Draft Royal Decree .../2024 of ... regulating *in vitro* diagnostic medical devices.

I

At a European level, it has been considered necessary to establish a new robust, transparent, predictable and sustainable regulatory framework for *in vitro* diagnostic medical devices, ensuring the highest level of safety and health protection for patients and users, while boosting innovation and the interests of small and medium-sized enterprises operating in this sector. To this end, Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017 on *in vitro* diagnostic medical devices and repealing Directive 98/79/EC and Commission Decision 2010/227/EU, has been adopted, which has been applicable since 26 May 2022.

This Regulation harmonises the rules applicable to the placing on the market and putting into service *in vitro* diagnostic medical devices and their accessories in the European Union, thus allowing them to benefit from the principle of free movement of goods, and, in addition, ensuring a high level of protection, so that the devices in circulation do not present risks to the health of patients, users or third parties and achieve the services assigned by the manufacturer, when used under the conditions laid down.

In vitro diagnostic medical devices belong to a type of product with specific characteristics, mainly with regard to risk classification or performance evaluation and clinical data.

Furthermore, Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017 consolidates the regulatory criterion applicable to a number of relevant matters, such as the supervision of notified bodies, risk classification, conformity assessment procedures, performance evaluation and performance studies, vigilance and market surveillance. It also introduces provisions guaranteeing the transparency and traceability of products through the European database *Eudamed*, the Unique Device Identification system ('UDI system'), and the publication of the summary on safety and performance of devices in Classes C and D.

Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017 lays down the obligations of Member States as regards the qualification of devices with regard to borderline cases. It likewise lays down requirements for Member States to ensure adequate information, counselling for persons undergoing genetic testing, as well as the obtaining of informed consent.

It also adapts the definitions, declares the importance of standardisation in the conformity of products and the relevant role of companion diagnostic, allows the Commission to adopt common specifications, and develops the obligations of different economic operators, including distributors and importers. As a new aspect, the regulation includes the designation of the European Union reference laboratories, as well as their functions, to verify the correct functioning of the highest-risk products.

Although Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017 is directly applicable in the countries of the European Union, it is necessary

to regulate the aspects that the European standard leaves to the regulation of each Member State at the national level. To this end, this Royal Decree is adopted, specifying issues such as the determination of the competent authority for the purposes of Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017, the health guarantees of products, the establishment of the language regime, and the regulation of the procedures for the manufacture of products for use at the health institution in question. With the entry into force of this Royal Decree, the previous legislation, namely Royal Decree 1662/2000 of 29 September 2000 on *in vitro* diagnostic medical devices, will be repealed, with the exceptions set out in the transitional provisions and in the derogating provision of this Decree.

II

This Royal Decree comprises 35 articles structured in nine chapters, three additional provisions, nine transitional provisions, one derogatory provision, and three final provisions.

Chapter I contains general provisions, which include the subject matter of the Royal Decree, the definitions, the scope of application, the competent authority in the field and the health guarantees to be complied with by devices, and contains provisions on administrative cooperation between the Spanish Agency for Medicines and Medical Devices and the Autonomous Communities and establishes the language regime.

With regard to the manufacturing, sterilisation, and importation of *in vitro* diagnostic medical devices, Chapter II refers to the requirements and conditions that must be met by companies engaged in these activities, as well as the procedure to be followed for the granting of the prior operating permit, in accordance with the provisions of Article 100 of General Law 14/1986 of 25 April 1986 on Health.

Regarding the manufacture by health institutions of devices for their own and exclusive use, the Royal Decree sets the obligation to notify the start of the activity and the declaration provided for in Article 5(5) of Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017 to the Spanish Agency for Medicines and Medical Devices. This type of manufacture and exclusive use in health institutions is not aimed at subsequent making available on the market or obtaining economic benefit, and is in the direct interest of a specific group of patients for whom there are no alternatives on the market, so it requires the corresponding agility and flexibility, in the interest of patients, always guaranteeing the proper functioning and safety of the products.

Chapter III addresses the general requirements for genetic testing as regards Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017, establishing an obligation for healthcare institutions and professionals to provide persons subject to testing with genetic information and appropriate counselling, as well as to seek their explicit consent. This chapter also includes the regime for reference laboratories. In particular, their authority and conditions for validation prior to designation by the European Commission.

Chapter IV lays down the regime for notified bodies, in particular the authority and conditions for their designation, the verification of their suitability, procedure and

documentation requirements, the revocation of the designation, and the obligations of the designated bodies.

With regard to the placing on the market and putting into service of the devices referred to in Chapter V, this provision provides for the establishment of a marketing register for devices distributed in Spain, which allows the traceability of devices to be established, while laying down exhaustively the obligations imposed on economic operators involved in those activities. In addition, distribution and sales activities are comprehensively regulated, establishing the concept of devices subject to prescription and including the display of devices for commercial purposes.

Chapter VI lays down the conditions for external trade in devices, specifying the requirements to be applied by the health inspection on import.

In general, conformity assessment of products requires data on their scientific validity, analytical and clinical performance data, performance studies being one of the crucial stages in the development of new products or new applications. For this reason, this Royal Decree, in its Chapter VII, regulates the aspects related to performance studies, and establishes the linguistic regime and approval by the Ethics Committees for Research on medicinal products.

The system on vigilance of medical devices, regulated in Chapter VIII, constitutes a key instrument for ensuring the safety and quality of *in vitro* diagnostic medical devices. Receives and evaluates reports of serious incidents and safety corrective actions and determines health protection measures aimed at reducing their consequences and preventing their recurrence in the future.

Finally, Chapter IX and the last of this standard concerns the regulation of market control activities and health protection measures, with particular emphasis on inspection activities.

In the regulation of all these matters, the provisions of Basic Law 41/2002 of 14 November 2002 on the autonomy of the patient, and rights and obligations regarding information and clinical documentation, and of Organic Law 3/2018 of 5 December 2018 on the Protection of Personal Data and the guarantee of digital rights, which are recognised as supplementary in matters not regulated by this Royal Decree, have been observed.

In general, the principles and guarantees set out in Article 2 of Law 14/2007 of 3 July 2007 on biomedical research must be respected.

III

This Royal Decree is in accordance with the principles for sound regulation referred to in Article 129 of Law 39/2015 of 1 October 2015 on the common administrative procedure for Public Administration, particularly the principles of necessity, effectiveness, proportionality, legal certainty, transparency and efficiency. It complies with the principles of necessity and effectiveness as it is justified by the reasons of

general interest described in the preceding paragraphs, and is the most appropriate instrument to ensure the achievement of the proposed targets.

As regards compliance with the principle of proportionality, this rule contains the regulations necessary to meet the identified needs, so that in order to achieve the objectives set, there are no other measures which are less restrictive of rights or impose fewer obligations on the addressees. In addition, any limitations on rights and obligations imposed by the rule are proportionate to the aims pursued and are justified by the mandatory nature of compliance with Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017; and, at a national level, with Law 14/1986 of 25 April 1986 and by the consolidated text of the Law on guarantees and rational use of medicines and medical devices, approved by Royal Legislative Decree 1/2015 of 24 July 2015.

At the same time, the necessary adaptation to European Union standards of national regulations applicable to *in vitro* diagnostic medical devices results in greater legal certainty, providing coherence and stability to the regulatory framework in this area.

