INTEGRATED SCIENTIFIC SERVICES
A MEDTECH COMPANY

IMPLEMENTATION OF THE NEW EU MEDICAL DEVICE REGULATIONS MDR (2017/745) AND IVDR (2017/746)

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Content

1 Introduction

The EU's Medical Device Regulation (EU 2017/745) and In Vitro Diagnostic Regulation (EU 2017/746) – referred to as MDR and IVDR, respectively – have entered into force on 26 May 2017. Both regulations are applicable to a wide range of stakeholders upon the conclusion of the staggered transition periods, ranging from six months to five years.

Guidance documents are necessary to support the application of the forthcoming MedTech Regulations, as these make provisions for implementing and delegated acts. In addition, the establishment of common specifications and a functional medical device database, EUDAMED, are prerequisite for the comprehensive employment of the new regulatory framework.

ISS, Integrated Scientific Services has been entrusted by the Federal Office of Public Health FOPH (Bundesamt für Gesundheit BAG) to provide comprehensive updates on the ongoing developments related to these Regulations, as well as their implementation and further elaboration. Subsequent reports will be published at three-month intervals, with a thematic focus on research, particularly in the realm of clinical trials. These reports will also delve into pertinent aspects of the Regulations and their implementation, alongside an exploration of the relevant modules in EUDAMED.

2 Abbreviations

AEMPS	Spanish Agency for Medicines and Health Products
AIMDD	Directive 90/385/EEC
BfArM	Bundesinstitut für Arzneimittel und Medizinprodukte, Germany
BVMed	Bundesverband Medizintechnologie, Germany
CCPS	Communication of Medical Devices Commercialization application, Spain
CDx	Companion Diagnostics
EAP	European Academy of Paediatrics
EC	European Commission
EMA	European Medicines Agency
FIMEA	Finnish Medicines Agency
IVDD	In Vitro Diagnostics Medical Devices Directive (98/79/EC)
IVDR	In Vitro Diagnostics Regulation (EU) 2017/746
MDCG	Medical Device Coordination Group
MDD	Medical Device Directive 93/42/EEC
MDR	Medical Device Regulation (EU) 2017/745
MPDG	Medizinprodukterecht-Durchführungsgesetz, Germany
MPG	Medizinproduktegesetz, Germany
NANDO	New Approach Notified and Designated Organisations
PMPS	Commissioning of Medical Devices application, Spain
QMS	Quality Management System
RoHS	Restriction of Hazardous Substances in Electrical and Electronic Equipment Directive 2011/65/EU
UDI	Unique Device Identification
VDGH	Verband der Diagnostica-Industrie, Germany

3 Critical Analysis of the Impacts and Industry responses to amending regulation (EU) 2023/607: A Comprehensive Examination

Four months following the publication of the amending regulation to the MDR ((EU) 2023/607), which introduced extended compliance timelines for legacy products, a series of documents and updates were issued to provide support for the successful implementation and comprehension of the amendment..

In July, the European Commission (EC) released a survey that revealed the number of certificates granted and applications submitted to notified bodies designated under the MDR and IVDR up to the present time. This survey provided valuable insight into the progress of the regulations' implementation and offered information on the rate of certificates issued, applications made to notified bodies, and the upcoming challenges. Moreover, the EC published a flowchart to assist MedTech manufacturers in determining whether a device qualifies for the extended transitional period, and the associated conditions. Additionally, a Q&A addressing practical aspects related to the transitional provisions for certain medical devices and in vitro diagnostic medical devices has been published. Also in the context of the extended transitional periods, the EC has issued a confirmation letter template, which notified bodies are required to utilize to confirm their application to manufacturers. Furthermore, members of Team NB have adopted a template agreement specifying the terms governing the transfer of surveillance for legacy devices from one notified body to another.

