Regulation (EU) No 536/2014 of the European Parliament and of the Council of 16 April 2014 on clinical trials on medicinal products for human use, and repealing Directive 2001/20/EC (Text with EEA relevance)

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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 Articles 114 and 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) In a clinical trial the rights, safety, dignity and well-being of subjects should be protected and the data generated should be reliable and robust. The interests of the subjects should always take priority over all other interests.

(2) In order to allow for independent control as to whether these principles are adhered to, a clinical trial should be subject to prior authorisation.

(3) The existing definition of a clinical trial as contained in Directive 2001/20/EC of the European Parliament and of the Council[(3)] should be clarified. For that purpose, the concept of clinical trial should be more precisely defined by introducing the broader concept of ‘clinical study’ of which the clinical trial is a category. That category should be defined on the basis of specific criteria. This approach takes due account of international guidelines, and is in line with the Union law governing medicinal products, which builds on the dichotomy of ‘clinical trial’ and ‘non-interventional study’.

(4) Directive 2001/20/EC aims to simplify and harmonise the administrative provisions governing clinical trials in the Union. However, experience shows that a harmonised approach to the regulation of clinical trials has only been partly achieved. This makes it in particular difficult to perform a given clinical trial in several Member States. Scientific development, however, suggests that future clinical trials will target more

specific patient populations, such as subgroups identified through genomic information. In order to include a sufficient number of patients for such clinical trials it may be necessary to involve many, or all, Member States. The new procedures for the authorisation of clinical trials should stimulate the inclusion of as many Member States as possible. Therefore, in order to simplify the procedures for the submission of an application dossier for the authorisation of a clinical trial, the multiple submission of largely identical information should be avoided and replaced by the submission of one application dossier to all the Member States concerned through a single submission portal. Given that clinical trials carried out in a single Member State are equally important to European clinical research, the application dossier for such clinical trials should also be submitted through that single portal.

(5) As regards Directive 2001/20/EC, experience also indicates that the legal form of a Regulation would present advantages for sponsors and investigators, for example in the context of clinical trials taking place in more than one Member State, since they will be able to rely on its provisions directly, but also in the context of safety reporting and labelling of investigational medicinal products. Divergences of approach among different Member States will be therefore kept to a minimum.

(6) The Member States concerned should cooperate in assessing a request for authorisation of a clinical trial. This cooperation should not include aspects of an intrinsically national nature, such as informed consent.

(7) In order to avoid administrative delays for starting a clinical trial, the procedure to be used should be flexible and efficient, without compromising patient safety or public health.

(8) The timelines for assessing an application dossier for clinical trials should be sufficient to assess the file while, at the same time, ensuring quick access to new, innovative treatments and ensuring that the Union remains an attractive place for conducting clinical trials. Against this background, Directive 2001/20/EC introduced the concept of tacit authorisation. This concept should be maintained in order to ensure that timelines are adhered to. In the event of a public health crisis, Member States should have the possibility to assess and authorise a clinical trial application swiftly. No minimal timelines for approval should therefore be established.

(9) Clinical trials for the development of orphan medicinal products as defined in Regulation (EC) No 141/2000 of the European Parliament and of the Council[(4)] and of medicinal products addressed to subjects affected by severe, debilitating and often life-threatening diseases affecting no more than one person in 50 000 in the Union (ultra-rare diseases) should be fostered.

(10) Member States should efficiently assess all clinical trials applications within the given timelines. A rapid yet in-depth assessment is of particular importance for clinical trials concerning medical conditions which are severely debilitating and/or life threatening and for which therapeutic options are limited or non-existent, as in the case of rare and ultra-rare diseases.

(11) The risk to subject safety in a clinical trial mainly stems from two sources: the investigational medicinal product and the intervention. Many clinical trials, however, pose only a minimal additional risk to subject safety compared to normal clinical practice. This is particularly the case where the investigational medicinal product is covered by a marketing authorisation, that is the quality, safety and efficacy has already been assessed in the course of the marketing authorisation procedure" or, if that product is not used in accordance with the terms of the marketing authorisation, that use is evidence- based and supported by published scientific evidence on the safety and efficacy of that product, and the intervention poses only very limited additional risk to the subject compared to normal clinical practice. Those low-intervention clinical trials are often of crucial importance for assessing standard treatments and diagnoses, thereby optimising the use of medicinal products and thus contributing to a high level of public health. Those clinical trials should be subject to less stringent rules, as regards monitoring, requirements for the contents of the master file and traceability of investigational medicinal products. In order to ensure subject safety they should however be subject to the same application procedure as any other clinical trial. The published scientific evidence supporting the safety and efficacy of an investigational medicinal product not used in accordance with the terms of the marketing authorisation could include high quality data published in scientific journal articles, as well as national, regional or institutional treatment protocols, health technology assessment reports or other appropriate evidence.

(12) The Recommendation of the Organisation for Economic Cooperation and Development (OECD) Council on the Governance of Clinical Trials of 10 December 2012 introduced different risk categories for clinical trials. Those categories are compatible with the categories of clinical trials defined in this Regulation as the OECD Categories A and B(1) correspond to the definition of a low-intervention clinical trial as set out in this Regulation, and the OECD Categories B(2) and C correspond to the definition of a clinical trial as set out in this Regulation.

