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Legacy Devices: Impacts of MDR/IVDR on these Products

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Introduction:

European parliament and of the council of In Vitro Diagnostic Devices (IVDR) introduced Regulation (EU) 2017/746 after a transition period of 5 years will become applicable May 26, 2022. However the recent roll plan for transition out according to device class will facilitate the Manufacturers to become fully comply with new regulations. The IVDs which are placed on the market from the date of application must follow all the applicable requirements described therein.

Definition of a Legacy Device:

A Legacy Device is a medical/implantable/in vitro diagnostic device, which is already on the market with a valid certificate from Medical Device Directive (MDD) or Active Implantable Medical Device (AIMD), which can be continued tosellin the market undernew IVDR/MDR regulation.Though the term Legacy Product" isnot defined under the IVDR the general understanding is that these are the products that have been placed on Market under IVDD/MDD and continues to be on market.A legacy device is manufactured, packaged, labeled, and distributed in full compliance with existing EU device directives and bearing a valid CE mark.

Legacy devices should be understood as devices, which, in accordance with Article 110(3) of the IVDR, are placed on the market after the IVDR's date of application (DoA) and until 26 May 2024 if certain conditions are fulfilled. Those devices can be:

- Devices which are Self-certified devices under Directive 98/79/EC (IVDD), for which an EC declaration of conformity was drawn up prior to 26 May 2022 and for which the conformity assessment procedure under the IVDR requires the involvement of a notified body.

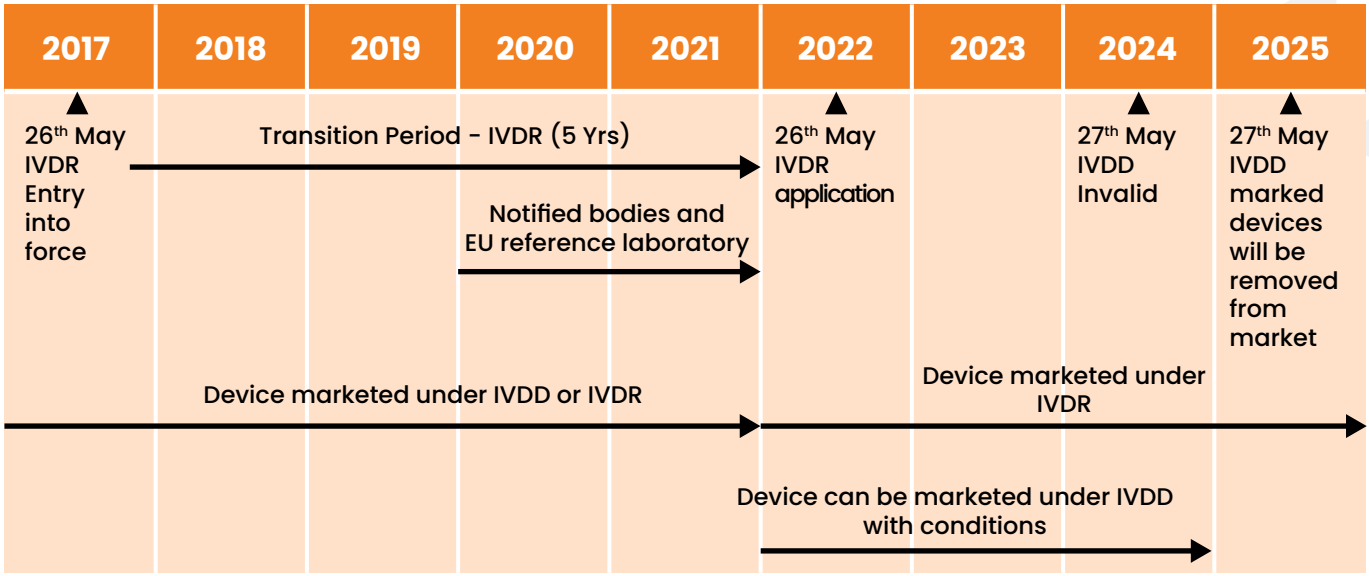
In view of MDR stand some legacy devices face a change in classification, some devices will need to perform a clinical evaluation and update their technical documentation, and all are subject to new surveillance practice requirements.