While Notified bodies have welcomed the extension of the transition timelines for legacy products and are confident in their ability to transition all remaining certificates within the new stipulated timeframes, Team NB issued a position paper. This paper cautions that the success of the timely transition is not solely the responsibility of the notified bodies. The voiced concerns includes manufacturers deprioritizing their applications and highlight the necessity for greater measures to alleviate the administrative burden placed upon notified bodies.

From the industry's point of view, the newly issued white paper from the German industry association BVMed (medical devices) and its IVD counterpart, VDGH has prompted diverse reactions. Within this whitepaper, the industry associations raise the question of whether a centralized EU MedTech agency should be established to oversee the regulation of medical devices. They emphasise the need for a simpler, more transparent and cost-effective solution in anticipation of the scheduled evaluation of the MDR in 2027. Proposals include eliminating the five-year recertification period and introducing fast-track procedures for orphan devices, diagnostics, and innovations.

4 Implementing and delegated acts & guidelines

4.1 Revised Factsheet for authorities in non-EU/EEA states

EU updated its factsheet tailored for authorities in non-EU/EEA states. The update aligns with the newly extended transition period timelines applicable to specific medical devices.

4.2 Addendum to MDCG position paper recommends to limit application of Article 79

The MDCG issued an addendum to it existing s position paper concerning the implementation of Article 97 for legacy devices. In light of the enactment of Regulation (EU) 2023/607 on 20 March 2023, the MDCG recommends that national CAs restrict the application of Article 97 of the MDR as outlined in MDCG 2022-18, reserving it’s utilisation solely for exceedingly rare and exceptional circumstances..

4.3 New implementing decisions update lists of harmonised standards with MDR and IVDR

Newly issued implementing decisions have resulted in updates to the lists of harmonised standards that provide essential support of the MDR and IVDR. The decisions were adopted on 4 July 2023 and subsequently published on 5 July 2023 in the Official Journal of the European Union. The details of these decisions are as follows:

For the MDR:

- Commission Implementing Decision (EU) 2023/1410 of 4 July 2023 amending Implementing Decision (EU) 2021/1182 as regards harmonised standards for sterilization of health care products and biological evaluation of medical devices
- This decision introduces EN ISO 10993-10:2023, titled "Biological evaluation of medical devices – Part 10: Tests for skin sensitisation (ISO 10993-10:2021)". It also updates the reference to EN ISO 25424:2019 by incorporating EN ISO 25424:2019/A1:2022

For the IVDR:

- Commission Implementing Decision (EU) 2023/1411 of 4 July 2023 amending Implementing Decision (EU) 2021/1195. The focus of these amendments relates to a harmonised standard concerning the sterilization of health care products

4.4 Delegated regulation approved to ease UDI requirements for contact lenses

The UDI requirements stipulated by the MDR are set to undergo modifications, resulting in a relaxation of their stringency, targeting specific products, beginning with contact lenses. On July 10, 2023, the European Commission approved a delegated regulation , permitting manufacturers of contact lenses to use a Master UDI-DI in lieu of an additional UDI-DI for designated products.

4.5 New implementing decision gives Annex XVI products manufacturer more time

Manufacturers of products without an intended medical purpose, yet falling within the scope of the EU's Medical Device Regulation (MDR) and are included in Annex XVI will be given more time to meet the regulation's requirements.
European Commission Implementing Regulation, EU2023/1194 confirms the extended periods, ranging from 18 to 30 months for products subject to clinical investigations and spanning up to 42 months for products not requiring clinical investigations. This latest text amends the former commission Implementing Regulation, EU 2022/2346 of 1 December 2022, laying down common specifications for Annex XVI products. On 22 June 2023 the Common Specifications for Medical Devices without intended medical purpose became fully applicable. The MDR is now applicable to them. Furthermore, the EC ha curated a dedicated webpage on the EU commission webpage catering to manufacturers of Annex XVI products.

