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2020/0321(COD)**

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## INFORMATION NOTE

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From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on a reinforced role for the European Medicines Agency in crisis preparedness and management for medicinal products and medical devices - Outcome of the European Parliament's first reading (Strasbourg, 17-20 January 2022)

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## I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the Joint declaration on practical arrangements for the codecision procedure<sup>1</sup>, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this file at first reading.

In this context, the rapporteur, Nicolás GONZÁLEZ CASARES (S&D, ES), presented a compromise amendment (amendment number 156) to the abovementioned proposal for a Regulation on behalf of the Committee on the Environment, Public Health and Food Safety. This amendment had been agreed during the informal contacts referred to above. No other amendments were tabled.

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<sup>1</sup> OJ C 145, 30.6.2007, p. 5.

## II. VOTE

When it voted on 19 January 2022, the plenary adopted the compromise amendment (amendment number 156) to the abovementioned proposal for a Regulation. The Commission's proposal as thus amended constitutes the Parliament's first-reading position which is contained in its legislative resolution of 20 January 2022, as set out in the Annex hereto<sup>2</sup>.

The Parliament's position reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position.

The act would then be adopted in the wording which corresponds to the Parliament's position.

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<sup>2</sup> The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in *bold and italics*. The symbol "■" indicates deleted text.

## European Medicines Agency \*\*\*I

**European Parliament legislative resolution of 20 January 2022 on the proposal for a regulation of the European Parliament and of the Council on a reinforced role for the European Medicines Agency in crisis preparedness and management for medicinal products and medical devices (COM(2020)0725 – C9-0365/2020 – 2020/0321(COD))**

**(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2020)0725),
  - having regard to Article 294(2) and Article 114 and Article 168(4), point (c), of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9-0365/2020),
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to the reasoned opinion submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the French Senate, asserting that the draft legislative act does not comply with the principle of subsidiarity,
  - having regard to the opinion of the European Economic and Social Committee of 27 April 2021<sup>3</sup>,
  - having regard to the opinion of the Committee of the Regions of 7 May 2021<sup>4</sup>,
  - having regard to the provisional agreement approved by the committee responsible under Rule 74(4) of its Rules of Procedure and the undertaking given by the Council representative by letter of 10 November 2021 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
  - having regard to Rules 59 of its Rules of Procedure,
  - having regard to the opinion of the Committee on Industry, Research and Energy,
  - having regard to the report of the Committee on the Environment, Public Health and Food Safety (A9-0216/2021),
1. Adopts its position at first reading hereinafter set out<sup>5</sup>;
  2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;

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<sup>3</sup> OJ C 286, 16.7.2021, p. 109.

<sup>4</sup> OJ C 300, 27.2.2021, p. 87.

<sup>5</sup> This position replaces the amendments adopted on 8 July 2021 (Texts adopted, P9\_TA(2021)0351).

- Instructs its President to forward its position to the Council, the Commission and the national parliaments.

**P9\_TC1-COD(2020)0321**

**Position of the European Parliament adopted at first reading on 20 January 2022 with a view to the adoption of Regulation (EU) 2022/... of the European Parliament and of the Council on a reinforced role for the European Medicines Agency in crisis preparedness and management for medicinal products and medical devices**

**(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 and Article 168(4), point (c), thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>6</sup>,

Having regard to the opinion of the Committee of the Regions<sup>7</sup>,

Acting in accordance with the ordinary legislative procedure<sup>8</sup>,

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<sup>6</sup> OJ C 286, 16.7.2021, p. 109.

<sup>7</sup> OJ C 300, 27.7.2021, p. 87.

<sup>8</sup> Position of the European Parliament of 20 January 2022.

Whereas:

- (1) Pursuant to Articles 9 and 168 of the Treaty on the Functioning of the European Union ('TFEU') and Article 35 of the Charter of Fundamental Rights of the European Union (the 'Charter'), the Union is to ensure a high level of human health protection in the definition and implementation of all Union policies and activities.
- (2) *The COVID-19 pandemic has highlighted the interconnectedness of human, animal, and ecosystem health and the risks posed by the loss of biodiversity on Earth. As recognised by the World Health Organization, many of the same microbes infect animals and humans, so efforts that focus only on human health or only on animal health cannot prevent or eliminate the problem of disease transmission. Diseases may be transmitted from humans to animals or vice versa and therefore need to be tackled in both humans and animals, taking advantage of potential synergies in research and treatments. Approximately 70 % of emerging diseases, and almost all known pandemics, namely influenza, HIV/AIDS and COVID-19, are zoonoses. Those diseases have increased globally over the past 60 years. Changes in land use, deforestation, urbanisation, agricultural expansion and intensification, wildlife trafficking and consumption patterns are factors that have contributed to that increase. Zoonotic pathogens can be bacterial, viral or parasitic, and can include unconventional agents that are able to spread to humans through direct contact or through food, water or the environment. The COVID-19 pandemic is a clear example of the need to reinforce the application of the One Health approach in the Union to achieve better public health outcomes, since, as stated in Regulation (EU) 2021/522 of the European Parliament and of the Council<sup>9</sup>, 'human health is connected to animal health and to the environment and ... actions to tackle threats to health must take into account those three dimensions'.*

