The European Association Medical devices - Notified Bodies

TEAM-NB A.I.S.B.L.
Boulevard Frère Orban 35A
B – 4000 Liège BELGIQUE
Phone: + 32 (0)4 254 55 88
Fax: + 32 (0)4 254 55 89

E-mail: secretary@team-nb.org
Web: http://www.team-nb.org
Bank ING: 340-1517487-57
IBAN BE09 3401 5174 8757

Vision on Revision

TEAM-NB viewpoints in Public Debate of the Revision of European Legislation on Medical Devices

Contents

Introduction

This document forms the input of TEAM-NB into the debate on *The Revision of European Legislation on Medical Devices.* Contributions came from BSI Germany, BSI UK, DEKRA Netherlands, TUV Austria, and TUV Sud.

This submission focuses on technical issues that are aimed to help clarify the requirements new regulations and improve the efficiency of their implementation. We hope that the proposals herein are improvements that will benefit patients, regulators and industry alike. The document summarises the TEAM-NB view on each point raised.

In the revision very often requirements are addressed but it is not mentioned that the practical realization needs more specific guidance in implementing acts or otherwise (example: What shall be tested on sampled devices which are collected during unannounced inspections and what shall be inspected when Notified Bodies go onsite unannounced).

Please address any questions on the content of the response to:

Gert Bos
President TEAM-NB
Boulevard Frère Orban 35A, B – 4000 Liège BELGIQUE
Secretary@team-nb.org

Chapter I Scope and definitions

The Medical Devices Regulation

TEAM-NB finds the proposed scope changes to the medical devices regulation helpful; they clarify which products fall under the legislation and which do not. The scope is an important part of the legislation, so there is a need to consider amending the Commission's wording to avoid any doubt as to what is covered by the legislation. There may be opportunity to sharpen some definitions to remove doubt as to the classification of devices. We have some observation and suggestions:

Non-viable human tissues or cells that are not substantially manipulated

Gaps currently exist within the European Regulatory framework with regard to products manufactured utilising non-viable human tissues or cells; such products are subject to an inconsistent approach within the European market. The proposed MDR goes some way to address these gaps, by including within the scope products manufactured utilising non-viable human tissues or cells. However, the MDR excludes products manufactured utilising non-viable human tissues or cells that are not substantially manipulated, such as human demineralised bone, dermis or heart valves. The MDR should include these products, in order to ensure sufficient patient safety.

The proposed MDR and 1394/2007 exclude human demineralised bone, as they consider it a product that is minimally manipulated. However, the manufacturing process for certain forms of human demineralised bone or heart valves can include steps that would constitute substantial manipulation. Following the proposed path would lead to an inconsistent approach in the regulation of such products.

If the proposed MDR excludes products manufactured utilising non-viable human tissues or cells that are not substantially manipulated, it will exclude products that incorporate certain human blood products, because these are non-viable human tissues or cells that are not substantially manipulated. There are a number of wound-care products that contain human dermis but which are processed in different ways. This could result in very similar products being regulated in different regulatory systems based an interpretation of "substantially manipulated".

It is an aim of the proposed MDR to improve harmonisation of regulatory frameworks across the globe. Products manufactured utilising non-viable human tissues or cells, which are not subject to substantial manipulation e.g. human demineralised bone, are classified as devices within the USA. Therefore it would be consistent to do the same in the European Union.

Proposed amendments:

Preamble (10)

Union legislation is incomplete in respect of certain products manufactured utilising non-viable human tissues or cells that have undergone substantial manipulation and that are not covered by Regulation (EC) No 1394/2007 of the European Parliament and of the Council of 13 November 2007 on advanced therapy medicinal products and amending Directive 2001/83/EC and Regulation (EC) No 726/200431. Whilst donation, procurement and testing of the human tissues and cells used for the manufacture of those products should remain within the scope of Directive 2004/23/EC of the European Parliament and of the Council of 31 March 2004 on setting standards of quality and safety for the donation, procurement, testing, processing, preservation, storage and distribution of human tissues and cells, the finished product should come under the scope of this Regulation. ***Non-viable Human*** *tissues and cells that are not substantially manipulated, such as human demineralised bone matrix, and products derived from such tissues and cells, should* ***also*** ~~*not*~~ *be covered by this Regulation.*

