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

REGULATION (EU) 2017/745 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 5 April 2017

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(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,

Having regard to the opinion of the European Economic and Social Committee[(1)],

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure[(2)],

Whereas:

(1) Council Directive 90/385/EEC[(3)] and Council Directive 93/42/EEC[(4)] constitute the Union regulatory framework for medical devices, other than *in vitro* diagnostic medical devices. However, a fundamental revision of those Directives is needed to establish a robust, transparent, predictable and sustainable regulatory framework for medical devices which ensures a high level of safety and health whilst supporting innovation.

(2) This Regulation aims to ensure the smooth functioning of the internal market as regards medical devices, taking as a base a high level of protection of health for patients and users, and taking into account the small- and medium-sized enterprises that are active in this sector. At the same time, this Regulation sets high standards of quality and safety for medical devices in order to meet common safety concerns as regards such products. Both objectives are being pursued simultaneously and are inseparably linked whilst one not being secondary to the other. As regards Article 114 of the Treaty on the Functioning of the European Union (TFEU), this Regulation harmonises the rules for the placing on the market and putting into service of medical devices and their accessories on the Union market thus allowing them to benefit from the principle of free movement of goods. As regards Article 168(4)(c) TFEU, this Regulation sets high

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standards of quality and safety for medical devices by ensuring, among other things, that data generated in clinical investigations are reliable and robust and that the safety of the subjects participating in a clinical investigation is protected.

(3) This Regulation does not seek to harmonise rules relating to the further making available on the market of medical devices after they have already been put into service such as in the context of second-hand sales.

(4) Key elements of the existing regulatory approach, such as the supervision of notified bodies, conformity assessment procedures, clinical investigations and clinical evaluation, vigilance and market surveillance should be significantly reinforced, whilst provisions ensuring transparency and traceability regarding medical devices should be introduced, to improve health and safety.

(5) To the extent possible, guidance developed for medical devices at international level, in particular in the context of the Global Harmonization Task Force (GHTF) and its follow-up initiative, the International Medical Devices Regulators Forum (IMDRF), should be taken into account to promote the global convergence of regulations which contributes to a high level of safety protection worldwide, and to facilitate trade, in particular in the provisions on Unique Device Identification, general safety and performance requirements, technical documentation, classification rules, conformity assessment procedures and clinical investigations.

(6) For historical reasons, active implantable medical devices, covered by Directive 90/385/EEC, and other medical devices, covered by Directive 93/42/EEC, were regulated in two separate legal instruments. In the interest of simplification, both directives, which have been amended several times, should be replaced by a single legislative act applicable to all medical devices other than *in vitro* diagnostic medical devices.

(7) The scope of application of this Regulation should be clearly delimited from other Union harmonisation legislation concerning products, such as *in vitro* diagnostic medical devices, medicinal products, cosmetics and food. Therefore, Regulation (EC) No 178/2002 of the European Parliament and of the Council[(5)] should be amended to exclude medical devices from its scope.

(8) It should be the responsibility of the Member States to decide on a case-by-case basis whether or not a product falls within the scope of this Regulation. In order to ensure consistent qualification decisions in that regard across all Member States, particularly with regard to borderline cases, the Commission should be allowed to, on its own initiative or at the duly substantiated request of a Member State, having consulted the Medical Device Coordination Group ('MDCG'), decide on a case-by-case basis whether or not a specific product, category or group of products falls within the scope of this Regulation. When deliberating on the regulatory status of products in borderline cases involving medicinal products, human tissues and cells, biocidal products or food products, the Commission should ensure an appropriate level of consultation of the European Medicines Agency (EMA), the European Chemicals Agency and the European Food Safety Authority, as relevant.

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(9) Since in some cases it is difficult to distinguish between medical devices and cosmetic products, the possibility of taking a Union-wide decision regarding the regulatory status of a product should also be introduced in Regulation (EC) No 1223/2009 of the European Parliament and of the Council[(6)].

(10) Products which combine a medicinal product or substance and a medical device are regulated either under this Regulation or under Directive 2001/83/EC of the European Parliament and of the Council.[(7)] The two legislative acts should ensure appropriate interaction in terms of consultations during pre-market assessment, and of exchange of information in the context of vigilance activities involving such combination products. For medicinal products that integrate a medical device part, compliance with the general safety and performance requirements laid down in this Regulation for the device part should be adequately assessed in the context of the marketing authorisation for such medicinal products. Directive 2001/83/EC should therefore be amended.

(11) Union legislation, in particular Regulation (EC) No 1394/2007 of the European Parliament and of the Council[(8)] and Directive 2004/23/EC of the European Parliament and of the Council[(9)], is incomplete in respect of certain products manufactured utilising derivatives of tissues or cells of human origin that are non-viable or are rendered non-viable. Such products should come under the scope of this Regulation, provided they comply with the definition of a medical device or are covered by this Regulation.

(12) Certain groups of products for which a manufacturer claims only an aesthetic or another non-medical purpose but which are similar to medical devices in terms of functioning and risks profile should be covered by this Regulation. In order for manufacturers to be able to demonstrate the conformity of such products, the Commission should adopt common specifications at least with regard to application of risk management and, where necessary, clinical evaluation regarding safety. Such common specifications should be developed specifically for a group of products without an intended medical purpose and should not be used for conformity assessment of the analogous devices with a medical purpose. Devices with both a medical and a non-medical intended purpose should fulfil both the requirements applicable to devices with, and to devices without, an intended medical purpose.