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<sup>9</sup> *Regulation (EU) 2021/522 of the European Parliament and of the Council of 24 March 2021 establishing a Programme for the Union's action in the field of health ('EU4Health Programme') for the period 2021-2027, and repealing Regulation (EU) No 282/2014 (OJ L 107, 26.3.2021, p. 1).*

- (3) The unprecedented experience of the COVID-19 pandemic has *also highlighted the difficulties of the Union and the Member States in addressing such a public health emergency. In that regard, it has demonstrated the need to strengthen the Union's role in order to* be more effective in managing the availability of medicinal products and the availability of medical devices and *in vitro* diagnostic medical devices and their respective accessories (collectively 'medical devices') and in developing medical countermeasures to address the threats posed to public health *at an early stage in a harmonised way that ensures cooperation and coordination between Union, national and regional competent authorities, medicinal products and medical devices industry and other actors in the supply chains for medicinal products and medical devices, including healthcare professionals. While the Union needs to give a higher priority to health,* its ability to ensure the continued provision of high quality healthcare services and to be prepared to address pandemics and other health threats has been severely impeded by the absence of a clearly defined legal framework for managing its response to pandemics and by the *limited mandates and resources of its health agencies,* as well as by the limited degree of Union *and Member States* preparedness for public health emergencies that impact a majority of the Member States.
- (4) *Shortages of medicinal products and medical devices have different and complex root causes which need to be further mapped, understood and analysed together with the different stakeholders in order to be comprehensively addressed. A better understanding of those shortages should include identification of vulnerabilities in the supply chain. In the specific case of the COVID-19 pandemic, the shortage of treatments for the disease had a variety of causes, ranging from production difficulties in third countries to logistical or production difficulties within the Union, where the shortage of vaccines was due to inadequate manufacturing capacity.*

- (5) ***Disruptions to the*** often complex supply chains for medicinal products and medical devices, national export restrictions and bans, border closures impeding the free movement of such goods, ■ uncertainty related to the supply for and demand of such goods in the context of the COVID-19 pandemic, ***and the lack of production in the Union of certain medicinal products or active substances,*** have led to significant impediments to the smooth functioning of the internal market and to addressing the serious threats to public health across the Union, ***with serious consequences for the Union's citizens.***
- (6) ***Addressing*** the issue of shortages of medicinal products has been a long-standing priority for the Member States and European Parliament as illustrated by several reports from the European Parliament such as the European Parliament resolution of 17 September 2020 on the shortage of medicines – how to address an emerging problem<sup>10</sup>, as well as by discussions within the Council of the European Union. However, that issue has remained, to date, unaddressed.

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<sup>10</sup> OJ C 385, 22.9.2021, p. 83.



- (7) *Shortages of medicinal products represent a growing threat to public health, with a serious impact on healthcare systems and on the right of patients to access appropriate medical treatment. Increased global demand for medicinal products, which was exacerbated by the COVID-19 pandemic, has led to further shortages of medicinal products, weakening the healthcare systems in Member States and posing significant risks to patients' health and to the care of patients, particularly in terms of disease progression and worsening of symptoms, longer delays or interruptions in care or therapy, longer periods of hospitalisation, increased risk of exposure to falsified medicinal products, medication errors, adverse effects resulting from the substitution of unavailable medicinal products with alternative ones, significant psychological distress for patients and increased costs for healthcare systems.*
- (8) The COVID-19 pandemic has exacerbated the problem of shortages of certain medicinal products considered to be critical to addressing the pandemic, and has highlighted the *Union's external dependence in terms of domestic production of medicinal products and medical devices, the lack of coordination and the structural limitations in the Union's and Member States' ability to rapidly and effectively react to such challenges during public health emergencies. It has also highlighted the need to support and strengthen the industrial capacities to produce those medicinal products and medical devices through appropriate policies, as well as the need for more active and extensive involvement of the Union institutions, bodies, offices and agencies in protecting the health of Union citizens.*