3.1. Scope and definitions (Chapter 1)

The extension of the scope concerns:

products manufactured utilising non-viable human tissues or cells, or their derivatives, ~~*that have undergone substantial manipulation*~~ *(e.g. syringes prefilled with human collagen,* ***human demineralised bone****), unless they are covered by Regulation (EC) No 1394/2007 on advanced therapy medicinal products.* ~~*Human tissues and cells, or products derived from human tissues or cells, that are not substantially manipulated and that are regulated by Directive 2004/23/EC of the European Parliament and of the Council of 31 March 2004 on setting standards of quality and safety for the donation, procurement, testing, processing, preservation, storage and distribution of human tissues and cells are not covered by the proposal*~~*;*

Products that intentionally contain biological substances or organisms

It would help to clarify the definition of products that intentionally contain biological substances or organisms. Article 1.2(f) Scope would benefit from increased clarity, changing:

> *Products that **contain or consist of** biological substances or organisms other than those referred to in points (c) and (e) that are viable, including living micro-organisms, bacteria, fungi or virus;*
>
> To: *Products that **intentionally incorporate** biological substances or organisms other than those referred to in points (c) and (e) that are viable, including living micro-organisms, bacteria, fungi or virus;*

Products composed of substances or combinations of substances that are intended to be ingested, inhaled or administered rectally or vaginally and that are absorbed by or dispersed in the human body

We believe there are inconsistencies in classifying as class III all products composed of substances or combinations of substances that are intended to be ingested, inhaled or administered rectally or vaginally and that are absorbed by or dispersed in the human body from the regulation of medical devices.

This would exclude for example IVF Media for embryo storage, which is administered vaginally and is dispersed by the body. This contradicts the proposal in the MDR to classify such products as class IIb.

Other products that fall under the definition of a medical device with a medical purpose include those that act physically, like obesity pills that expand in the stomach and leave the body unaltered, and a raft of material that sits on top of stomach fluids for some time to prevent stomach acids rise up into the esophagus. Post market surveillance for these products demonstrates good safety and efficacy. The draft MDR states "*Devices that are composed of substances or combination of substances intended to be ingested, inhaled or administered rectally or vaginally and that are absorbed by or dispersed in the human body shall comply, by analogy, with the relevant requirements laid down in Annex I to Directive 2001/83/EC*". This requires that these devices involve consultations with drug agencies and ensures that inputs and recommendations from the drug agencies are included in the Notified Body product certification decisions.

In addition we believe the scope "*Products composed of substances or combinations of substances that are intended to be ingested, inhaled or administered rectally or vaginally and that are absorbed by or dispersed in the human body"* could include products administered via the eye, ear or nose that act physically. Although we believe it would be a mistake to exclude the products included in the MDR definition, it seems inconsistent to leave out these other body orifices from the definition.

Article 2(5) and Annex VIII, III Classification Rules 6 to 8: Partially, Wholly or Mainly?

Article 2 point (5) states

> *'implantable device' means any device, including those that are **partially or wholly** absorbed, which is intended……*

However, Annex VIII section III Classification Rules state

> *Rule 6 All surgically invasive devices intended for transient use are in class IIa unless they:… – have a biological effect or are **wholly or mainly** absorbed in which case they are in class IIb,…*
>
> *Rule 7 All surgically invasive devices intended for short-term use are in class IIa unless they:… have a biological effect or are **wholly or mainly** absorbed in which case they are in class III,…*
>
> *Rule 8 All implantable devices and long-term surgically invasive devices are in class IIb unless they:… have a biological effect or are **wholly or mainly** absorbed, in which case they are in class III,…*

It would bring clarity if these clauses used the same definition of the degree of absorption that triggers up-classification to a higher risk category.

Definitions

TEAM-NB generally supports updating the definitions in light of legislative and technological developments.

Notified bodies and Medical Device Competent Authorities in Member States are best placed to have the necessary competency and expertise to assess the safety of devices without a medical purpose. The proposal will address an inconsistency in the current regulatory framework where, for example, corrective contact lenses are regulated as medical devices but cosmetic contact lenses are regulated under general product safety legislation. It is clear that regulators and policy makers must define unambiguously and robustly the risk acceptability criteria for such devices, as there are no medical benefits on which to base an assessment of safety and performance.

If policy makers pursue the idea of an Annex containing a positive list of products, the list in the Annex should be evergreen. The regulation should contain a time-limited review process that commits member States and the Commission to revising the list to include new product types that meet the criteria of cosmetic devices. An alternative approach would be to have general descriptions of these types of device in the regulation, supported by guidance documents containing positive and negative examples.

One type of product that should be considered to be added at this stage is intense pulsed light equipment. The definition could be expanded to include intense pulsed light equipment that is intended for use towards the human body with a specific defined function or end point delivered to the body. A

second type of product that should be considered to be added at this stage is Radio Frequent (RF) treatment devices. These are used more and more as alternative for intense pulsed light (IPL) equipment.