(13) As is the case for products that contain viable tissues or cells of human or animal origin, that are explicitly excluded from Directives 90/385/EEC and 93/42/EEC and hence from this Regulation, it should be clarified that products that contain or consist of viable biological materials or viable organisms of another origin in order to achieve or support the intended purpose of those products are not covered by this Regulation either.

(14) The requirements laid down in Directive 2002/98/EC of the European Parliament and of the Council[(10)] should continue to apply.

(15) There is scientific uncertainty about the risks and benefits of nanomaterials used for devices. In order to ensure a high level of health protection, free movement of goods and legal certainty for manufacturers, it is necessary to introduce a uniform definition for nanomaterials based on Commission Recommendation 2011/696/EU[(11)], with the necessary flexibility to adapt that definition to scientific and technical progress and

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subsequent regulatory development at Union and international level. In the design and manufacture of devices, manufacturers should take special care when using nanoparticles for which there is a high or medium potential for internal exposure. Such devices should be subject to the most stringent conformity assessment procedures. In preparation of implementing acts regulating the practical and uniform application of the corresponding requirements laid down in this Regulation, the relevant scientific opinions of the relevant scientific committees should be taken into account.

(16) Safety aspects addressed by Directive 2014/30/EU of the European Parliament and of the Council[(12)] are an integral part of the general safety and performance requirements laid down in this Regulation for devices. Consequently, this Regulation should be considered a *lex specialis* in relation to that Directive.

(17) This Regulation should include requirements regarding the design and manufacture of devices emitting ionizing radiation without affecting the application of Council Directive 2013/59/Euratom[(13)] which pursues other objectives.

(18) This Regulation should include requirements for devices' design, safety and performance characteristics which are developed in such a way as to prevent occupational injuries, including protection from radiation.

(19) It is necessary to clarify that software in its own right, when specifically intended by the manufacturer to be used for one or more of the medical purposes set out in the definition of a medical device, qualifies as a medical device, while software for general purposes, even when used in a healthcare setting, or software intended for life-style and well-being purposes is not a medical device. The qualification of software, either as a device or an accessory, is independent of the software's location or the type of interconnection between the software and a device.

(20) The definitions in this Regulation, regarding devices themselves, the making available of devices, economic operators, users and specific processes, the conformity assessment, clinical investigations and clinical evaluations, post-market surveillance, vigilance and market surveillance, standards and other technical specifications, should be aligned with well-established practice in the field at Union and international level in order to enhance legal certainty.

(21) It should be made clear that it is essential that devices offered to persons in the Union by means of information society services within the meaning of Directive (EU) 2015/1535 of the European Parliament and of the Council[(14)] and devices used in the context of a commercial activity to provide a diagnostic or therapeutic service to persons within the Union comply with the requirements of this Regulation, where the product in question is placed on the market or the service is provided in the Union.

(22) To recognise the important role of standardisation in the field of medical devices, compliance with harmonised standards as defined in Regulation (EU) No 1025/2012 of the European Parliament and of the Council[(15)] should be a means for manufacturers to demonstrate conformity with the general safety and performance requirements and other legal requirements, such as those relating to quality and risk management, laid down in this Regulation.

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(23) Directive 98/79/EC of the European Parliament and of the Council[16] allows the Commission to adopt common technical specifications for specific categories of *in vitro* diagnostic medical devices. In areas where no harmonised standards exist or where they are insufficient, the Commission should be empowered to lay down common specifications which provide a means of complying with the general safety and performance requirements, and the requirements for clinical investigations and clinical evaluation and/or post-market clinical follow-up, laid down in this Regulation.

(24) Common specifications ('CS') should be developed after consulting the relevant stakeholders and taking account of European and international standards.

(25) The rules applicable to devices should be aligned, where appropriate, with the New Legislative Framework for the Marketing of Products, which consists of Regulation (EC) No 765/2008 of the European Parliament and of the Council[17] and Decision No 768/2008/EC of the European Parliament and of the Council[18].

(26) The rules on Union market surveillance and control of products entering the Union market laid down in Regulation (EC) No 765/2008 apply to devices covered by this Regulation which does not prevent Member States from choosing the competent authorities to carry out those tasks.

(27) It is appropriate to set out clearly the general obligations of the different economic operators, including importers and distributors, building on the New Legislative Framework for the Marketing of Products, without prejudice to the specific obligations laid down in the various parts of this Regulation, to enhance understanding of the requirements laid down in this Regulation and thus to improve regulatory compliance by the relevant operators.

(28) For the purpose of this Regulation, the activities of distributors should be deemed to include acquisition, holding and supplying of devices.

(29) Several of the obligations on manufacturers, such as clinical evaluation or vigilance reporting, that were set out only in the Annexes to Directives 90/385/EEC and 93/42/EEC, should be incorporated into the enacting provisions of this Regulation to facilitate its application.

(30) Health institutions should have the possibility of manufacturing, modifying and using devices in-house and thereby address, on a non-industrial scale, the specific needs of target patient groups which cannot be met at the appropriate level of performance by an equivalent device available on the market. In that context, it is appropriate to provide that certain rules of this Regulation, as regards medical devices manufactured and used only within health institutions, including hospitals as well as institutions, such as laboratories and public health institutes that support the healthcare system and/or address patient needs, but which do not treat or care for patients directly, should not apply, since the aims of this Regulation would still be met in a proportionate manner. It should be noted that the concept of 'health institution' does not cover establishments primarily claiming to pursue health interests or healthy lifestyles, such as gyms, spas, wellness and fitness centres. As a result, the exemption applicable to health institutions does not apply to such establishments.