Current requirements for legacy devices under new regulation:

According to the new regulation of IVDR/MDR, legacy devices can be placed in the market if the product is certified by a notified body under the new IVDR directive, which is until May 26, 2024 or until the IVDD certificate expires. This is applicable only for class A and B products. General IVDs do not have a certificate.

A period of one year (until May 27, 2025) from the expiration date is provided to the manufacturer to put their product into service. A manufacturer can choose to place their product under the IVDD or IVDR until that period; until and unless there is no significant change in design or its intended purpose is performed.Just because a device is marked with a CE certificate doesn't mean it's lesser than any device under the new regulation.

Under the new regulation all the self certified devices will undergo re-classification. If a class A self certified device is sold in sterile condition, it must be IVDR compliant by May 2022. Class B, C and D devices must be IVDR compliant by May 2022.



CE marked legacy devices under the new market with new regulations:

These Legacy devices are subject to most of the incoming regulatory requirements, but carry a set of unique considerations.

EU Member State authorities and Notified Bodies will continue to oversee the EU market, ensuring that all IVDs are fit for purpose and reliably provide information to be used for diagnostic purposes, regardless of whether they are CE marked underthe current Directive or the Regulation. CE doesn't mean it is inferior to the devices which are marketed under the new directive.

Distinguishing of Legacy devices: These are the Class I sterile, Class I measuring, Class IIa, IIb, III (medical devices) or active implantable medical devices which have valid CE certificates and were in the European market after 26th May 2021.

New Identifiers for Legacy Devices &UDI system:

Once made compliant with MDR/IVDR, legacy devices will have to follow MDR/IVDR registration requirements with the EUDAMED database. However, these devices may not necessarily have to be assigned Basic UDI-DI and UDI-DI codes.

Legacy Devices should follow MDR or IVDR registration requirements with some exceptions such as the assignment of a Basic UDI-DI and a UDI-DI. Even if the legacy device doesn't require a Basic UDI-DI and UDI-DI, to maintain the same standard as the other devices the manufacturer must obtain a EUDAMED-DI (the equivalent of the Basic UDI-DI). Hence there will be only a EUDAMED DI assigned to the legacy devices but not a UDI-DI. But in some cases a UDI-DI can be used to identify a Legacy Device in EUDAMED. Moreover, only one device identifier will be assigned to a Legacy Device, either a UDI-DI (where the EUDAMED DI is automatically generated) or a EUDAMED DI (where the EUDAMED ID is automatically generated).

In a nutshell EU MDR compliance for legacy devices describes that the legacy devices will not have the same previously assigned UDI-DI instead will have EUDAMED-DI which is same as UDI-DI and EUDAMED ID which is same as UDI-DI. In an overview the Legacy Device will therefore have the following identificion elements:

- A UDI-DI (assigned by the manufacturer)
- A EUDAMED DI (generated based on the UDI-DI)

Implementation of the EUDAMED database will be conducted in phases.

The EUDAMED database supports the linking of new devices with legacy devices and their successors. If a MDR/IVDR compliance device is exactly the same as the legacy device, the products may share the same UDI-DI.

Hence the manufacturers need to register devices on EUDAMED and how to link products covered by the outgoing and incoming regulatory frameworks.

Legacy device and classification under IVDR/MDR regulation:

Strategies to classify legacy devices:

The manufacturers should start to deal with the IVDR regulation instead of labeling their device under general devices. Only then the gap between legacy device and their performance characteristics will reduce. This will ensure the users get exposed to safe and effective medical devices with high quality. Majority of devices in List A and List B are reclassified as class D under the new regulation. Manufacturers of class D devices have less work when compared to general IVDs and self-cert devices which are certified under a notified body. The new classification rules had reclassified a large number of devices under Class B or Class C devices including legacy devices, which will require a new CE marking from the notified body. The up-classified class I device which have a valid CE marking under MDD before May 2020, will now require conformity assessment procedure pursuant to this regulation requires the involvement of a notified body. The device can be place in the marker until 26 May 2024.