4.6 EMA published two Q&A regarding CDx and ancillary medical substance/ancillary human blood derivate

The European Medicines Agency (EMA) has recently published two Q&As regarding the consultation procedure concerning companion diagnostics and ancillary medicinal substance or human blood derivative incorporated in a medical device. Both documents serve to encapsulate the most frequent questions regarding the procedure, application and applicable fees.

5 Notified body designation

5.1 39 notified bodies designated under the MDR, ten under the IVDR

By the end of August 2023, there were 39 notified bodies designated under the MDR, while ten were designated under the IVDR.

The following additional NB with MDR designation is listed in NANDO:

– GFI Health Technology Certification, Cyprus

According to the latest quarterly update from the European Commission, one organization seeking designation in the context of the IVDR is already at the stage of being recommended by the MDCG and should be designated imminently. Additionally, there are now six further organizations seeking designation under the MDR and three IVDR applications that have at least reached the joint assessment team corrective and preventive action plan (JAT CAPA) review stage.

6 Implementation activities on national levels

6.1 Denmark: Information on clinical investigations and performance studies published

The Danish Medicines Agency published two entries on its homepage regarding clinical investigations with medical devices and IVD performance studies. The information includes details on the local legislative requirements, applicable standards, when a notification to the Danish Medical Agency is needed, and which details the notification should include.

6.2 Finland: Medical device distributors not required to submit device notifications until further notice

According to section 49 of the Finnish Medical Devices Act (719/2021), an operator that distributes devices to retailers, health care and social welfare operators and other professional users and makes devices available on the market in Finland must submit a notification of its activities and devices to the Finnish Medicines Agency. Fimea decided to exempt distributors from submitting device notifications for the time being, as it is challenging to keep track of a vast number of devices and ensure that the notifications are accurate and timely.

6.3 Germany: BfArM updates website with information related to national databases

In April 2023, the BfArM updated several of its information on its medical device database:

– Datenbankinformation Medizinprodukte-Adressen
  The medical device address databases contain the addresses of the notifying parties and the competent authorities. They are part of the database-supported medical device information and database system. The addresses are recorded with the notifications for the first placing on the market of medical devices (according to § 25 MPG or § 96 MPDG).
– Datenbankinformation Medizinprodukte-Anzeigen
  Medical device notifications contain information on notifications for the first placing on the market of medical devices (according to § 25 MPG or according to § 96 MPDG).
– Datenbankinformation In-vitro-Diagnostika-Anzeigen
  In vitro diagnostic device notifications contain information on notifications for the first placing on the market of IVDs (according to § 25 MPG).

6.4 Italy: Four decrees published concerning clinical investigations of medical devices

Two Ministerial Decrees were published in the Official Gazette (No. 136) of 13 June 2023 concerning:
– Clinical investigations for devices that are not CE marked or are CE marked but used outside their intended use;
– Clinical investigations of CE marked devices used within the scope of their intended use.

Two other Ministerial Decrees were published in the Official Gazette (No. 137) on 14 June 2023 concerning:

- The provisions used to ensure the independence, transparency and impartiality of the parties in charge of evaluating and validating clinical investigation requests;
- The prerequisites of facilities considered appropriate for conducting clinical investigations aimed at establishing the conformity of medical devices, in alignment with the stipulations outlined in Article 62, paragraph 7, of Regulation (EU) 2017/745.

6.5 Italy: National register of breast prosthetic implants is operational

According to the newest ministry notice, the National Register of Breast Prosthetic Implants (RNPM), IT platform is operational. Regions and Autonomous Provinces can start collecting data in their respective regional and provincial registers, which will then be transmitted to the national register.

6.6 Italy: Decree on registration and storage of UDI by healthcare institutions

According to a new decree issued by the Italian MHO, the UDI of medical devices supplied to health institutions and health professionals must now be registered and retained to facilitate traceability. This stipulation is mandatory for all Class III and Class IIb implantable devices, while the UDI of other lower-risk devices may be recorded on a voluntary basis..