In compliance with the principle of efficiency, the draft introduces only the administrative burdens necessary to adapt the regulation of *in vitro* diagnostic medical devices for human use and their accessories subject to authorisation for making available on the market or registration, thereby also ensuring the achievement of the general interest it pursues. Likewise, and in this sense, the draft does not introduce or establish additional or different procedures to those contemplated in Law 39/2015 of 1 October 2015. This rule, as a basic and common law in matters of administrative procedure, is of complementary and supplementary application to the European Regulation as regards the procedures provided for therein, to which this Royal Decree refers.

Likewise, during the procedure for drafting this legislative text, the active participation of potential addressees of this Decree has been promoted, through the procedures of prior public consultation and public hearing and information, in compliance with the principle of transparency.

The Autonomous Communities and the cities of Ceuta and Melilla have been consulted in its preparation, and the sectors concerned have been heard. Likewise, it has been submitted for the opinion of the Data Protection Officer of the Spanish Agency for Medicines and Medical Devices, as well as of the Spanish Data Protection Agency, and the mandatory opinion of the Council for Consumers and Users has been obtained.

Furthermore, and in accordance with the provisions of Articles 67(2) and 71 of Law 16/2003 of 28 May 2003 on cohesion and quality of the National Health System, this Royal Decree has been the subject of a preliminary report by the Advisory Committee and the Plenary of the Interterritorial Council of the National Health System.

Likewise, this Royal Decree has been submitted to the procedure for the provision of information on technical standards and regulations and regulations relating to the information society, regulated by Royal Decree 1337/1999 of 31 July 1999 regulating the transmission of information in the field of technical standards and regulations and regulations relating to information society services, for the purposes of complying with Directive (EU) 2015/1535 of the European Parliament and of the Council of

9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services.

This Royal Decree is issued pursuant to the exclusive competence conferred on the State by Article 149(1)(16) of the Spanish Constitution with regard to the bases and coordination of health care and legislation on pharmaceutical devices, with the exception of Chapter VI, which is issued under the exclusive competence of the State to regulate external health.

Accordingly, on a proposal from the Minister for Health, with the prior approval of the Minister for Digital Transformation and the Civil Service, in agreement with the Council of State, and after deliberation by the Council of Ministers at its meeting on xx xxxx 202x,

THE FOLLOWING IS DECREED:

CHAPTER I

General provisions

Article 1. *Purpose.*

This Royal Decree aims to regulate *in vitro* diagnostic medical devices for human use and their accessories, and in particular:

a) The competent authority and the health guarantees.

b) The procedures for the granting of prior operating licences for facilities

c) Genetic testing considered as an *in vitro* diagnostic medical device for human use, as defined in Article 2(2) of Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017 on *in vitro* diagnostic medical devices and repealing Directive 98/79/EC and Commission Decision 2010/227/EU.

d) Reference laboratories.

e) The requirements and actions of notified bodies.

f) Making available on the market and putting into service in Spain

g) Trade on the European Union market and on the external market.

h) Performance studies.

i) The vigilance system.

j) Market inspection and control, and health protection measures.

Article 2. *Definitions*.

For the purposes of this Royal Decree, the definitions set out in Article 2 of Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017 and in the acts adopted for its implementation shall apply.

Article 3. *Scope*.

1. This Royal Decree shall apply to products falling within the scope of Article 1 of Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017.

For the purposes of this Royal Decree, *in vitro* diagnostic medical devices, and accessories for *in vitro* diagnostic medical devices, shall hereinafter be referred to as 'products'.

2. Products, the conformity of which has been determined in accordance with Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017, do not fall under Royal Decree 186/2016 of 6 May 2016 on the electromagnetic compatibility of electrical and electronic equipment.

3. This provision shall not affect the application of Royal Decree 601/2019 of 18 October 2019 on the justification and optimisation of the use of ionising radiation for the radiation protection of persons during medical exposure; nor of Royal Decree 1029/2022 of 20 December 2022 approving the Regulation on health protection against risks arising from exposure to ionising radiation; nor of Royal Decree 1836/1999 of 3 December 1999 approving the Regulation on nuclear and radioactive facilities; nor of Royal Decree 1085/2009 of 3 July 2009 approving the Regulation on the installation and use of X-ray devices for medical diagnostic purposes.

4. Devices which are machinery in accordance with the provisions of Royal Decree 1644/2008 of 10 October 2008 laying down the standards for the placing on the market and putting into service of machinery, must also comply with the essential health and safety requirements laid down therein, provided that such essential health and safety requirements are more specific than the general safety and performance requirements laid down in annex I to Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017.

Article 4. *Competent authority*.

1. The competent authority referred to in Article 96 of Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017, is the Spanish Agency for Medicines and Medical Devices, without prejudice to the competences of other health authorities.

2. The Spanish Agency for Medicines and Medical Devices shall decide on the application to a device of definitions and classification criteria in accordance with Articles 2 and 47(2) and Annex VIII to Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017. Prior to this decision, and if necessary, the Spanish Agency for Medicinal Products and Medical Devices may consult the

Committee on Medical Devices, regulated by Article 28 bis of Royal Decree 1275/2011 of 16 September 2011 establishing the State Agency 'Spanish Agency for Medicines and Medical Devices' and approving its Statute, as well as experts in the field.

Article 5. *Health guarantees of devices*.

1. Devices may be placed or made available on the market or put into service only if they comply with the requirements laid down in Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017, and in this Royal Decree, provided that these are duly supplied, correctly installed and maintained according to the manufacturer's instructions, and are used in accordance with their intended purpose, without compromising the safety or health of patients, users or, where applicable, third parties.

2. At the time of its putting into service in Spain, the devices must include the data and information contained in paragraph 20 of annex I to Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017 at least in Spanish, so as to make it possible to have effective, truthful and sufficient information on their essential characteristics in a certain and objective manner.

3. In Spain, only products that comply with the provisions of Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017, and this Royal Decree may be used, under the conditions and according to the purposes foreseen by the manufacturer thereof.

In order to ensure the correct use of the devices, the professionals who use them must be properly qualified and trained.

Regarding devices for near-patient testing, in accordance with Article 2(6) of Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017, they may only be used by health professionals with the level of training, qualification, or experience specified by the manufacturer in the instructions for use of the product.

Devices must be properly maintained by suitably qualified personnel in such a way as to ensure that, during their period of use, the devices retain the safety and performance intended by their manufacturer.

Article 6. *Administrative cooperation*.

The Spanish Agency for Medicines and Medical Devices and the Autonomous Communities shall cooperate within the scope of their competences.

CHAPTER II

Facilities

Article 7. *Prior operating licence* for facilities.

1. In accordance with Article 100 of General Health Law 14/1986 of 25 April 1986, natural and legal persons engaged in the manufacture, import, or sterilisation of medical devices, and the facilities in which such activities are carried out will require prior operating licence granted by the Spanish Agency for Medicines and Medical Devices.

For the purposes of this Royal Decree, both importers established in Spain who place a device from a third country on the European Union market, and natural and legal persons who, without being importers in accordance with Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017, physically import a device into Spain, shall require an import licence.

The prior operating license will also be required for those natural and legal persons who carry out the complete manufacture of the products for third parties.