Here are few steps which can be followed to classify legacy devices under new regulation:

- Intended purpose of the device should be determined.
- Provide sufficient evidence based on the claims you want to include in the product literature Make sure the performance evaluation under scientific validity is well demonstrated. Follow the seven classification rule to determine the risk class of your device.
- Identify compliance requirements resulting from the risk classification process.
- Gap assessment should be conducted between these requirements and for legacy devices, their current compliance to the directive.
- Work with plan and timeline outlining how gaps are to be met.
- Identify and engage with a notified body to reach an agreement on both your device risk classification and implementation timeline for conformity.
- Follow implementation plans, obtain CE Mark.

Examples of Legacy devices and their fate:

Based on the intended purpose of the device the classification of the devices variesfrom device to device. For example Rule 1; first indent applies to all devices intended to assess the suitability of blood, blood components, cells, tissues or organs or their derivatives for transfusion, transplantation or cell administration, with respect to transmissible agents. The result of the test will be a major determinant as to whether the analyzed donation will be used.

Class D and C devices under rule 1:

If a device intended purpose is to screen transmissible agents in the organ donated or the sample collected will fall under Class A under the new regulation. If a device intended purpose is to check the presence of a transmissible agent in an individual then the device fall under Class C under the new regulation.

Example of the devices include Hepatitis B (HBs-Ag), Hepatitis C (Anti-HCV), Human Immunodeficiency Virus 1/2 (Anti-HIV 1/2) under european directives 2002/98/EC (on blood), and 2006/17/EC (on tissues and cells) and Hepatitis B, Hepatitis C, Human Immunodeficiency Virus detection devices which screen organs falls under European directive 2010/45/EU (corrigendum: 2010/53/EU) (on organs).

Class D&C devices under rule 2:

Devices with the following intended use will fall under class D devices:

- The determination of the expression of ABO and Rhesus (Rh) D, Weak D, C, E, c, e in donor and recipient e.g. by serological testing or molecular genotyping.
- The determination of partial D, as these D antigen positive patients are at risk of anti-D all immunization.
- The detection of anti-A and anti-B antibodies for reverse ABO typing, as ABO blood grouping requires both forward (antigen) and reverse (antibody) typing.
- Screening, detection or identification of red cell antibodies for the Rh system (anti RH antibodies), Kell system (anti-KEL1 antibodies), Kidd system (anti-JK1 and anti-JK2 antibodies) and Duffy system (anti-FY1 and anti-FY2 antibodies)
- Typing of specific red blood cell antigens (KEL1, JK1, JK2, FY1, FY2).

Example: Device intended for molecular RhD blood group typing, targeting directly the RHD gene alleles that code for the RBC antigens, in blood donors and recipients, Anti-K from clone ID, Human IgM Antibody, Blood grouping reagent for transfusion purposes, FoetalRhD typing kit.

Devices intended for identifying markers, other than the red blood cell markers listed in this rule, which are either intended as screening, diagnostic, confirmatory or supplemental devices for blood grouping, tissue typing, or to ensure the immunological compatibility of blood, blood components, cells, tissue or organs that are intended for transfusion or transplantation or cell administration are class C devices.

Example: Anti-k from clone ID, Human IgG Antibody, Blood grouping reagent for transfusion purposes, Anti-Lea Monoclonal blood grouping reagent for transfusion purposes.

Class C devices under Rule 3:

According to rule 3a detection of sexually transmitted disease such as Chlamydia trachomatis, Haemophilusducreyi, Herpes simplex virus 1&2, Human papilloma virus (HPV), Neisseria gonorrhea whose main mode of transmission is via sexual will fall under Class C

According to rule 3b detection of infectious agents such as bacteria, viral, fungi, parasite, protozoans in cerebrospinal fluid or blood will fall under class C.

Stand-alone Software:

If the legacy device is software which is intended to use alone or in combination which drives a device or influence the performance of a device shall fall under the same class of the device.

If the combination of device is worth nothing the application of classification shall be governed by the intended purpose of the device.