Another addition would be the implantation of implantable microchips often causing infection, and so they may benefit from greater regulatory oversight.

The IVD Regulation

TEAM-NB is supportive to the proposed changes to scope, which will provide a greater degree of clarity. We agree with the approach to clarify the inclusion of software, genetic tests and companion diagnostics within the scope of the IVD regulation.

Work is needed to establish which regulation applies to the medical device portion if that portion is not an integral part of a product, but could be supplied together as a kit or co packaged, for example a swab and transport tube with media, or a sweat test for cystic fibrosis which has a sweat patch with body contact and a reader; is the sweat patch IVDR or MDR? Further, the Notified Body undertaking the reviews of such products needs expertise to review both the IVD device and medical device elements.

There needs to be clarification that a near patient test is delivered by a healthcare professional.

There needs also to be a definition of tests performed by a medically unqualified individual, such as an assistant in a pharmacy (not a pharmacist) or a personal trainer in a sports centre.

Regulatory status of products: both regulations

TEAM-NB welcomes the proposals on a strengthened decision process on regulatory status of products, overarching all relevant EU legislation. Binding decisions made at a European level gives clarity to the work of Notified Bodies.

We also support the idea of an expert group to support the Commission's decisions, and suggests that it would help all participants if the group included at least one member with significant experience in the work of notified bodies. Often decisions benefit from input based on the practicalities of implementation; well-meaning initiatives can be confounded by a lack of understanding of the details of implementation and enforcement.

Chapter II: Making available of devices, obligations of economic operators, reprocessing, CE marking, free movement

Placing on the market and putting into service: the medical devices regulation

TEAM-NB supports the inclusion of text relating to the requirement on manufacturers to provide a clinical evaluation, which is an existing requirement but is usefully highlighted in this section.

On the changes to the 'in-house exemption' on health institutions, TEAM-NB feels it is most crucial that although such products may be exempt from the burden of review and CE marking, they should become part of the vigilance reporting scheme which should help identify bad designs.

Placing on the market and putting into service: the IVD regulation

TEAM-NB supports tightening up the requirement on manufacturers to provide a clinical evaluation, which is an existing requirement but is usefully highlighted in this section.

We wish to enhance the focus on the aim of the legislation, which is to control risks to patients from products. Those risks are the same whether a device is produced by manufacturers or a healthcare institution. Therefore it is appropriate that the regulatory requirement should be the same. Patients deserve the same level of protection for the same risk class of device.

ISO 15189 as suggested by some is not an appropriate standard and does not address the GMP requirements covered by ISO 13485 or the Regulation. It does not address the risks associated with consistent manufacture.

There are many in-house tests for companion diagnostics under the regulations which will require a competent authority consultation; it does not seem appropriate that no consultation would be required for these high risk devices.

Internet sales: both regulations

TEAM-NB supports the proposal and is interested to understand how this will be enforced in practice, particularly for devices sourced from outside the EU by the consumer directly.

Harmonised standards: both regulations

TEAM-NB believes that Article 11 of the Regulation on European Standardization (1025/2012) enables Member States to issue formal objections to harmonised standards, so the detailing of a process to raise such objections is no longer required in the text of the medical devices regulations. If this is not the case we support the position in the consultation paper.

TEAM-NB is concerned that the slow resolution rate on formal objections to harmonized standards is unconstructive, and timelines of resolutions might be added to provide more focused solutions in case of discrepancies in view.

Common technical specifications: the medical device regulation

It is TEAM-NB's view that a CTS could be beneficial for manufacturers, if all stakeholders can contribute to its development and if it will be updated at a similar frequency to standards. There should be strong commitment in the regulation to continuous development of CTS to keep them state of the art and stop them being a drag on innovation. CTS should be used to respond to real regulatory needs and regulators should take care not to undermine the principles and functioning of harmonised standards and the New Approach.

Common technical specifications: the IVD regulation

TEAM-NB is of the opinion that extending the scope of CTS will be helpful for IVD manufacturers because they will provide more clarity and certainty about what is needed to meet the regulatory requirements. It will be important to establish clear criteria to ensure that CTS are developed in the most useful areas.

Additional guidance is needed to clarify stakeholder involvement in the preparation of new CTS and suitable transition to them.

General Obligations of economic operators: both regulations

TEAM-NB appreciates the alignment of the regulation of medical devices with the EU's New Legislative Framework.