2. A single prior operating licence shall be granted, covering the facilities and the activities to be carried out there, both own and joint.

3. The authorisations referred to in paragraph 1 shall be electronically requested from the Spanish Agency for Medicines and Medical Devices, which shall examine the documentation submitted and notify the decision within three months of the date on which the application was registered on the Spanish Agency for Medicines and Medical Devices website authorised to do so, without prejudice to the provisions of Article 22(1)(a) of Law 39/2015 of 1 October 2015 on the Common Administrative Procedure of Public Administrations regarding the suspension of the time limit for the submission of documentation. The decisions of the Spanish Agency for Medicines and Medical Devices put an end to the administrative procedure.

4. The Spanish Agency for Medicines and Medical Devices shall request the functional areas of Health and Social Policy integrated into the Government Delegations where the registered office of the company is located, as well as the areas where the facility or facilities are located, in the event that these are not in the same functional demarcation, to report on the conditions under which the natural and legal persons will carry out the activities related to paragraph 1, ordering for this purpose the necessary inspections of the facilities. The request for such a report may suspend, for a maximum period of three months, the procedure in accordance with Article 22(1)(d) of Law 39/2015 of 1 October 2015. The request for such a report and its receipt shall be communicated to the person concerned.

Notwithstanding the provisions of the previous paragraph, exceptionally, for reasons of urgency or where the nature of the activities advises it, said report and the corresponding inspection may be carried out by the Spanish Agency for Medicines and Medical Devices itself. In this case, the procedure in accordance with Article 22(1)(e) of Law 39/2015 of 1 October 2015 may also be suspended for a maximum period of three months.

5. Where the manufacturing, sterilisation or storage activities are carried out in facilities established outside Spanish territory, the inspection reports referred to in the preceding paragraphs may be replaced by documentation that adequately supports the activities carried out.

6. The Spanish Agency for Medicines and Medical Devices shall refuse, suspend or revoke operating licences if the documentation provided or the inspection reports relating thereto do not guarantee that adequate facilities, means, procedures and personnel are available to carry out the respective activities, or when the conditions under which the licence was granted, its modifications or revalidations are not maintained.

7. The Spanish Agency of Medicines and Medical Devices and the health authorities of the Autonomous Communities shall keep one another informed of the operating licences granted pursuant to the terms of this chapter, as well as of their amendments, suspensions or revocations, through the IT application authorised to this end.

8. Operating licences shall be valid for a period of maximum five years, which shall be specified in the authorisation document. They may be re-validated at the request of the interested party, made before their expiry, once compliance with the requirements has been verified.

Any modification of the conditions under which the operating licence was granted must be authorised in advance by the Spanish Agency for Medicines and Medical Devices.

9. The outsourcing of activities by the authorised entities does not relieve them of ultimate responsibility for any failures by subcontractors.

10. The provisions of the preceding paragraphs shall not apply to products for performance studies.

Article 8. *Requirements for granting the prior operating licence*.

The application for a prior operating licence shall be accompanied by supporting documentation of the following requirements:

a) Availability of a quality management system capable of ensuring the quality of the devices and the implementation of the procedures and controls required.

b) Availability of appropriate facilities, procedures, equipment and personnel according to the activities and devices concerned.

c) Availability of a technical officer, with a university degree or a higher education course, who attests an appropriate qualification according to the devices of which they are in charge, who will exercise direct supervision of such activities.

If the qualification referred to in the preceding paragraph does not fully demonstrate the qualification, it may be completed on the basis of training and/or experience.

Availability shall be demonstrated by contract with the responsible technician in which the time spent will be specified, which must be sufficient depending on the type and volume of the activity carried out.

d) Availability of a documentary archiving system to store the documentation generated with each device and maintenance of a register of all devices to ensure traceability of these devices. The documentary file shall be kept at the disposal of the competent authorities for a period of at least 10 years after the last unit of the device has been placed on the market or put into service.

e) In the case of concerted actions, declaration of the name and address of the subcontractors, description of the activities and means available for their execution, and submission of the corresponding contracts and the procedures used.

Such combined activities may only be carried out by entities which meet the requirements set out in sub-paragraphs (a) and (b) of this article.

Article 9. *Manufacture of devices by health institutions for their exclusive use by the institution itself.*

1. The activity provided for in Article 5(5) of Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017 may only be carried out by health institutions within the scope of their competences, in accordance with the definition laid down in Royal Decree 1277/2003 of 10 October 2003 laying down the general bases for the authorisation of health institutions, services and establishments.

2. Health institutions shall comply with all the requirements laid down in Article 5(5) of Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017.

Likewise, any health institution that outsources the performance of clinical analyses to a third party located in Spain that carries out the activities provided for in Article 5(5) of Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017, must ensure that that entity complies with the requirements established in that Regulation, and in this Royal Decree.

3. For the manufacture, the laboratories of the health institutions must be accredited in accordance with the ISO 15189 standard, in accordance with the provisions of the eighth transitional provision.

4. Health institutions may not subcontract any of the manufacturing activities.

5. Health institutions shall designate a person responsible for the procedures resulting from the application of this article, and shall communicate their details to the Spanish Agency for Medicines and Medical Devices.

6. The sale to the public of products manufactured in health institutions shall not be permitted.

Likewise, the offering of the service to the public that includes the use of products manufactured in healthcare facilities will not be permitted, except upon prescription by a healthcare professional.

7. Health institutions may not sell or supply the product manufactured in their facility for use by third parties.

8. To carry out this manufacturing activity, health institutions must provide a prior notification of the commencement of activity to the Spanish Agency for Medicines and Medical Devices, which will provide the necessary means to ensure compliance with this obligation. This communication shall contain:

a) The person responsible for the manufacturing activity at the institution.

b) The declaration provided for in Article 5(5)(f) of Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017.

c) The documentation referred to in Article 5(5)(c), (d), (e), and (g) of Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017.

The requirements laid down in Article 5(5)(g) of Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017 shall also apply to products in Class B and C.

This communication will allow the start of the activities, without prejudice to subsequent verification by the Spanish Agency for Medicines and Medical Devices, by means of documentary verification and, where appropriate, inspection of the elements and circumstances revealed by the interested party in the communication.

9. The Spanish Agency for Medicines and Medical Devices may request from the functional areas of health and social policy of the Government Delegations where the health institution is located, a report on the conditions under which natural and legal persons carry out the activity referred to in Article 5(5) of Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017, ordering for this purpose the necessary inspections of the facilities.

10. The Spanish Agency for Medicines and Medical Devices shall order the cessation of activities if the documentation provided or the corresponding inspection reports relating thereto do not guarantee that the appropriate facilities, means, procedures, and personnel are available to carry out the respective activities, or when any essential inaccuracy is incurred with respect to the conditions under which the communication was made.

11. All modifications of the data referred to in paragraph 8, as well as the cessation of the activity, shall be communicated to the Spanish Agency for Medicines and Medical Devices.

12. The Spanish Agency for Medicines and Medical Devices shall keep the health authorities of the Autonomous Communities informed of the activities reported in accordance with this article, through the IT application provided for this purpose.

