular attention to clinical data from post-market surveillance and PMCF activities undertaken since the previous (re-)certification
- Annex VIII Conformity Assessment
  - The Notified Body shall randomly perform unannounced on-site audits
  - The Notified Body shall employ device reviewers with sufficient clinical expertise, including the use of external clinical expertise
- Procedure on scrutiny for class III products and implants
- Annex XIII Clinical Evaluation and Post-Market Clinical Follow-up
- Annex XV List of Groups of Products without an intended medical purpose
  - e.g. dermal fillers, fat removing devices or lasers for hair removal
# Notified bodies

<table>
<thead>
<tr>
<th>Chapter IV notified bodies</th>
<th>Make assessment of notified body's potential to be re-notified under new system</th>
<th>Re-notification to be timely; with long delays in re-notification consider alternative plans</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Agree re-assessment plan with current notified body or agree transition plan to new notified body if necessary</td>
<td><strong>Article 36:</strong> Analyse and implement new transition procedures for dealing with consequences of changes in designation and cessation of notified bodies.</td>
</tr>
</tbody>
</table>

**ANNEX VI MINIMUM REQUIREMENTS TO BE MET BY NOTIFIED BODIES**

- Contact notified body to discuss if it can meet the new requirements and prepare for transition if needed.

**ANNEX XII MINIMUM CONTENT OF CERTIFICATES ISSUED BY A NOTIFIED BODY**

- No action required by manufacturer

- No action required by notified body in case notified body not re-notified or has scope restricted as to not support devices concerned any longer.

- No action required by manufacturer
Chapter V – Classification and conformity assessment
MDR: conformity assessment issues

• Re-/up classification of devices (e.g. substance based, implants)
• Resources?

  • “Clinical evaluation consultation procedure” for implantable Class III devices and Class IIb active devices intended to administer and/or remove a medicinal product

• PSURS and trend reporting
• Special conformity assessments procedures for substance based MD
• Reporting and planning obligations of member states to Commission

• Problematic

  • Liability and insurance for manufacturers and Authorized Representatives
MDR conformity assessment routes overview
Classification

New classification rules for

- Standalone software (rule 10a)
- Nanomaterials (rule 19)
- Substance based devices (rule 21)

Up classification of spinal implants
## Classification and conformity assessment MDR

<table>
<thead>
<tr>
<th>Chapter V Classification and conformity assessment</th>
<th>Do gap analysis of all devices on the market against new classification rules and make transition plan if classification necessitates new conformity assessment (class II implants may be subject to additional clinical scrutiny procedure (Article 42 (2a)).)</th>
<th>Implement transition plan for reclassified devices</th>
<th>Apply new conformity assessment procedures to devices already on market and optionally to new devices to be placed on the market. Selection of devices which have documentation to support the new essential principles.</th>
<th>Apply new conformity assessment procedures to devices</th>
</tr>
</thead>
<tbody>
<tr>
<td>Article 42: make QMS gap analysis against the new rules</td>
<td>Apply new QMS optionally in case of new devices to be placed on the market</td>
<td>Apply new QMS in case of new devices to be placed on the market</td>
<td>Article 46: conclude tri-partite transition agreement with outgoing and incoming notified body in case of voluntary change of notified body</td>
<td></td>
</tr>
<tr>
<td>Do gap assessment for consequences of new substance-based devices rule 21 (class IIb default, class IIa in case on skin, class III if systematically absorbed)</td>
<td>Work on reclassification where appropriate</td>
<td>Apply new classification rule 21</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Do gap assessment for consequences of spinal implants reclassification (spinal disc replacement implants and implantable devices that come into contact with the spinal column, in which case they are in class III with the exception of components such as screws, wedges, plates and instruments, rule 8)</td>
<td>Work on reclassification where appropriate</td>
<td>Apply new classification rule 8</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
## Classification and conformity assessment MDR

<table>
<thead>
<tr>
<th>ANNEX</th>
<th>General Safety and Performance Requirements</th>
<th>Technical Documentation</th>
<th>DeclARATION OF CONFORMITY</th>
<th>CE Marking of Conformity</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td><em>Gap analysis of consequences of changed ‘essential requirements’ for recertification of existing devices (rule 21, Annex XV, new software requirements)</em>&lt;br&gt;  <em>Gap analysis of requirements for new devices</em></td>
<td><em>Amending existing technical files against new technical file requirements and recertification based on amended technical file</em>&lt;br&gt;  <em>Use new technical file requirements</em></td>
<td><em>Amending existing declarations of conformity against new declaration of conformity requirements and recertification based on amended technical file</em>&lt;br&gt;  <em>Use new declaration of conformity requirements</em></td>
<td>No changes</td>
</tr>
<tr>
<td>II</td>
<td><em>Gap analysis of existing technical files against new technical file requirements</em></td>
<td></td>
<td></td>
<td>No changes</td>
</tr>
<tr>
<td>III</td>
<td><em>Gap analysis of existing declarations of conformity against new declaration of conformity requirements</em></td>
<td></td>
<td></td>
<td>No changes</td>
</tr>
<tr>
<td>IV</td>
<td></td>
<td></td>
<td></td>
<td>No changes</td>
</tr>
</tbody>
</table>
## Classification and conformity assessment MDR