TEAM-NB supports the concept of a 'qualified person' that has been introduced into the legislation and consider that this will help to support regulatory compliance and consistently high standards across the industry. It is also likely to support notified bodies' interactions with manufacturers and authorised representatives.

We note the concern about SMEs that manufacture only low risk devices, but observe that many SMEs manufacture high risk devices (that are highly beneficial and of high value) who often do not grasp the full breadth and depth of their regulatory obligations and may need to "up their game". Also, the regulations must clarify the roles and responsibilities of importers, authorised representatives and manufactures so that they each understand fully their obligations, avoid duplication and between them meet fully the requirements.

To give credit to concerns of the requirement being over burdensome on SMEs, the regulation should clarify whether a contract QP is acceptable as happens in the pharmaceutical industry.

The "qualified person" should be able to speak as an equal with their counterparts in competent authorities and notified bodies, and should be as equally well qualified. It would be helpful if the regulation laid out the qualification requirements. Article 13.1 should be supplemented with the following provisions, to ensure manufacturers employ competent staff:

> *The qualified person shall have proven qualifications equivalent to those Notified Body personnel as laid down in Annex VI articles 3.2.5 or 3.2.6, depending on the scope of their role.*

The reprocessing of single-use devices: the medical devices regulation

TEAM-NB is supportive of adding control to a largely unregulated area that only in a minority of countries is controlled. Also the coverage of the 'in-house' reprocessing of single-use devices by health institutions is supported, as it is in the benefit of the patients to have the same rigor apply in case hospitals reprocess rather than manufacturers. Also outsourced reprocessing should in our view be covered in the requirements.

TEAM—NB is concerned about how manufacturers will be able to demonstrate conformity with the regulatory requirements. We do not agree with the provision to allow Member States to take action

unilaterally, as that clearly represents a distortion of the single market. It is not a case of ethics; it is a case of a re-processor demonstrating clearly the safety and performance of the reprocessed device and meeting the essential requirements of the regulation.

A list of single-use devices for critical use which can be reprocessed, decided by the Commission with oversight from Member States, will secure a high level of patient safety. Perhaps an expert scientific committee, such as the Scientific Committee on Emerging and Newly Identified Health Risks, should advise the Commission on this issue, and support regular review of the list over time to keep it state of art.

Implant card: the medical devices regulation

TEAM-NB supports this new requirement.

As patients may have a large number of devices implanted in a single operation and those devices may be made up of a number of components, it needs to be considered to have an implant card system covering a surgical procedure rather than stacks of implant cards being handed to the patient. It will be important to define precisely the types of implant such a requirement should cover. E.g. do implant cards also need to be generated for surgical sutures?

Declaration and CE marking of conformity: both regulations

TEAM-NB is happy with the added clarity these updated provisions will bring.

Devices for special purposes, systems and procedure packs, parts and components, and free movement: both regulations

TEAM-NB is generally supportive of the revised wording. Further clarification is needed when the procedure pack contains medical devices and IVDs.

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

Identification, traceability and transparency of devices: both regulations

TEAM-NB supports the measure on identification because it substantially simplifies the existing system by replacing multiple national registrations with a single central registration. The benefit of improved traceability outweighs the small increase in administrative burden to economic operators.

TEAM-NB supports the introduction of a UDI system. The International Medical Device Regulatory Forum (IMDRF) is very active in this area and it will help all parties if national and pan-European systems fit harmoniously together and with systems at a global level. Member states and the Commission must

engage as actively and constructively as possible with the IMDRF to minimise the degree of divergence at a local level.

Centralized Database

TEAM-NB supports the establishment of a new central database; this will help to share information, facilitate cooperation between Member States, Notified Bodies and other operators; it will improve the transparency of information for patients.

A properly functioning central database would be very beneficial. Notified bodies need a level of access that enables them to perform their tasks and meet their obligations in the best informed manner possible. There is a danger notified bodies are seen as sources or conduits of information, rather than full participants in the regulatory process.

TEAM-NB supports the requirement to produce a summary of safety and performance which will increase transparency for clinicians and patients. It is important that clinicians have access to the right information so that they can make more informed decisions about the devices available on the market. We support getting clarification on the structure of and the level of detail of information these summaries should include to ensure that they really add value to clinicians and patients, in particular in relation to clinical evidence and are consistent in its formatting.

Chapter IV: Notified Bodies

Notified Bodies: both regulations

TEAM-NB strongly supports the introduction of the requirements which will support improvements in the national authorities overseeing notified bodies. TEAM-NB supports an overview of CA on a European level, as it is now the plan by the Commission (introducing Food & Verterinary Offcie, Dublin), and in our view the decisions should be made by the audit team and not left to the designating authority alone.