13. Notwithstanding the provisions of the previous paragraphs, in exceptional health emergency cases, the Spanish Agency for Medicines and Medical Devices may authorise the manufacture of any product in health institutions or public health institutes under conditions other than those provided for in this article, when its use is in the interest of the public health, or the safety or health of patients.

14. The activity provided for in Article 5(5) of Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017 for the manufacture of self-testing devices may not be carried out if the devices are not used in the health institution itself.

15. In the case of the manufacture of genetic tests by healthcare institutions for their exclusive use by the institution itself, the requirements established in Articles 10 and 11 of this Royal Decree applicable to them must be met.

CHAPTER III

Genetic tests, genetic information and counselling. Reference laboratories.

Article 10. *Genetic tests.*

1. Genetic tests may only be placed or made available on the market or put into service if they comply with the requirements laid down in Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017, and this Royal Decree.

The requirements laid down in this Royal Decree with regard to genetic tests shall be observed without prejudice to the specific regulations applicable to them.

2. Genetic analyses shall be carried out for the identification of the state of affected, unaffected or carrier of a genetic variant that may predispose to the development of a specific disease in an individual, or condition their response to a specific treatment, in accordance with Article 46 of Law 14/2007 of 3 July 2007 on biomedical research, in the terms provided for in Article 1(2) of the aforementioned Law.

Predictive tests for genetic diseases or tests to identify the subject as a carrier of a gene responsible for a disease, or to detect a genetic predisposition or susceptibility to a disease, may only be carried out for medical or medical research purposes and with genetic counselling, where indicated, or in the case of the study of inter-individual differences in drug response and genetic-environmental interactions or for the study of the molecular bases of diseases in accordance with Article 9.3 of Law 14/2007 of 3 July 2007.

Article 11. *Genetic information, counselling and informed consent.*

1. Any health institution or professional carrying out genetic tests on persons for medical purposes of diagnosis, treatment improvement, predictive or prenatal testing and in the context of healthcare, as defined in Article 3(1) of Royal Decree 81/2014 of 7 February 2014 laying down rules to ensure cross-border healthcare and amending Royal Decree 1718/2010 of 17 December 2010 on medical prescriptions and dispensing orders, shall provide the person being tested or, where appropriate, his or her legally designated representative with the relevant information concerning the nature, importance and consequences of the genetic test, as appropriate.

This will apply to any healthcare institution or professional, regardless of their location, that carries out a genetic test on individuals who are in Spain, including those performing a service for diagnostic or therapeutic purposes offered through information society services.

2. Health institutions and health professionals shall also provide appropriate counselling to individuals in the case of the use of genetic tests that provide information on the genetic predisposition to ailments or diseases considered, in general, impossible to be treated according to the knowledge available in science and technology.

3. Paragraph 2 shall not apply where the diagnosis of an ailment or disease already known to be present in the person being tested is confirmed by a genetic test, or where a diagnostic test is used for therapeutic selection.

4. The health professional who performs or coordinates genetic counselling, as defined in Law 14/2007 of 3 July 2007, shall provide appropriate information and counselling, both before and after the test, concerning both the significance of the resulting genetic diagnosis and the possible alternatives that the person may choose in view of it.

5. In accordance with the provisions of Article 56 of the Law 14/2007, of 3 July 2007, the entire process of genetic counselling and the practice of genetic analysis for health purposes must be conducted by qualified personnel and must be carried out in accredited institutions, in accordance with Article 57 of the same law.

6. The information and genetic counselling provided to the person shall include at least:

a) The purpose of the genetic test.

b) The advantages, risks and possible alternatives of the test.

c) The place of analysis and the destination of the biological sample at the end of the analysis.

d) The identity of the persons who will have access to the results of the tests, if these are not subjected to dissociation or anonymisation procedures.

e) Information on the possible significance for the person of the results obtained, the alternatives available to them, as well as information about the person's ability to take a stance in relation to receiving their communication.

f) A warning about the possibility of unexpected discoveries and their potential significance for the person, as well as the person's ability to take a position regarding receiving such communication.

g) A warning of the implications it may have for their relatives.

h) The commitment to provide genetic counselling, once the results of the analysis have been obtained and evaluated.

In cases where Law 14/2007 of 3 July 2007 establishes the obligation to provide certain information in writing to the person, this must be provided at least in Spanish.

7. In accordance with the provisions of Article 48 of Law 14/2007 of 3 July 2007, it will be necessary to obtain explicit and specific written consent for the performance of the test. This consent must be provided at least in Spanish.

8. Regarding data protection, the provisions of Article 5 of Law 14/2007 of 3 July 2007, and current European and Spanish regulations on data protection will be observed and, in particular, the references to biomedical research included in the seventeenth additional provision of Organic Law 3/2018 of 5 December 2018 on the Protection of Personal Data and guarantee of digital rights.

9. Compliance with all the information and advisory requirements provided for in Articles 10 and 11 shall be ensured in a timely manner throughout the process of carrying out the genetic test, including sampling.

Article 12. *Reference laboratories.*

1. The Spanish Agency for Medicines and Medical Devices, after validation of the documentation and verification of the criterions, shall submit to the Commission applications for the designation of laboratories located in the national territory in accordance with Article 100(1) of Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017.

2. The Spanish Agency for Medicines and Medical Devices will carry out the necessary actions to validate the laboratory's request and verify compliance with the requirements and criteria established in Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017 and the corresponding implementing regulations, in order to submit it to the Commission for designation.

The Spanish Agency for Medicines and Medical Devices may request the laboratory to submit, at least in Spanish, the documents provided with the application.

3. The Spanish Agency for Medicines and Medical Devices may carry out support actions to verify the maintenance of these skills in laboratories, in accordance with Article 100(9) of Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017.

4. Upon request by the Spanish Agency for Medicines and Medical Devices, the designated laboratory shall provide all relevant information and documentation, including the budgetary documents necessary for it to verify compliance with the requirements of Article 100 of Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017.

CHAPTER IV

Notified bodies

Article 13. *Notified bodies*.

1. The Ministry of Health is the authority responsible for notified bodies for the purposes of Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017.

2. The Ministry of Health shall designate the bodies to carry out the procedures set out in that Regulation, in accordance with the scope of designation in the field of medical devices as laid down in Commission Implementing Regulation (EU) 2017/2185 of 23 November 2017 on the list of codes and corresponding types of devices for the purpose of specifying the scope of the designation as notified bodies in the field of medical devices under Regulation (EU) 2017/745 of the European Parliament and of the Council and *in vitro* diagnostic medical devices under Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017, and notify the European Commission and the other Member States thereof. Such designation shall be published

in the 'Official State Gazette' together with the identification number assigned by the European Commission.

All documents required for the application and assessment of the designation of conformity assessment bodies shall be written at least in Spanish for the Ministry of Health to verify compliance with the requirements of Annex VII to Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017.

The Ministry of Health shall take the necessary steps to verify the suitability of the bodies for their appointment and to verify that these skills are maintained in the designated bodies.

3. Notified bodies shall comply with the requirements set out in annex VII to Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017. The act of designation is independent of and is not bound by any national certification or accreditation.

4. Where a pre-designated body is found to no longer meet the requirements set out in annex VII to Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017, the Ministry of Health shall withdraw the designation, following the relevant administrative procedure, with a hearing of the concerned party, and inform the European Commission and the other Member States thereof.