<table>
<thead>
<tr>
<th>ANNEX VII CLASSIFICATION CRITERIA</th>
<th>ANNEX VIII CONFORMITY ASSESSMENT BASED ON FULL A QUALITY MANAGEMENT SYSTEM ASSURANCE AND DESIGN EXAMINATION</th>
<th>ANNEX IX CONFORMITY ASSESSMENT BASED ON TYPE EXAMINATION</th>
<th>ANNEX X CONFORMITY ASSESSMENT BASED ON PRODUCT CONFORMITY VERIFICATION</th>
<th>ANNEX XI CONFORMITY ASSESSMENT PROCEDURE FOR CUSTOM-MADE DEVICES</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Analyse devices under new classification criteria to determine if they will be reclassified</td>
<td>• Perform gap analysis between current full QMS and new full QMS requirements, improve QMS where necessary</td>
<td>• Perform gap analysis between current type examination QMS and new type examination QMS requirements, improve QMS where necessary</td>
<td>• Perform gap analysis between current product verification QMS and new product verification QMS requirements, improve QMS where necessary</td>
<td>• Apply procedure for custom made devices optionally to devices in scope</td>
</tr>
<tr>
<td></td>
<td>• Recertification of existing devices under new classification rules</td>
<td>• Recertification of existing devices under new QMS</td>
<td>• Recertification of existing devices under new QMS</td>
<td>• Recertification of existing devices under new QMS</td>
</tr>
<tr>
<td></td>
<td>• Apply new classification rules to new devices</td>
<td>• Apply new QMS</td>
<td>• Apply new QMS</td>
<td>• Apply new QMS</td>
</tr>
</tbody>
</table>


Chapter VI – Clinical evaluation and clinical investigations
Clinical requirements

• MDR proposal seems about “More Data, Really”
  • Chapter VI: Clinical evaluation and clinical investigations: article 49 – 60
  • Annex XIII (Part A): CLINICAL EVALUATION
  • Annex XIII (Part B): POST-MARKET CLINICAL FOLLOW-UP
  • Annex XIV: CLINICAL INVESTIGATIONS

• Relation to current and future ISO 14155 standard problematic
  • MDR will likely not be in line with global state of art in medical devices GCP
Clinical requirements

• MDR will

  • elaborate on the current clinical investigation requirements in Article 15 MDD and Annex X, and align the MDR with the clinical trials regime for medicinal products
  • propose system for clinical investigations similar to the current system for medicinal products including notification in a centralized database
  • member state authority assessment of clinical investigations – the EP proposes to have this done by ethics committees.
  • make Post-Market Clinical Follow-up (PMCF) mandatory as part of the clinical evaluation cycle for the device concerned, essentially implementing the PMCF MEDDEV (MEDDEV 2.12/2 rev. 2)
  • There will be more attention for clinical benefit and efficacy (defined in article 2 (37d) and (37e)) and effectiveness (article 2 (37f))
Clinical requirements

• Important concepts have been introduced that are inconsistent with the current Good Clinical Practice standard for medical devices, the MDD harmonized EN ISO 14155:2011 (e.g. proposed definition of ‘sponsor’ under the MDR is far wider than under EN ISO 14155:2011)
• Not clear at this moment if and how the EU legislation will reconcile the proposal with the GCP standard
• At this point it is safe to say that requirements for clinical evidence will increase substantially and will require significantly higher investment from companies.
• In order to design, work with and interpret clinical studies companies will need to invest in staff who are knowledgeable in
  • Regulatory affairs,
  • Good Clinical Practice (GCP) and
  • Clinical investigation
• Meet the requirement of having a person responsible for regulatory compliance
Clinical – clinical evaluation

Article 49

Clinical evaluation

1. Confirmation of conformity with the general safety and performance requirements referred to in Annex I and where applicable relevant requirements of Annex IIa under the normal conditions of the intended use of the device, and the evaluation of the undesirable side-effects and of the acceptability of the benefit/risk ratio referred to in Sections 1 and 5 of Annex I, shall be based on clinical data providing sufficient clinical evidence.

The manufacturer shall specify and justify the level of clinical evidence necessary to demonstrate compliance with the relevant essential requirements on safety and performance which shall be appropriate to the characteristics of the device and its intended purpose.

To that end, manufacturers shall plan, conduct and document a clinical evaluation in accordance with this Article and Part A of Annex XIII.