We would be supportive of the Commission taking on the administrative responsibility of organising the rotation of peer reviews, supported by the new committee of Member State experts, the Medical Device Coordination Group, to get a more balanced system in place.

TEAM-NB believes the national authority staff overseeing notified bodies should be as equally well qualified as the Notified Body staff they are overseeing. It would be helpful if the regulation laid out the qualification requirements. Article 28.6 first paragraph currently states:

> *The national authority responsible for notified bodies shall have a sufficient number of competent personnel at its disposal for the proper performance of its tasks.*

This should be supplemented with the following provisions, to ensure national authorities employ competent staff:

National authority personnel responsible for the auditing the work of Notified Body personnel responsible for carrying out product related review (e.g. design dossier review, technical documentation review or type examination including aspects such as clinical evaluation, biological safety, sterilisation, software validation) shall have proven qualifications equivalent to those Notified Body personnel as laid down in Annex VI article 3.2.5.

National authority personnel responsible for the auditing the work of Notified Body personnel responsible for carrying out audits of the manufacturer's quality management system shall have proven qualifications equivalent to those Notified Body personnel as laid down in Annex VI article 3.2.6.

TEAM-NB broadly welcomes the requirements set on notified bodies and believes that its members should arrange to be properly resourced with the necessary expertise to address the changes described in case that currently might not yet be the case. As stated previously, we believe members state designation authorities should also meet the resource and expertise requirements laid down for notified bodies. If they are not, how can they properly perform their role and meet their own regulatory obligations?
TEAM-NB supports the proposed changes applicable to become a Notified Body. We believe the investment is necessary if the regulations are to be applied consistently across the European Union.

TEAM-NB is of the strong opinion that tightening up the monitoring of notified bodies with assessments, audits and better communication is crucial to ensure a consistent level of scrutiny of manufacturers and devices across the EU.

The qualification requirements for personnel involved in conformity assessment procedures should be described in more detail to ensure a level playing field all over Europe. Depending on the conformity assessment route chosen by the manufacturer the qualification of that personnel may vary based on the risk classes of medical devices (e.g. qualification needed for TF Assessment on class IIa or IIb devices versus qualification for Design Dossier assessment on class III devices). Suggestion is given in detail in our code of conduct.

Chapter V: Classification and conformity assessment

Classification: both regulations

TEAM-NB agrees to the changes proposed to the classification, and especially welcome the transition in IVD to move to a GHTF rule based system. A clear and transparent system is needed to ensure all stakeholders are instantly updated on any classification conclusion.

In relation to some of the ongoing debates, it is TEAM-NBs view that novelty is very difficult to define and when defined hard to interpret. The focus should be on risk.

Conformity assessment: the medical devices regulation

TEAM-NB support these changes to the conformity assessment procedures, in particular the additional requirements on Notified Body audits.

TEAM-NB has some other suggestions relating to the conformity assessment provisions in the proposed regulation.

Reporting Changes for Class III Devices

There are instances where Class III manufacturers do not report to their Notified Body changes to their approved design dossiers for further approval. The change proposed here increases the visibility of product changes to the Notified Body and so reduces the possibility of significant changes that could affect the safety and performance of a device going un-reviewed.

Currently it is at the manufacturer's discretion whether they report or not. For example, manufacturers may make a change in materials that could be argued not to be a design change and so not reportable to the Notified Body, so denying them the opportunity to establish whether or not the change is significant. The manufacturers base their decision on the highlighted words in Annex VIII of the proposed medical device regulation:

> *ANNEX VIII CONFORMITY ASSESSMENT BASED ON FULL QUALITY ASSURANCE AND DESIGN EXAMINATION Chapter II: Design dossier examination, Section 5.5*
>
> *Changes to the approved **design** shall receive further approval from the Notified Body which issued the EU design-examination certificate **wherever the changes could affect conformity with the general safety and performance requirements of the Regulation or with the conditions prescribed for use of the device.** The applicant shall inform the Notified Body which issued the EU design-examination certificate of any planned changes to the approved design. The Notified Body shall examine the planned changes, notify the manufacturer of its decision and provide him with a supplement to the EU design-examination report. The approval of any change to the approved design shall take the form of a supplement to the EU design-examination certificate.*

These phrases are ambiguous and often trigger a discussion as to why the manufacturer did not elect to report any product changes. If the regulation can reduce this ambiguity it will improve control of these changes and introduce a more efficient process for all parties.