Article 14. *Obligations of notified bodies established in Spain*.

1. For the purposes of the language requirements of Article 37 of Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017, the following shall be written at least in Spanish:

a) The documentation generated by the notified body corresponding to the conformity assessment procedures, including audit, assessment or inspection reports.

b) Conformity assessment certificates.

c) The documentation requested, at the request of the authority, for follow-up actions by notified bodies.

2. Upon request, the notified body shall provide all relevant information and documentation, including budget documents necessary for the Ministry of Health to verify compliance with the requirements of annex VII to Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017.

CHAPTER V

Placing on the market and entry into service

Article 15. *Marketing register*.

1. Any economic operator who markets products in Spanish territory must be included in the Marketing register of the Spanish Agency for Medicines and Medical Devices. This registration must be made prior to the making available on the market activity through

the authorised means of doing so in the electronic site of the Spanish Agency for Medicines and Medical Devices.

2. Operators shall notify the Marketing register of the devices to be placed on the market. This communication shall include:

a) Identifying data of the economic operator making the communication.

b) Trade name of each of the devices it markets in Spain.

c) Device Identifier (hereinafter UDI-DI)

d) Labelling and instructions for use under which the device is to be placed on the market in Spain.

e) Date on which marketing begins in Spain.

3. Any modification of the data indicated in the previous paragraph of this article, as well as the cessation of marketing, will be communicated to the registry.

4. Dispensing pharmacies and any other outlets exclusively to the public are exempt from compliance with paragraphs 1 and 2.

5. Economic operators shall, on an annual basis, update their communication to the Marketing register indicating the devices they continue to market.

Failure to update the communication will result in the withdrawal of the devices and the economic operator from the Marketing register.

6. The Spanish Agency for Medicines and Medical Devices shall keep an up-to-date register of all the communications referred to in the previous paragraph.

7. The Spanish Agency for Medicines and Medical Devices shall provide the competent health authorities of the Autonomous Communities access to this register.

Article 16. *Device identification and traceability*.

1. Any economic operator placing devices on the market shall keep a documented record of the devices made available in Spanish territory containing at least the following information:

a) Trade name of the device.

b) Model.

c) UDI-DI, except for the products, categories or groups of products determined in Article 24(8) of Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017, for which the UDI shall be stored and retained.

d) Serial number or lot number.

e) Date of dispatch or supply.

f) Identification of the economic operator who supplied it with the device.

g) Identification of the economic operator, health institution or health professional to whom they have supplied the product.

2. Dispensing pharmacies and any other point of sale exclusively to the public shall maintain a documented record of the devices they make available in Spanish territory, containing at least the data included in paragraph 1(a), (e) and (f).

3. In accordance with Article 24(9) of Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017, health institutions and professionals shall store and retain, preferably by electronic means, the UDI of devices in classes D and C supplied to them.

Article 17. *Relabelling, repackaging and translations*.

The Spanish Agency for Medicines and Medical Devices shall provide importers and distributors with the necessary means to comply with the obligations laid down in Article 16(4) of Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017 in relation to this competent authority.

Article 18. *Obligations of economic operators*.

1. Economic operators shall:

a) Submit in Spanish, in response to a reasoned request from the health authorities, how much information is deemed necessary to judge the conformity of a device. However, the authorities may accept the submission of documentation supporting such conformity in other languages. The refusal to provide the documentation referred to in this article may be regarded as a presumption of non-conformity.

If the importer and the distributor do not have the documentation referred to in the previous paragraph, they shall obtain it from the manufacturer or the authorised representative, or request the manufacturer or the authorised representative to submit it directly to the health authorities.

b) Immediately respond to the measures ordered by the health authorities in the event of non-compliance or infringements, in the case of a product that does not bear the CE marking contrary to the provisions of the regulation of *in vitro* diagnostic medical devices, or is found to have been improperly affixed, or in cases of non-conformity.

c) Meet the costs of verifying the non-conformity of a device by the health authorities, where the latter requires evaluations or tests on the device or its technical documentation, with the exception of dispensing pharmacies and any other point of sale exclusively to the public.

2. Importers and distributors shall ensure that, at the time of it being put into service, the product is accompanied by the particulars and information specified in Article 5(2), both on the labelling and in the instructions for use, in accordance with that Article.

3. The importer and the distributor shall ensure, with the exception of dispensing pharmacies and any other point of exclusive sale to the public, that the notification obligations laid down in Article 82 of Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017 are complied with and, if necessary, they must inform the Spanish Agency for Medicines and Medical Devices.

4. Where a manufacturer established in Spain is in a situation of declaration of insolvency or cessation of its activity, it shall keep at the disposal of the competent authorities concerned, for a period of at least 10 years after the last product has been placed on the market, the documentation set out in Annexes IX, X, XI and XIII to Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017.

Manufacturers must inform the Spanish Agency for Medicines and Medical Devices of this situation to establish the appropriate measures for the conservation of the documentation and, where appropriate, the referral thereof.

This obligation shall also apply to authorised representatives established in Spain where the manufacturer has no registered office in a Member State.

Article 19. *Distribution and sale*.

1. Only devices complying with Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017 and this Royal Decree, and which are not expired, may be distributed and sold.

2. The distribution and sale of the devices shall be carried out in such a way as to ensure the proper storage and preservation of the devices.

Distribution and sales activities shall be subject to surveillance and inspection by the health authorities of the autonomous community concerned.

3. Distributors and natural or legal persons engaged in the sale activity must make prior notification of the start of business to the health authority of the autonomous community where the company's registered office is located, as well as to the health authority of the community where the warehouse or warehouses are located, in the case where they are not in the same community, which shall contain:

a) Identification of the establishment of distribution or sale, where applicable.

b) The types of products it distributes or sells.

c) The identification and qualification of the responsible technician, in accordance with Article 20(2), where applicable.

Dispensing pharmacies are exempt from making such a declaration of retail sales activity.

4. Distributors shall communicate to the marketing register in accordance with Article 15, with the exception of dispensing pharmacies and any other outlet exclusively to the public.

5. According to Article 3(5) of the revised text of the Law on Guarantees and Rational Use of Medicines and Medical Devices, the sale to the public by mail order and telematic procedures of medical devices subject to prescription is prohibited.

For the purposes of this Royal Decree, devices subject to prescription are:

a) Those financed by the National Health System.

b) Those intended for use, or applied exclusively by healthcare professionals.

c) Human genetic tests considered as *in vitro* diagnostic medical devices included in the definition in Article 2(2) of Regulation (EU) 2017/746.

6. The Spanish Agency for Medicines and Medical Devices may, for reasons of public health or the safety of persons, by means of decision, establish specific conditions for sale to the public by correspondence and by telematic procedures of certain products.

7. The sale to the public of products for self-testing will be carried out exclusively through dispensing pharmacies or directly through the pharmacy's own website without the intervention of intermediaries.

8. The sale may be made through vending machines designed for this purpose, provided that the integrity and safety of the product is not impaired, except in the cases of prescription products and products for self-testing.

9. The sale to the public of products intended to be used or applied exclusively by healthcare professionals shall be prohibited.

10. The itinerant sale of *in vitro* diagnostic medical devices shall be prohibited.

Article 20. *Distribution activity*.