- (9) The rapid evolution of COVID-19 and the spread of the virus led to a sharp increase in demand for medical devices such as ventilators, surgical masks, and COVID-19 test kits, while disruption of production or limited capacity to rapidly increase production and the complexity and global nature of the supply chain for medical devices led to *severe supply difficulties and, at certain times, serious shortages of medical devices. It has also led Member States competing with each other when they respond to the legitimate needs of their citizens, thereby contributing to uncoordinated actions at national level, such as national hoarding and stockpiling.* Those issues *further* resulted in new entities being involved in the *expedited* production of such medical devices, which subsequently resulted in *delays* in conformity assessments and the prevalence of medical devices that were *overpriced*, non-compliant, unsafe, and, in some cases, counterfeits. It is therefore appropriate *and a matter of urgency* that long-term structures be established within the European Medicines Agency (the ‘Agency’), established by Regulation (EC) No 726/2004 of the European Parliament and of the Council<sup>11</sup>, to ensure *more solid and effective* monitoring of shortages of medical devices *that can occur during* a public health emergency and coordination of the management of those shortages, *as well as increased and early dialogue with the medical devices industry and healthcare professionals to prevent and mitigate those shortages.*
- (10) *The COVID-19 pandemic and the subsequent public health emergency revealed the need for a more coordinated Union approach in crisis management. Although the lack of an impact assessment accompanying the Commission proposal for this Regulation was due to the emergency-like nature of the situation, sufficient allocation of resources in terms of staff and funding should be secured, taking into account the specificities of the health sector in the different Member States.*

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<sup>11</sup> Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Union procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency (OJ L 136, 30.4.2004, p. 1).

- (11) Uncertainty of supply and demand and the risk of shortages of medicinal products and medical devices during a public health emergency like the COVID-19 pandemic can trigger export restrictions among Member States and other national protective measures, which can seriously impact the functioning of the internal market, thereby *exacerbating the consequences for public health, as well as leading to the need for temporary export transparency and export authorisation mechanisms*. Furthermore, shortages of medicinal products can result in serious risks to the health of patients in the Union due to their lack of availability, which can result in medication errors, increased duration of hospital stays, adverse reactions *and increased risk of fatalities* caused by the administration of unsuitable medicinal products used as a substitute for unavailable medicinal products. With respect to medical devices, shortages can lead to a lack of diagnostic resources with negative consequences for public health measures or to a disease deteriorating or not being treated, and may also prevent health professionals from adequately carrying out their tasks *or being protected when doing so, as evidenced during the COVID-19 pandemic, with serious consequences for their health*. Such shortages, for example, insufficient supply of COVID-19 test kits, can also have a significant impact on control of the spread of a given pathogen. It is therefore important to *have an appropriate framework at Union level to coordinate the Union response to* shortages of medicinal products and medical devices and to reinforce and formalise the monitoring of critical medicinal products and medical devices *in the most efficient way and in a way that avoids creating unnecessary burdens for stakeholders which can place a strain on resources and cause additional delays*.

- (12) Safe and efficacious medicinal products that treat, prevent or diagnose diseases which cause public health emergencies, should be *identified*, developed, *notably through joint efforts by public authorities, the private sector and academia*, and made available to Union *citizens* as soon as possible during such emergencies. The COVID-19 pandemic has also highlighted *the need to coordinate assessments and conclusions on* multinational clinical trials, *in line with what was done on a voluntary basis by clinical trials experts of Member States prior to the date of application of Regulation (EU) No 536/2014 of the European Parliament and of the Council*<sup>12</sup>, and the need for Union-level advice on the use of medicinal products in national compassionate use programmes or the use of medicinal products for indications that are not covered by the marketing authorisation in the Union, in order to avoid delays in the implementation of results of research and in the development and availability of new or repurposed medicinal products.
- (13) During the COVID-19 pandemic, ad hoc solutions, such as contingent arrangements between the Commission, the Agency, marketing authorisation holders, manufacturers *or other actors in the supply chain for medicinal products, on the one side*, and Member States, on the other, had to be found in order to make available safe and efficacious medicinal products to treat COVID-19 or prevent its spread, and in order to facilitate and speed up the development and marketing authorisation of treatments and vaccines.

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<sup>12</sup> Regulation (EU) No 536/2014 of the European Parliament and of the Council of 16 April 2014 on clinical trials on medicinal products for human use, and repealing Directive 2001/20/EC (OJ L 158, 27.5.2014, p. 1).

- (14) In order to ensure the better functioning of the internal market for safe and efficacious medicinal products for the treatment of COVID-19 or prevention of its spread and to contribute to a high level of human health protection, it is therefore appropriate to approximate *and strengthen* the rules on monitoring of shortages of medicinal products and medical devices, and to facilitate the research and development of medicinal products which have the potential to treat, prevent or diagnose diseases that cause public health emergencies, *with a view to strategically complementing the efforts of the Commission, including the Health Emergency Preparedness and Response Authority ('HERA'), established by Commission Decision of 16 September 2021<sup>13</sup>, and Union agencies, to that end.*
- (15) *In order to support the assessment of the crisis-preparedness and crisis-management framework provided for in this Regulation with regard to shortages of medicinal products and medical devices, the Commission should be able to use the outcomes of targeted stress tests performed by the Commission, the Agency, Member States or other relevant actors. Such stress tests entail a simulation of a public health emergency or major event in which some or all segments of the processes and procedures laid down in this Regulation are tested.*

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<sup>13</sup> OJ C 3931, 29.9.2021, p. 3.