We propose a re-ordered and reworded Section 5.5:

> *The applicant shall inform the Notified Body which issued the EU design-examination certificate of any planned changes to the approved **product, with a supporting case justifying whether or not the change is significant.** Changes to the approved product shall receive further approval from the Notified Body which issued the EU design-examination certificate wherever the changes could affect conformity with the general safety and performance requirements of the Regulation or with the conditions prescribed for use of the device. The*

Notified Body shall examine the planned changes, notify the manufacturer of its decision and provide him with a supplement to the EU design-examination report. The approval of any change to the approved design shall take the form of a supplement to the EU design-examination certificate.

The new wording now instructs manufacturers of Class III devices to report all changes to class III devices. If the relevant Notified Body judges that the change requires further approval they will raise the flag for supplementary change. The danger could be that all changes are reportable and the Notified Body takes the decision on whether it is a significant change or not (that is whether it requires further approval or not) away from the manufacturer. However, the manufacturer should decide on this anyway; the Notified Body either agrees or disagrees with their decision.

Annex I General Requirement 6: Nothing in life is without risk

General Requirement 6 states:

For devices listed in Annex XV for which the manufacturer does not claim a medical purpose, the general requirements set out in Sections 1 and 5 shall be understood that the device, when used under the conditions and for the purposes intended, shall ***not*** *present* ***any risk or*** *only the minimum acceptable risks related to the product's use which is consistent with a high level of protection for the safety and health of persons.*

It is not feasible to demonstrate no risk as all devices will have inherent risk. Therefore the words in bold should be removed. However, the requirement should consider the state of the art to support the aim of minimising risk. Therefore General Requirement 6 should be updated to:

For devices listed in Annex XV for which the manufacturer does not claim a medical purpose, the general requirements set out in Sections 1 and 5 shall be understood that the device, when used under the conditions and for the purposes intended, shall present only the minimum acceptable risks related to the product's use which is consistent with the state of the art and a high level of protection for the safety and health of persons.

Annex I General Requirement 7.4: The unborn child

General Requirement 7.4 states:

".....If the intended use of such devices includes treatment of children or treatment of pregnant or nursing women, the manufacturer shall provide a specific justification for the use of these substances with regard to compliance with the general safety and performance requirements...."

This requirement gives special consideration to special groups including children, pregnant women and nursing women. However it does not consider the unborn child, which is in a similar risk category to the groups already identified. Therefore this section should be updated to:

".....If the intended use of such devices includes treatment ***of cells, tissue, or body liquids intended to be introduced into a human for the purpose of inducing pregnancy, embryos,*** *children or treatment of pregnant or nursing women, the manufacturer shall provide a*

specific justification for the use of these substances with regard to compliance with the general safety and performance requirements...."

Annex I General Requirement 7.5: Leach, Leak and Egress

General Requirement 7.4 states:

The devices shall be designed and manufactured in such a way as to reduce as far as possible and appropriate the risks posed by substances that may leach or leak from the device. .....

General Requirement 7.5 states:

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

"*or egress*" and "*or from*" can be deleted from 7.5 as the issues is covered in 7.4.

Annex I Requirement 19: Labelling of Primary and Secondary Packaging

Annex I, III, section 19 of the proposed MDR covers the requirements for labels. Like the current MDD, it does not address the issue of various levels of labelling. Currently the requirements only cover "the label" and it is not clear whether this applies to the primary label and any additional secondary levels of labelling (box, shipper etc.) or whether the sum of the requirements can be satisfied by the combination of all levels. This can result in manufactures choosing to miss out information that may be critical on the primary pack if it is on the secondary pack; on occasion details such as manufacturer name, single use symbols and warnings have been omitted. Notified bodies can challenge this from a risk management perspective but it would enhance the new regulations if the issue was made very clear in the MDR. Sometimes a device pack is so small that there is not enough room for all the symbols and labels. However at present one manufacturer of a device includes all the information while another argues there is no requirement to do so when the device and pack size are essentially the same; this creates a disparity. This is a particular challenge for Own Brand Labels where the Notified Body's ability to challenge Original Equipment Manufacturer labels is reduced. A similar situation may arise with separate IFUs for professional users and lay persons.