1. For the development of the distribution activity, the necessary organisation and means shall be in place to take any appropriate action in cases of potential risks related to the products and a documented record of the products to be distributed, in accordance with Article 16.

2. The distribution activities will be carried out under the supervision of a responsible technician whose university degree or vocational training certifies an appropriate qualification, depending on the products for which they are responsible. This responsible technician shall be directly in charge of the implementation of the activities and obligations provided for in Articles 15 and 16. Likewise, they shall be responsible for maintaining the technical and health information about the devices they distribute or commission in Spain.

If the qualification referred to in the preceding paragraph does not fully demonstrate the qualification, it may be completed on the basis of training and/or experience.

Points for sale exclusively to the public are exempt from the requirement concerning the technician responsible.

Article 21. *Exhibitions*.

Devices which do not comply with the provisions of this Royal Decree may be presented at fairs, exhibitions and demonstrations, provided that a sufficiently visible sign placed on or near the devices itself clearly indicates that such devices cannot be placed on the market or put into service until they have been declared in conformity. Such demonstrations may never involve the use of these products on samples from participants.

CHAPTER VI

Trade in the European Union market and in the external market

Article 22. *Circulation on the European Union market and import*.

1. Devices introduced from European Union countries and imported from third countries may only be placed on the market and put into service in Spain if they comply with the requirements laid down in this Royal Decree and in Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017.

2. The Spanish Agency for Medicines and Medical Devices, through the pharmaceutical inspection services of the functional areas of health and social policy of the Government Delegations, will verify that imports of the devices covered by this Royal Decree comply with the following requirements:

a) The importer established in Spain placing a device from a third country on the Union market, as well as natural and legal persons who, without being importers in accordance with Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017, physically import a device into Spain hold the operating health licence provided for in Article 7.

b) The product bears the CE marking, except in the case of products intended for performance studies.

c) The device has been subject to the conformity assessment procedures provided for in Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017.

In the case of the importation of semi-finished devices, it shall be verified that the relevant operating licence is available as a manufacturer or importer, as appropriate, provided for in Article 7.

3. Where the conditions referred to in the previous paragraph are not met, the goods shall be rejected.

The goods shall also be rejected if the device bears an undue or false CE marking, where the device has been subject to restrictive measures by the health authorities or where it presents a risk to health.

4. The functional areas of health and social policy shall inform the Spanish Agency for Medicines and Medical Devices of the rejected import operations.

5. The Spanish Agency for Medicines and Medical Devices may authorise the import of products where the conditions indicated in Paragraph 2 of this Article are not met.

Article 23. *Export*.

1. Devices which are manufactured exclusively for export to third countries and do not comply with the requirements set out in Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017 or in this Royal Decree shall be labelled in such a way that they are identified as such unambiguously, different from those intended for the European Union market, in order to avoid their use there.

2. In addition to the free sales certificates provided for in Article 55 of Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017, the Spanish Agency for Medicines and Medical Devices may issue export licences at the request of other operators having their registered office in Spain.

CHAPTER VII

Performance studies

Article 24. *Interventional clinical performance studies and other performance studies involving risks to subjects.*

1. In conducting performance studies on products included in Article 3(1) of this Royal Decree, as referred to in Article 58 (1) and (2) of Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017, the ethical, methodological and protection principles of the subjects of the trial, referred to in Royal Decree 1090/2015 of 4 December 2015 regulating clinical trials with medicinal products, the Research Ethics Committees with medicinal products and the Spanish Registry of Clinical Studies, as well as the provisions of Chapter VI and Annexes XIII and XIV to Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017, shall apply.

2. Products intended for such performance studies may only be made available to physicians or researchers if the study has the favourable opinion of the Research Ethics Committee with medicinal products accredited by the competent body of the relevant autonomous community, in accordance with the provisions of Article 60 of the consolidated text of the Law on guarantees and rational use of medicinal products and medical devices. Conformity of the address of the centre where it is to be carried out shall also be required.

3. The Research Ethics Committee shall deliver an opinion on the performance studies with these products. This will particularly consider the provisions of Article 16(4)(a) of Royal Decree 1090/2015 of 4 December 2015. Where such studies are carried out in several centres, the opinion shall be issued by a Research Ethics Committee in the national territory and shall be unique and binding.

This provision shall extend to substantial modifications of these performance studies.

4. The Spanish Agency for Medicines and Medical Devices shall inform the relevant Autonomous Communities of the decisions taken to ensure the safety of the performance studies.

5. Devices intended for performance studies shall be provided free of charge by the sponsor. Other forms of supply may be authorised in certain circumstances.

All leftover products will be returned to the promoter upon completion of the study.

Labels and the instruction manual for products intended for performance studies must be written at least in Spanish and must at any time permit the perfect identification of the products.

The manufacturing and control protocols for batches of products manufactured for the performance study shall be kept by the sponsor in the main trial file.

In the case of performance studies carried out in hospitals, it will be the hospital dispensary services that supervise the supply of the products to be used for the study. Where the study is not carried out in a hospital, a person shall be appointed to supervise this supply.

6. The sponsor or legal representative established in Spain shall keep at the disposal of the competent authorities the documentation referred to in annex XIV to Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017 within the time limits set out in point 3 of chapter II of this annex.

7. In the event of bankruptcy or cessation of activity, they must inform the Spanish Agency for Medicines and Medical Devices to establish the appropriate measures for the preservation of the documentation or referral thereof.

Article 25. *Procedure for the authorisation of interventional clinical performance studies and other performance studies involving risks for trial subjects*.

1. The sponsor shall apply for authorisation from the Spanish Agency for Medicines and Medical Devices, together with the documentation required by Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017, in accordance with the procedures and time limits laid down in this regulation. This request shall be without prejudice to any communication required by the health authority of the autonomous community concerned.

The application, the researcher's manual, the performance study plan, the informed consent, and the instructions and labelling of the product for the study must be submitted at least in Spanish.

2. The Spanish Agency for Medicines and Medical Devices shall evaluate the submitted documentation and decide by authorising studies or by communicating a counter-decision based on public health or public policy considerations based on the time limits laid down in Article 66 of Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017.

For performance studies carried out in accordance with Article 58(1)(a) of Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017, and where the collection of samples does not pose a significant clinical risk to the subject, the same procedure shall apply with the same deadlines as for all other cases.

3. Any substantial modification of these performance studies must be communicated to the Spanish Agency for Medicines and Medical Devices, in accordance with Article 71 of Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017. The Spanish Agency for Medicines and Medical Devices shall assess and resolve all substantial amendments in accordance with the deadlines laid down in Article 71 of Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017.

Article 26. *Compensation for damages in interventional clinical performance studies and other performance studies involving risks for trial subjects*.

1. In performance studies, the sponsor shall ensure that the subject is compensated for any damage and injury suffered as a result. This indemnity shall be independent of the financial capacity of the sponsor, the researcher and the institution.

2. The sponsor of these performance studies is responsible for taking out insurance or a financial guarantee covering the damages referred to in Paragraph 1, as well as the liabilities that may be incurred by the sponsor, the principal researcher and their collaborators, including the contracted clinical researchers, and the hospital or institution where the study is conducted, which must be documented prior to the commencement of the study.

Article 27. *Liability regime for interventional clinical performance studies and other performance studies involving risks to trial subjects*.