MDCG Guidance and Updates: 2022

MDCG 2021-25 "Regulation (EU) 2017/745 – application of MDR requirements to 'legacy devices' and to devices placed on the market prior to 26 May 2021 in accordance with Directives 90/385/EEC or 93/42/EEC. MDCG published guidance on surveillance of legacy devices that are allowed to stay on the EU market until May 2024 with valid certificates issued under Active Implantable Medical Devices Directive (AIMDD) or Medical Devices Directive (MDD).

The guidance addresses a question raised by the Medical Device Regulation (MDR). Under MDR, legacy devices can stay on the EU market until 2024 if they comply with the old directives and do not undergo significant changes. However, MDR also requires legacy devices to meet the regulation's requirements on post-market surveillance, market surveillance, vigilance and registration of economic operators. Hence Notified bodies handle surveillance of quality management systems for legacy devices. As only certain MDR requirements apply to legacy devices, "the audit activities to be performed by notified bodies should be a continuation of the previous surveillance activities with a focus on the new provisions," the guidance states. Manufacturers should make Periodic Safety Update Reports and Post Market Surveillance plans and reports available to their notified bodies so they can "verify that the quality management system has been appropriately adapted and remains compliant for the certificate(s) issued under the MDD or the AIMDD."

MDCG Guidance Update 2022-4

This Guidance document clarifies that Article 120(3) MDR defines that devices may be placed on the market or put into service until 26 May 2024 when they are covered by valid certificates under the MDD/AIMDD, provided that they continue to comply with either of those Directives and that there are no significant changes in the design and intended purpose. Therefore, in principle, the quality management system approved under the directives needs to be maintained. However, in accordance with the first subparagraph of Article 120(3) MDR, all relevant requirements set out in Chapter VII MDR on post-market surveillance, market surveillance, vigilance and registration of economic operators and of devices apply to 'legacy devices' in place of the corresponding requirements in the directives. MDR requirements will now be subject to the notified body's surveillance activities as described in section 4. Theo guidance document also clarifies that Legacy devices' are also subject to the requirements laid down in Article 85 and Article 86 MDR, based on their classification in accordance with the MDD. During the transition period, a possible change of their risk class under the MDR should not be taken into account. For the purpose of applying the relevant MDR requirements active implantable devices subject to the AIMDD should be considered as class III devices.

MDCG Guidance update: 2022-6

MDCG inregard to Legacy devices has added new Guidance of list of actions with the objective of covering IVDR application to Legacy Devices, under Article 110 (3) of IVDR. In summary the change in the regulations and classification will result in increased screening by European Regulatory Authorities. As per the latest updates available manufacturers cannot place legacy devices on the market anymore as soon as there are significant changes in their design or intended purpose after May 26, 2022.

IVD legacy devices must have the following characteristics to be placed on the market as such:

- A valid certificate issued by a notified body under the Directive 98/79/EC on in vitro diagnostic medical devices (IVDD),and
- A declaration of conformity drawn up before May 26, 2022, following the IVDD and for which the conformity assessment procedure according to the IVDR (contrary to the IVDD) requires the involvement of a notified body.
- It is also clarified in latest MDCG guidance update May 2022that in particular, if the manufacturer wishes to make a 'significant change in design or intended purpose' within the meaning of IVDR Article 110(3), the implementation of such a change would prevent the manufacturer from placing the device on the market under the IVDD in accordance with that provision. Examples for Significant changes:

Significant changes:

- Extension of the intended purpose, such as:
- Additions regarding what is detected and/or measured, such as addition of a new genotype to a human papillomavirus assay, necessitating new primers13;
- Additional functions of the device, such as screening, monitoring, diagnosis;
- For companion diagnostics: extension of the target population(s) or of the tissue type or associated medicinal products;
- Addition of specimen type(s).
- Any other major change of the intended purpose, such as:
- Change of assay type, e.g. from screening assay to confirmatory assay or from qualitative to quantitative assay;
- Change of the intended user, e.g. from professional user to lay user;
- Change of operation from automatic to manual or vice versa;
- Change of specimen type(s).

However, the MDCG guidance document does not elaborate on the process for manufacturers' submission and notified bodies' assessment of changes to the approved design7 or substantial changes to the approved quality system or the product-range covered8 that are part of the conformity assessment process and surveillance.