The additions in bold to Annex I, 19.1 should help resolve this issue:

(b) Some devices may include separate information for the professional user and the lay person. ***Where separate information is provided each of these shall meet the General Safety Requirements.***

(c) 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. ***Each level of labelling shall meet the General Safety Requirements unless it can be justified that not doing so does not result in increased risk.***

Annex I Requirement 19.1 (g): Labelling following Standards that are not Harmonised

Annex I 19.1(g) does not address the situation where a standard (or other recognised guidance) exists but it is not harmonised. It should be amended as in bold to cover this possibility:

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

Annex I, Requirement 19.3: How to use the device?

The current requirements do not actually state that instructions for use needs to explain how to use the device. There should be a new requirement in this section, such as *"The instructions required to use the device safely taking into account the skill and experience of the intended user".*

Annex I, Requirement 19.3(a): Information in the instructions for use

This should include the "The particulars" referred to in points 19.2 b) and d), in addition to those listed in the proposal.

Annex I, Requirement 19.3(h): Installation and implantation

This section currently appears to only apply to devices requiring "installation". Some of these requirements would equally apply to devices that require implanting or fitting, so the additions in bold would help:

> *The information needed to verify whether the device is properly* ***fitted, implanted or*** *installed and is ready to perform safely and as intended by the manufacturer, together with, where relevant:*
>
> - *details of the nature, and frequency, of* ***follow up checks by a medical expert****, preventative 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;*
> - *methods of eliminating the risks encountered by persons involved in installing, calibrating or servicing devices*

Annex I, Requirement 19.3(m): Substantive change

Some devices may be intended for use with substances as well as other devices or equipment and therefore this section should be expanded to include this possibility:

> *For devices intended for use together with other devices* ***and/or substances*** *and/or general purpose equipment:*

- *information to identify such devices, **substances** or equipment, in order to obtain a safe combination, and/or*
- *information on any known restrictions to combinations of devices, **substances** and equipment.*

Conformity assessment: the IVD regulation

TEAM-NB supports the changes which will tighten up the assessment of IVDs before they are placed on the market.

TEAM-NB also supports the future requirement for notified bodies to be involved in assessment of sterile class A IVDs because if a sterile IVD is in contact with a patient then it makes sense to have a Notified Body review, in the same way as for sterile class I medical devices.

As for class A IVDs with a measuring function, all IVDs measure something, so including them in mandatory Notified Body oversight would mean all IVDs would require Notified Body involvement. The question is whether this requirement would be proportionate to the risk posed. If a piece of equipment delivers an incorrect amount of analyte to an assay, that assay should detect that error at the calibration stage. If a piece of equipment measures and delivers an erroneous value it depends on the use of that value as to whether the product needs a third party review by a Notified Body. The definition "measuring function" could be limited to quantitative assays.

TEAM-NB supports the requirement for companion diagnostics to be subject to consultation with a medicines competent authority during conformity assessment because this will help to ensure their suitability when used in conjunction with a specific medicine.

TEAM-NB feels further clarification is needed on the conformity assessment route for re-labelling/re-packaging. Specifically, clarification is needed for the text in article 14.4 "a certificate, issued by a Notified Body".

Own Brand labeling

TEAM-NB supports the continuation of own brand labelling directly from the original approval. Current practice should be streamlined to ensure good OBL practice is adhered to, including:

- Chain-linking of contracts should be prohibited (e.g. CE manufacturers in China, OBL in Germany, OBL to OBL in Austria);
- Parts of technical documentation (e.g. STED Part A) shall be available at the site of the OBL manufacturer, for review by the Notified Body that issues the CE certificate to the OBL;
- A manual for acceptable changes to the product or packaging should be defined.

However, a European wide regulation on the depth of assessment of the OBL including the quality management system and product documentation by the Notified Body of the OBL is necessary.

Derogations, choosing a Notified Body, and certificates: both regulations

TEAM-NB is supportive of a system where full disclosure of manufacturers changing notified bodies is in place, for example by requiring manufacturers to disclose their previous interactions with other notified bodies.

Additional pre-market scrutiny for higher risk devices: both regulations

TEAM-NB is of the opinion that the best way to enhance scrutiny is for member states to do unannounced reviews of selected high risk design dossiers after CE marking. This forces Notified Bodies to excel in all their assessments. In addition, this will result in a more harmonized interpretation of the regulations.

Sample of technical documentation for Assessment

Sampling procedures for assessment of technical documentations are currently described in an NBOG guidance document, utilized by all TEAM-NB members. The current sampling procedure in this document provides an oversimplification of the provisions in the Directive for large enterprises, and leads to broad divergence in interpretation. Clearly defined rules should be part of the future MD regulations.

Unannounced factory visits

TEAM-NB has harmonised interpretation of scope, focus and risk based sampling of unannounced factory visits in its code of conduct. For a harmonized approach, the number and procedures of unannounced factory visits shall be regulated in more detail in the future MD regulations.