1. In the absence of evidence to the contrary, damage to the health of the subject during the study and in the year following the end of treatment is presumed to have occurred as a result of the study. However, once the year has concluded, the test subject is obliged to prove the link between the study and the damage produced.

2. For the purposes of the liability regime provided for in this article, all expenses arising from the impairment of the health or physical condition of the person subject to a performance study, as well as the economic damage arising directly from such impairment, shall be compensated, provided that the impairment is not inherent to the pathology under study or to the evolution of his or her disease as a result of the ineffectiveness of the treatment.

3. The minimum amount that will be guaranteed as liability shall be EUR 250 000 per person subject to a performance study, and may be received in the form of lump-sum compensation or equivalised income of the same capital amount. A maximum insured capital or maximum amount of the financial guarantee may be established for the study of the operation and annuity of EUR 2 500 000.

Article 28. *Interventional clinical performance studies and other performance studies involving risks for subjects conducted with CE marked devices*.

1. Performance studies carried out with CE marked devices outside the scope of their intended purpose, in addition to what is indicated in Article 70(2) of Regulation (EU)

2017/746 of the European Parliament and of the Council of 5 April 2017, shall be governed by the provisions of Articles 24, 25, 26 and 27 of this Royal Decree.

2. Performance studies as defined in Article 70(1) of Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017, shall be communicated to the Spanish Agency for Medicinal Products and Medical Devices, in accordance with the provisions of that Article, and any substantial amendments thereto shall be communicated in accordance with Article 71(1) of that Regulation. This communication shall be without prejudice to any communication required by the health authority of the autonomous community concerned.

The communication letter, the researcher's manual, the performance study plan, the informed consent, and the instructions and labelling of the product for the study must be presented at least in Spanish.

In addition to what is indicated in Article 70(1) of Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017, Article 24(1), (2), (3), (4), (5), third paragraph, (6) and (7) of this Royal Decree shall apply to these performance studies.

Article 29. *Other performance studies.*

1. Performance studies other than those referred to in Article 58(1) and (2) of Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017 shall be regulated in accordance with this Decree, without prejudice to other applicable legislation.

CHAPTER VIII

Surveillance system

Article 30. *Vigilance system*.

1. Manufacturers shall perform the incident reports provided for in Article 2 of Chapter VII of Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017 through the procedures provided for in that Regulation.

2. Health professionals and authorities who, in the course of their activities, become aware of a serious incident must notify the Spanish Agency for Medicines and Medical Devices through its electronic site designated for this purpose, which will forward this information to the manufacturer of the product concerned.

Patients and users may also notify serious incidents to the Spanish Agency for Medicines and Medical Devices using the electronic procedure enabled for this purpose or by any of the means provided for in Article 16(4) of Law 39/2015 of 1 October 2015, without prejudice to the notification they may have made to the manufacturer, another economic operator or the health professional.

The Spanish Agency for Medicines and Medical Devices shall coordinate with the autonomous communities, through the aforementioned electronic procedure, the receipt of notifications received by healthcare professionals, patients or users.
3. The health institutions shall designate a person responsible for vigilance for the procedures resulting from the application of this Article, and shall communicate their details to the health authorities of the corresponding Autonomous Community and to the Spanish Agency for Medicines and Medical Devices. The health centres belonging to the Defence Health Network shall make such communication through the Inspectorate-General for Defence Health, which will transfer it to the Spanish Agency for Medicines and Medical Devices and to the health authorities of the relevant autonomous community.

In the event that the Spanish Agency for Medicines and Medical Devices has set up an electronic register for the communication of the designation of those responsible for surveillance, the health centres shall have the obligation to communicate the data required to said register. The information in this register shall be available to the autonomous communities.

4. The Spanish Agency for Medicines and Medical Devices shall centrally evaluate and register notifications, adopting the necessary health protection measures, in accordance with Article 33.

5. The Spanish Agency for Medicines and Medical Devices shall inform the health authorities of the autonomous communities and the Inspectorate-General for Defence Health of information relating to the measures taken, or to be taken, in relation to surveillance notifications. It shall also notify other actors concerned where appropriate.

6. Manufacturers shall inform the Spanish Medicines and Medical Devices Agency of any corrective safety action before such action is carried out, in accordance with Article 82(1) and (8) of Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017. They shall also forward the field safety notice intended for communication to users or customers prior to its dissemination. This field safety notice must be provided at least in Spanish. The Spanish Agency for Medicines and Medical Devices may determine the appropriateness of implementing the proposed measures, preventing them or modifying them for justified reasons of public health.

Any other information from a manufacturer, authorised representative, importer or distributor intended to communicate to users or customers any other warnings, preventive measures or other corrective actions related to devices placed on the market shall also be provided in Spanish, at least. The Spanish Agency of Medicines and Medical Devices may require that this information be submitted.

CHAPTER IX

Market control activities and health protection measures

Article 31. *Market control activities*.

The Spanish Agency for Medicines and Medical Devices shall coordinate market control activities to be carried out in cooperation with the health authorities of the autonomous communities in order to comply with Article 88 of Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017.

The Spanish Agency for Medicines and Medical Devices shall take appropriate measures to promote cooperation and mutual assistance with the health authorities of the autonomous communities, including the inspection and organisation of specific control programmes.

Article 32. *Inspection*.

1. It is up to the health administrations, within the scope of their competence, to perform periodic inspections to verify compliance with this Royal Decree and Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017.

2. Failure to comply with the provisions set out in this Royal Decree and Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017 will lead to the adoption, by those health administrations, of the necessary corrective measures, irrespective of the penalties imposed.

3. The Spanish Agency for Medicines and Medical Devices, by itself or through the inspection services of the functional areas of health and social policy of the Government Delegations, shall carry out inspection and control activities in respect of foreign trade devices and facilities where they are manufactured, sterilised, imported or exported, provided that they are located in the national territory, as well as in the other cases provided for in Article 108(2) of the consolidated text of the Law on guarantees and rational use of medicines and medical devices.

4. Staff working in public administrations carrying out inspection tasks shall proceed in accordance with Article 108(3) of the consolidated text of the Law on guarantees and the rational use of medicines and medical devices, and may request any information necessary to verify compliance with the provisions of this Royal Decree and Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017, for devices placed on the market in Spain and those subject to performance studies.

5. The authorities of the General State Administration and the competent autonomous communities shall assist each other for inspection purposes.

Article 33. *Health protection measures*.

1. Where a specific device, category or group of devices constitutes an unacceptable risk to health and safety referred to in Article 90 of Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017, the Spanish Agency for Medicines and Medical Devices and the other competent health authorities shall take the appropriate precautionary measures provided for in Article 26 of Law 14/1986 of 25 April and Article 109 of the consolidated Law on guarantees and the rational use of medicines and medical devices.

2. Where a specific device, category or group of devices has a non-compliance with the rules referred to in Article 92 of Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017, the Spanish Agency for Medicines and Medical Devices and the other competent health authorities shall take appropriate measures.

3. Where a specific device category or group of devices poses a potential risk in accordance with Article 93 of Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017, the Spanish Agency for Medicines and Medical Devices may take appropriate measures.

4. Where a product, a category or a specific group of products does not comply with the provisions of this Royal Decree, the Spanish Agency for Medicines and Medical Devices and the other competent health authorities shall take appropriate measures to put an end to the non-compliance in question.