• Prepare with MEDDEV 2.7/1 rev 4
• Scientific advice procedure for class III devices
# Clinical MDR

## Chapter VI Clinical evaluation and clinical investigations

- Understand new clinical requirements (e.g. new definition of 'clinical data'); define gap between current clinical evaluation of devices and future model according to Article 49
- Review and update internal procedures for planning and commissioning clinical investigations

## Define similar devices per device that are clinically significantly similar in clinical performance and safety on the market and make gap assessment for substantiating equivalency to amend clinical evaluation for each device currently on the market. (Article 49)

## Consider prior review of clinical studies for class III and implantable devices; perform clinical evaluation in accordance with new mode
- Check transition timescales and requirements for when this needs to be undertaken to meet the requirements of the new certificate

## Implement plan for amending technical file changes and certification of changes by notified body. Ensure access to equivalency relevant data of other manufacturers by entering into agreement with other manufacturer. (Article 49)
- Plan to commission own clinical trials if equivalence data will not be acceptable in future.

## ANNEX XIII

### CLINICAL EVALUATION AND POST-MARKET CLINICAL FOLLOW-UP

- Perform gap analysis of current clinical evaluation method and outcomes per devices against new requirements

## Perform gap analysis of current post market clinical follow up method and outcomes per devices against new requirements

## Implement new requirements for PMCF; generate clinical evidence to meet new requirements
- Apply new requirements optionally

## Generate PMCF to new requirements; apply new requirements

## ANNEX XIV

### CLINICAL INVESTIGATIONS

- Perform gap analysis to determine new clinical investigations requirements and impact on

## Apply new clinical investigation criteria

- Apply new clinical investigation criteria
Chapter VII – Post-market surveillance, vigilance and market surveillance
Post-market surveillance

- Manufacturer must implement post market surveillance system as part of the post market surveillance plan:
  
  (a) to update the benefit risk determination and risk management, the design and manufacturing information, the instructions for use and the labelling;
  (b) to update the performance evaluation;
  (c) to update the summary of safety and performance;
  (d) for the identification of needs for preventive, corrective or field safety corrective action;
  (e) for the identification of possibilities to improve the usability, performance and safety of the device;
  (f) when relevant, to contribute to the post-market surveillance of other devices;
  (g) to detect and report trends

- Manufacturer must make annual PSUR per device or group
Vigilance

- Report electronically:

  (a) any serious incident involving devices made available on the Union market, except expected erroneous results which are clearly documented and quantified in the product information and in the technical documentation and are subject to trend reporting pursuant to Article 59a;

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

- Implementation of EU electronic system for vigilance to be used by Commission and authorities
Market surveillance

• Central EU surveillance policy that member states must fit their national surveillance plans in

• New procedures to cooperate between member states and Commission in case of medical devices that are public health risk or non-compliance

• Electronic system on market surveillance will be set up
Vigilance and market surveillance

• Advantages
  • EU-established binding standard procedures

• Disadvantages
  • Expected that many member states will not be able to commit the resources that the implementation of the vigilance and market surveillance procedures will require for lack of political sense of urgency

• Preparation
  • Companies will need to review their internal vigilance and post-market surveillance processes to prepare to scale for the increased reporting requirements
## Post market

<table>
<thead>
<tr>
<th>Chapter VII: Post-market surveillance, vigilance and market surveillance</th>
<th>Understand new post market surveillance system required and perform gap analysis against current system used</th>
<th>Design and implement new post market surveillance plan (plan for consequences of ongoing PMCF and PMS obligations as long as devices are still in installed base) Gather PMS clinical data as early as possible on any product currently based on equivalence</th>
<th>Use new post market surveillance system (deal with consequences of ongoing PMCF and PMS obligations as long as devices are still in installed base)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Understand new vigilance reporting requirements, including new trend reporting requirements</td>
<td>• Implement new vigilance reporting requirements • Implement trend reporting system (Article 61a)</td>
<td>• Apply new vigilance reporting requirements • Apply new trend reporting requirements</td>
<td>Prepare periodic safety update to notified body reporting according to prescribed model</td>
</tr>
</tbody>
</table>
Chapter X – Final provisions (transitional regime etc.)
No grandfathering

THERE IS NO GRANDFATHERING IN THE EU!

- EU will require that all products on the market are phased into the new system by the end of transitional period
- This means that you have to do a new conformity assessment under the new rules for all devices currently on the market or remove the product from the market.
## Transition

| Chapter X Final provisions | Understand transitional regime for devices placed on the market during transitional period | Apply transitional regime for devices placed on the market during 3-year transitional period. Determine and add to transition plan which products might be outlived and that consequently could stay for a further period on an MDD or AIMD certificate after the transition period. | Recertify devices on certificates issued during the transitional period under the old rules (up to 2-5 years after end of transitional period) |
Transition

Entry into force

Date of application

DoA

DoA + 4 years

DoA + 5 years

First certificate 94 (2) 2nd
[entry into force of MDR to DoA + 2]

Last 94 (2) 2nd certificate
[DoA -1 to DoA +4]

Transitional period (3 years)

Lawfully made available under MDD or AIMDD

94 (2) grace period with certificate (4 years)

94 (3a) grace period when lawful on the market on DoA (5 years)
Prepare!

How to prepare for and implement the upcoming MDR – Dos and don'ts

Gert Bos, Head of Regulatory and Clinical Affairs, BSI
Erik Vollebregt, Partner at Axon Lawyers

KEEP CALM AND CALL AXON
THANKS FOR YOUR ATTENTION

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