6.7 Italy: Decree on personal data of patients involved in reported medical device incidents

According to a newly issued decree, the personal data of patients involved in incidents with medical devices will only be kept for the time necessary to evaluate the incident (a maximum of two years). The personal data of healthcare professionals may be held for up to five years. After the indicated timeframe, the MoH must delete the personal data from the New National Health Information System (NSIS).

6.8 Malta: Urgent notice in regard of the registration of organizations published

The Medicines Authority of Malta has issued an urgent notice regarding registering organizations involved in Medical Devices Regulatory Sciences in Malta. As outlined in the Medical Devices and In Vitro Diagnostic Medical Devices Provision on the Maltese Market Regulation, economic operators in Malta are required to register their organizations with the Malta Medicines Authority.

6.9 Poland: Final provisions of national medical devices act went into effect

On 1 July 2023, the final provisions of the Medical Devices Act from 7 April 2022 went into effect. Since 1 July 2023, manufacturers, authorized representatives, and importers of custom-made devices must register their activities in Poland before selling them on the market.

6.10 Poland: New legislation on medical device advertising adopted

Poland has approved a new regulation for the advertisement of medical devices. It came into effect on 13 May 2023 after months of preparation. The Regulation outlines additional requirements for advertising medical devices.

6.11 Spain: Commercial communications on medical devices now only possible through CCPS

Up until 2018, interactions involving commercial communications with the relevant authority in Spain were done through the Commissioning of Medical Devices application (PMPS) system. However, as of May 2023, the AEMPS has officially informed that the communication previously carried out via the PMPS are now deemed obsolete, with this change having taken effect on 4 July 2023. Henceforth, any new entries have to be submitted through the Communication of Medical Devices Commercialization application (CCPS).

6.12 Turkey: New regulation on medical device advertising published

A revised version of the regulation governing medical device advertising introduces key amendments to the regulation on sales, advertisement, and promotion of medical devices in Turkey. The revised regulation takes

effect from the date of publication, with exemption of the QMS requirements, which are scheduled to be set into force on 1 January 2027.

7 Miscellaneous

7.1 EC extends time for IVD manufacturers to use lead in PVC sensors

Manufacturers of in vitro diagnostic products can temporarily use lead as a thermal stabilizer in PVC sensors until the end of the year. The European Commission has made the decision in the context of the *Restriction of Hazardous Substances in Electrical and Electronic Equipment (RoHS) Directive* because there is no adequate substitution of lead in specific sensors. According to the delegated directive 2023/1526, there is an extended exemption for using lead in certain devices because reliable substitutes are unavailable. The existing substitutes may not be accurate for certain parameters, such as creatinine and blood urea nitrogen.

7.2 EMA launches second phase of pilot program to provide free scientific advice to manufacturers

The European Medicines Agency (EMA) launched the second phase of its pilot program for EU-based medical device manufacturers or their authorized representatives. The program provides free scientific advice from expert panels for innovative and high-risk devices. Manufacturers should apply by 15 September via EMA's ServiceNow portal. Manufacturers will have to pay for this service after the pilot ends. The service is critical since notified bodies cannot advise on clinical data and files.

7.3 New study on challenges due to increased clinical data requirements issued

A research paper has revealed that some device manufacturers are facing difficulties due to the stricter clinical evidence requirements outlined in the MDR. According to this research, 54% of the participants who market high-risk medical devices have either removed or are planning to remove their products from the EU market. This decision is based on their challenges in complying with the stricter MDR clinical evaluation requirements.

7.4 European Academy of Pediatrics calls for urgent action to ensure access to orphan devices

The European Academy of Paediatrics (EAP) has expressed concern about the limited access to vital medical devices for children and patients with rare diseases. In a letter to Stella Kyriakides, the European Commissioner for Health and Food Safety, EAP leaders, and other paediatric bodies highlighted the negative impact of the MDR on products aimed at smaller patient populations.

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