5. Where the measures referred to in Paragraphs (1), (2) and (4) have been adopted by a health authority other than the Spanish Agency for Medicines and Medical Devices, the agency shall immediately inform that body of the measures taken and of the reasons for them.

6. The Spanish Medicines and Medical Devices Agency shall immediately inform the European Commission and the other Member States of the measures adopted in accordance with Article 90, 92 and 93 of Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017.

7. The Spanish Agency for Medicines and Medical Devices will communicate the measures taken by the appropriate means, and with the appropriate speed for each case, to the health authorities, the responsible entities, or the general public, as appropriate. The cost of such measures shall be borne by the natural or legal person who gave rise to their adoption.

Article 34. *Individual health control measures*.

The Spanish Agency for Medicines and Medical Devices, in order to ensure the protection of human health, safety or compliance with public health rules, may take all necessary and transitional measures justified in respect of a device, category or a specific group of devices, and may lay down provisions on the conditions of use of such devices or on special monitoring measures, and may include the warnings necessary to avoid health risks in their use.

The provisions of Article 33(7) shall apply to measures adopted pursuant to this article.

Article 35. *Communication to the data subject and resources*.

Unless there are grounds of urgency for its adoption, any measure adopted in accordance with the two preceding articles must be brought to the attention of the person concerned in advance with an indication of the appropriate remedies in accordance with the legislation in force.

First additional provision. *Application of fees*.

The procedures laid down in Articles 7, 9, 15, 23, 25 and 28(1) shall be subject to the corresponding fees set out in group V of Article 123(1) of the consolidated text of the Law on guarantees and the rational use of medicines and medical devices, approved by Royal Legislative Decree 1/2015 of 24 July 2015.

Second additional provision. *Application of this Royal Decree for the Cities of Ceuta and Melilla*.

The references contained in this Royal Decree to the autonomous communities shall be understood as being made to the cities of Ceuta and Melilla, within the framework of their competences.

Third additional provision. *Application within the Ministry of Defence.*

When the provisions of this Royal Decree affect the units, centres and bodies belonging to the Ministry of Defence and its public bodies, any actions that are necessary will be implemented by the General Inspectorate of Defence Health, in coordination with the Ministry of Health or with the Spanish Agency of Medicines and Medical Devices, in each case.

First transitional provision. *Prior operating licence for full manufacturing of devices for third parties*.

The prior operating license referred to in Article 7 shall not be required until one year after the entry into force of this Royal Decree for those persons who, at the entry into force of this Royal Decree, carried out the complete manufacture of products for third parties exclusively for this activity.

Second transitional provision. *Renewal and modification of licenses*.

Prior operating licences granted prior to the entry into force of this Royal Decree shall be subject, for renewal or modification, to the arrangements provided for in chapter II, at the time required in accordance with the regulations.

Third transitional provision. *Performance studies.*-

Performance studies initiated in accordance with Royal Decree 1662/2000 of 29 September 2000 on *in vitro* diagnostic medical devices, prior to the application of Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017, shall be governed, until their completion, by that legislation, except for the reporting of serious adverse events and device deficiencies, which shall be carried out in accordance with Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017 and this Royal Decree.

Fourth transitional provision. *European Database on Medical Devices* (*Eudamed)*.

In accordance with Article 113(3)(f) of Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017, until *Eudamed* is fully operational in accordance with Article 34(3) of Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017, the relevant provisions of Royal Decree 1662/2000 of 29 September 2000 shall continue to apply for the purposes of complying with the obligations laid down and, in particular, information concerning the communication of placing on the market and putting into service, registration of persons responsible for placing on the market, performance studies, notifications of certificates and notifications of surveillance.

Fifth transitional provision. *Marketing register.*

The obligation to communicate to the marketing register referred to in Article 15 shall not apply until that register is fully operational.

Until the register for placement on the market is operational, the communication of placement on the market and commissioning will be carried out in accordance with the provisions of Articles 9 and 10 of Royal Decree 1662/2000 of 29 September 2000.

Once the Marketing register is operational, operators placing devices on the market in Spain must notify the register within six months of notification of the device to *Eudamed*. The transfer of communications to the new marketing register shall be exempt from payment of the corresponding fee.

Sixth transitional provision. *Transitional legal regime for devices covered by Article 110 of Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017.*

For the purposes of Article 110(3) of Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017, devices covered by that provision shall be deemed to continue to comply with Directive 98/79/EC of 27 October 1998 on *in vitro* diagnostic medical devices, when they comply with the provisions of Royal Decree 1662/2000 of 29 September 2000.

Seventh transitional provision. *Validity of authorisation, certification and communication procedures*.

Authorisations, certifications, and communications carried out in accordance with the authorisation, certification, and communication procedures provided for in Royal Decree 1662/2000 of 29 September 2000.

Eighth transitional provision. *Accreditation according to the ISO 15189 standard for laboratories in health institutions*.

To carry out the activity provided for in Article 9 of this Royal Decree, the laboratories of health institutions must comply with the ISO 15189 standard, and they must be

accredited within the period established in the standard developing the areas and conditions for such accreditation.

Ninth transitory provision. *Transitional legal regime for the manufacture of products by health institutions for their exclusive use by the institution itself.*

For the purposes of Article 9 of this Royal Decree, the time limits of the transitional regime established for that purpose in Article 113(3) of Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017, shall be taken into account.

Sole derogating provision. *Repeal of legislation*.

By this Royal Decree, all rules of equal or lesser rank are repealed insofar as they contradict or oppose the provisions herein.

By way of derogation from Article 110(3) and (4) on the transitional legal regime for devices, and considering the repeal of Directive 98/79/EC and Commission Decision 2010/227/EU provided for in Article 112 of Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017, Royal Decree 1662/2000 of 29 September 2000 on *in vitro* diagnostic medical devices is repealed, with the exception of:

1. Article 20 and the obligations relating to surveillance and performance evaluation studies set out in the relevant Annexes, which are repealed with effect from the later date referred to in Article 113(3)(f) of Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017.

2. Article 18(5) and (6), Articles 9, 10, 11 and 12, and the notification of certificates provided for in the relevant Annexes, which are repealed, as appropriate, with effect from the later date referred to in Article 113(3)(f) of Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017.

3. Articles 25, 26 and 27 relating to advertising, promotion, incentives and sponsorship of scientific meetings shall remain in force until the development of their specific legislation.

First final provision. *Title of competence*.

This Royal Decree is issued pursuant to Article 149(1)(16) of the Spanish Constitution, which confers exclusive competence on the State in matters of health bases and coordination and legislation on pharmaceutical devices, with the exception of chapter VI, which is issued under the exclusive competence of the State to regulate external health.

Second final provision. *Implementation authorisation*.

The head of the Ministry for Health shall be empowered to make all the provisions necessary for the implementation and application of this Royal Decree, and to adopt the provisions which, in relation to the classification or reclassification of the products covered by this Royal Decree or the modification or adaptation, where appropriate, of the rules for the classification of these products, are adopted at European Union level or are advisable for technical or scientific reasons.

Third final provision. *Entry into force*.

This Royal Decree shall enter into force on the day after its publication in the 'Official State Gazette'.