(13) The assessment of the application for a clinical trial should address in particular the anticipated therapeutic and public health benefits (relevance) and the risk and inconvenience for the subject. In respect of the relevance, various aspects should be taken into account, including whether the clinical trial has been recommended or imposed by regulatory authorities in charge of the assessment of medicinal products and the authorisation of their placing on the market and whether surrogate end-points, when they are used, are justified.

(14) Unless otherwise justified in the protocol, the subjects participating in a clinical trial should represent the population groups, for example gender and age groups, that are likely to use the medicinal product investigated in the clinical trial.

(15) In order to improve treatments available for vulnerable groups such as frail or older people, people suffering from multiple chronic conditions, and people affected by mental health disorders, medicinal products which are likely to be of significant clinical value should be fully and appropriately studied for their effects in these specific

groups, including as regards requirements related to their specific characteristics and the protection of the health and well-being of subjects belonging to these groups.

(16) The authorisation procedure should provide for the possibility to extend the timelines for the assessment in order to allow the sponsor to address questions or comments raised during the assessment of the application dossier. Moreover, it should be ensured that, within the extension period, there is always sufficient time for assessing the additional information submitted.

(17) The authorisation to conduct a clinical trial should address all aspects of subject protection and data reliability and robustness. That authorisation should therefore be contained in a single administrative decision by the Member State concerned.

(18) It should be left to the Member State concerned to determine the appropriate body or bodies to be involved in the assessment of the application to conduct a clinical trial and to organise the involvement of ethics committees within the timelines for the authorisation of that clinical trial as set out in this Regulation. Such decisions are a matter of internal organisation for each Member State. When determining the appropriate body or bodies, Member States should ensure the involvement of laypersons, in particular patients or patients' organisations. They should also ensure that the necessary expertise is available. In accordance with international guidelines, the assessment should be done jointly by a reasonable number of persons who collectively have the necessary qualifications and experience. The persons assessing the application should be independent of the sponsor, the clinical trial site, and the investigators involved, as well as free from any other undue influence.

(19) The assessment of applications for the authorisation of clinical trials should be conducted on the basis of appropriate expertise. Specific expertise should be considered when assessing clinical trials involving subjects in emergency situations, minors, incapacitated subjects, pregnant and breastfeeding women and, where appropriate, other identified specific population groups, such as elderly people or people suffering from rare and ultra rare diseases.

(20) In practice, sponsors do not always have all the information needed for submitting a complete application for authorisation of a clinical trial in all of the Member States where a clinical trial is eventually going to be conducted. It should be possible for sponsors to submit an application solely on the basis of documents assessed jointly by those Member States where the clinical trial might be conducted.

(21) The sponsor should be allowed to withdraw the application for authorisation of a clinical trial. To ensure the reliable functioning of the assessment procedure, however, an application for authorisation of a clinical trial should be withdrawn only for the entire clinical trial. It should be possible for the sponsor to submit a new application for authorisation of a clinical trial following the withdrawal of an application.

(22) In practice, in order to reach recruitment targets or for other reasons, sponsors may have an interest in extending the clinical trial to an additional Member States after the initial authorisation of the clinical trial. An authorisation mechanism should be provided to allow for such extension, while avoiding the re-assessment of the application by all

the Member States concerned which were involved in the initial authorisation of the clinical trial.

(23) Clinical trials are usually subject to many modifications after they have been authorised. Those modifications may relate to the conduct, the design, the methodology, the investigational or auxiliary medicinal product, or the investigator or clinical trial site involved. Where those modifications have a substantial impact on the safety or rights of the subjects or on the reliability and robustness of the data generated in the clinical trial, they should be subject to an authorisation procedure similar to the initial authorisation procedure.

(24) The content of the application dossier for authorisation of a clinical trial should be harmonised in order to ensure that all Member States have the same information available and to simplify the application process for clinical trials.

(25) In order to increase transparency in the area of clinical trials, data from a clinical trial should only be submitted in support of a clinical trial application if that clinical trial has been recorded in a publicly accessible and free of charge database which is a primary or partner registry of, or a data provider to, the international clinical trials registry platform of the World Health Organization (WHO ICTRP). Data providers to the WHO ICTRP create and manage clinical trial records in a manner that is consistent with the WHO registry criteria. Specific provision should be made for data from clinical trials started before the date of application of this Regulation.

(26) It should be left to Member States to establish the language requirements for the application dossier. To ensure that the assessment of the application for authorisation of a clinical trial functions smoothly, Member States should consider accepting a commonly understood language in the medical field as the language for the documentation not destined for the subject.

(27) Human dignity and the right to the integrity of the person are recognised in the Charter of Fundamental Rights of the European Union (the 'Charter'). In particular, the Charter requires that any intervention in the field of biology and medicine cannot be performed without free and informed consent of the person concerned. Directive 2001/20/EC contains an extensive set of rules for the protection of subjects. These rules should be upheld. Regarding the rules concerning the determination of the legally designated representatives of incapacitated persons and minors, those rules diverge in Member States. It should therefore be left to Member States to determine the legally designated representatives of incapacitated persons and minors. Incapacitated subjects, minors, pregnant women and breastfeeding women require specific protection measures.

(28) An appropriately qualified medical doctor or, where appropriate, a qualified dental practitioner should be responsible for all medical care provided to the subject, including the medical care provided by other medical staff.

(29) It is appropriate that universities and other research institutions, under certain circumstances that are in accordance with the applicable law on data protection, be able to collect data from clinical trials to be used for future scientific research, for example for medical, natural or social sciences research purposes. In order to collect data for