- In guidance document 2021-25 ("Application of MDR requirements to "legacy devices" and to devices placed on the market prior to 26 May 2021 in accordance with Directives 90/385/EEC or 93/42/EEC"), the MDCG provides its opinion on this issue. The document contains detailed guidance particularly to which extent periodic safety update reports (PSURs) must be created and submitted. The MDCG also opines that manufacturers of. Legacy devices do not need to appoint a Person Responsible for Regulatory Compliance (PRRC) for legacy devices. Manufacturers, but also importers and distributors, of such legacy devices should carefully assess their current processes in light of this new guidance and adapt as necessary.
- Under Art. 120(3) of Medical Device Regulation 2017/745 (MDR) provides that certain devices certified under the prior Medical Device Directives 93/42/EEC or 90/385/EEC (so-called "legacy devices") may, for a transitional period, continue to be placed on the market after the date of application of the MDR on 26 May 2021 without being certified under MDR, provided, however, that the MDR rules regarding surveillance and vigilance be complied with. As many

devices still rely on this transitional mechanism, the question which surveillance and vigilance obligations specifically must be complied with by importers and distributors of such legacy devices is critical.

MDCG's guidance answers that question, instructing notified bodies to take account of the new requirements in the framework of their surveillance activities. In practice, that means MDCG wants notified bodies to review the quality management system documentation, checking whether the manufacturer has made adjustments in line with MDR, and then use the outcome of the assessment to determine the audit program.

New Additional Requirements for Legacy Devices:

In addition to Chapter VII, the other MDR needs to be applied to 'legacy devices' only to those whose requirements relate to post-market surveillance, market surveillance, vigilance, registration of economic operators and devices. The manufacturers and importers are generally obliged to comply with MDR (Articles 10(1) and 13(1) for legacy devices,

The EU MDR guidance on compliance of legacy devices states that MDR requirements that have no relation with post-market surveillance, market surveillance, vigilance, registration of economic operators and devices are not liable to apply to economic operators in respect to 'legacy devices.

Under MDR, legacy devices can stay on the EU market until 2024 if they comply with the old directives and do not undergo significant changes. However, MDR also requires legacy devices to meet the regulation's requirements on post-market surveillance, market surveillance, vigilance and registration of economic operators. Manufacturers still need to follow the requirements of MDR /IVDR for:

- Post-marketing Surveillance (Article 78)
- Market Surveillance (Article 88)
- Vigilance (Article 82)
- Registration of Economic Operators (Article 28)
- He device must have no significant changes to its design or intended use after May 26, 2021

The device must continually meet all applicable general safety and performance requirements (GSPRs) laid out in Annex I (and document same)

- The manufacturer must demonstrate ongoing post-market surveillance
- The manufacturer or the authorized representative must complete a conformity assessment and issue a Declaration of Conformity by May 26, 2021
- If the device is sterile, a surgical instrument, or a device with a measurement function, the manufacturer must involve a notified body in the certification process

So all these procedures should be updated and applied prior to May 26th, 2022 to be on the safe side.

Registration requirements of Legacy devices:

Manufacturers will have the possibility to register any of their Legacy Devices in EUDAMED. As explained in the guidance document, their registration will be mandatory in case a serious incident occurs or there is a field safety corrective action to apply, which requires registration as soon as possible and at least before a follow up or final vigilance report is submitted.

Conclusion:

According to new guidance on EU MDR compliance for legacy devices, the legacy devices need to comply the requirements based on their classification in the MDD instead of MDR. Active implantable devices under AIMDD should be considered as Class III devices for the reason to apply MDR requirements for the legacy device during the transition period. Under the requirement of MDR compliance the makers of legacy devices need to update periodic safety update reports (PSURs). These reports are needed to be made available to the notified bodies and competent authorities during the audits. For the older devices i.e., one placed in the market before May 26, 2021, though the guidance does not apply to old devices but the competent authorities need to check conformity of devices with the rules applicable at present.

All above the regulations with regard to Legacy products are intended to improve device safety and help the competent authorities and regulatory agencies monitor device performance to prevent harm to patients and help minimizing disruption in the availability of Legacy devices on the European market.

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