Changes of the members of the evaluation team

TEAM-NB views that due to potential loss of information a change of the complete audit team is not advisable. Especially for complex products and processes this adds risks and may be counterproductive. A change of the lead Auditor for every 3 year, e.g. coinciding with the QMS renewal audit that takes up more mandays, as included in our Code of Conduct should be practicable, and would be supportive of more independent reviews.

Acceptance of audits / reports / certificate

TEAM-NB view is that the clause "Unless duly substantiated, it shall presume that quality management systems which satisfy the relevant harmonized standards or CTS conform to the requirements covered by the standards or CTS" is unclear. It would open assessment of the quality management system requirements of the medical devices regulation to assessment bodies other than notified bodies, which is out of policy in several EU countries at this moment; the current principle of 93/42/EEC article 11 (7) is missing.

Chapter VI: Clinical evaluation, investigations, evidence

Clinical evaluation and general requirements on clinical investigations: the medical devices regulation

TEAM-NB supports the principles of these changes, and acknowledge that already today the debate on this topic has resulted in much stricter expectations being in place in notified bodies for high risk devices following the 2007/47 revision to the medical devices directives.

General requirements on clinical evidence and clinical performance studies: the IVD regulation

TEAM-NB supports the principles of these changes; important to drive an improvement in clinical evaluation by manufacturers and assessment of clinical evidence by notified bodies.

Clinical investigations: the medical devices regulation; and interventional clinical performance studies and other clinical performance studies involving risks for the subjects of the studies: the IVD regulation

TEAM-NB feels the rules should be further clarified. What is the regulatory impact of a Member State approving a clinical trial? Member States should be more active in providing positive approval within the current 60 days window upon applying for a clinical trial, where essential after requesting more data; the current practice of no response within 60 days equalling no objection is outdated.

Additional guidance to define what constitutes an interventional study would be useful; for example, if an additional ml of blood is drawn is this an interventional study?

TEAM-NB supports the changes to registration and the introduction of a central European database which will simplify the existing national provisions and facilitate information sharing. TEAM-NB emphasises that sufficient detail of approved or rejected clinical trials should be visible to the Notified Body reviewing the technical documentation of the products in the clinical trial.

TEAM-NB supports the introduction of a coordinating competent authority could be useful to facilitate cooperation between Member States.

Chapter VII: Vigilance and market surveillance

Vigilance: both regulations

TEAM-NB supports the establishment of a central vigilance database.

In line with current guidance, we think that there should be a deadline for manufacturers to report field safety corrective actions (FSCAs), for example, no later than the FSCA has begun or within two days if there is a serious public health threat.

TEAM-NB supports the improved analysis of incidents and field safety corrective actions.

Market Surveillance: both regulations

TEAM-NB supports the changes which will simplify reporting of market surveillance and facilitate cooperation between competent authorities.

Chapter VIII: Cooperation between Member States, Medical Device Coordination Group, EU reference laboratories, device registers

Cooperation between Member States: both regulations

TEAM-NB agrees that the MDCG should become an effective forum for decision-making. As stated above, we suggest that it would help all participants if the group included at least one member with experience in the work of notified bodies. Often decisions benefit from input based on the practicalities of implementation; well-meaning initiatives can be confounded by a lack of understanding of the details of implementation and enforcement.

Concerning international work, it is imperative that Member States engage fully, either individually or at a European level, in international regulatory for at OECD or Global levels. Stronger involvement in regional and global initiatives will prevent a phasing out of European involvement, and thus will prevent adverse impact on patients and industry in the EU.

EU reference laboratories: both regulations

TEAM-NB feels it is challenging to see the benefit that such a network would bring. There are a number of areas Member States and other stakeholders have identified where money would be better spent to more effectively improve the patient safety.

The governance of these reference laboratories is not clear. They would have a major role in the preparation of the CTS; as this defines the state of the art it may be better under competent authority supervision.

It is not clear that additional independent testing by the reference laboratory of products to the CTS on top of routine batch testing will add value, but it will certainly take time, increase cost and create delays.

Chapter IX: Confidentiality, data protection, funding, penalties

Confidentiality, data protection, funding, penalties: both regulations

TEAM-NB fully supports the aim of transparency in regulation.

There is a need for a properly structured funding and penalty system. The system should be uniform across the EU; the system should be proportionate to the requirements of the regulations and the needs of the citizens for a system that protects their safety and is as cost effective as possible.

Brussels

26 February 2013