- (16) This Regulation aims to ensure *a high level of protection for human health by ensuring* the smooth functioning of the internal market as regards medicinal products and medical devices **■**. Moreover, this Regulation aims to ensure the quality, safety and efficacy of medicinal products that have the potential to address public health emergencies. Both objectives are being pursued simultaneously and are inseparably linked, without one being secondary to the other. As regards Article 114 TFEU, this Regulation establishes a framework for the monitoring and reporting of shortages of medicinal products and medical devices during public health emergencies and major events. As regards Article 168(4), point (c), TFEU, this Regulation should provide for a strengthened Union framework for ensuring the quality and safety of medicinal products and medical devices.
- (17) *This Regulation should establish a framework to address the issue of shortages of medicinal products and medical devices during public health emergencies and major events. However, those shortages are a persistent problem that has been increasingly affecting the health and lives of Union citizens for decades. Therefore, this Regulation should be a first step towards improving the Union response to that persistent problem. The Commission should subsequently assess the expansion of that framework to ensure that the issue of shortages of medicinal products and medical devices is addressed.*

- (18) In order to improve crisis preparedness and management with respect to medicinal products and medical devices and to increase resilience and solidarity across the Union, the procedures and the respective roles and obligations of the different entities concerned should be clarified. The framework established by this Regulation should build on the ad hoc solutions identified to date in the response to the COVID-19 pandemic *that have proven effective, and should build on experience, best practices and examples from third countries, while remaining flexible enough to tackle any future public health emergency and major event in the most efficient way to the benefit of public health and patients.*

- (19) A harmonised system of monitoring shortages of medicinal products and medical devices should be established. This would facilitate appropriate access to critical medicinal products and medical devices during public health emergencies **■** *and* major events, which can have a serious impact on public health. That system should be complemented by improved structures for ensuring the appropriate management of public health emergencies and major events and for coordinating and providing advice on research and development relating to medicinal products which have the potential to *mitigate* public health emergencies or major events. In order to facilitate the monitoring and reporting of actual or potential shortages of medicinal products and medical devices, the Agency should be able to request and obtain information and data from the marketing authorisation holders concerned, manufacturers and Member States through designated single points of contact, *while avoiding any duplication of the information requested and submitted. This should not interfere with the obligation on marketing authorisation holders under Article 23a of Directive 2001/83/EC of the European Parliament and of the Council* <sup>14</sup> *to notify a Member State when a product ceases to be placed on the market of that Member State or the obligation under Article 81 of that Directive on marketing authorisation holders and wholesale distributors to ensure appropriate and continued supplies of that medicinal product to persons and legal entities that are authorised or entitled to supply medicinal products, so that the needs of patients in the Member State in question are met.*

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<sup>14</sup> *Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ L 311, 28.11.2001, p. 67).*



(20) *In order to facilitate the prevention, monitoring and reporting of shortages of medicinal products, the Agency should set up an information technology (IT) platform, to be known as the European shortages monitoring platform ('ESMP'), that is capable of processing information on the supply of and demand for critical medicinal products during public health emergencies or major events and, outside of those situations, to allow for reporting on shortages of medicinal products that are likely to lead to public health emergencies or major events. To facilitate the development of the ESMP, existing IT systems should be leveraged and used where possible. The ESMP should allow national competent authorities to submit and monitor information on unmet demand, including information received from marketing authorisation holders, wholesale distributors and other persons or legal entities that are authorised or entitled to supply medicinal products to the public, in order to anticipate shortages of medicinal products. The ESMP could also process additional information received from marketing authorisation holders, wholesale distributors and other persons or legal entities that are authorised or entitled to supply medicinal products to the public in order to avert a public health emergency or a major event. The ESMP, once it is fully implemented, should act as the sole portal for marketing authorisation holders to provide the information required during public health emergencies and major events, with a view to increasing efficiency and predictability during public health emergencies and major events, and to accelerating the decision-making process while avoiding duplication of efforts and unjustified burdens on stakeholders. In order to facilitate the coordination role of the Agency, the interoperability of data with existing Member States' IT platforms for monitoring shortages and other systems, as appropriate, is essential to allow the sharing of relevant information with the ESMP, which should be managed by the Agency.*

(21) *In the event that the actual future demand is unknown due to a public health emergency or major event, it is important to make pragmatic predictions as to demand for certain medicinal products on the basis of the best available information. In that context, information and data on available stocks and planned minimum stocks should be collected by Member States and the Agency and taken into account in identifying the demand as far as possible. Those information and data are essential for making correct adjustments in the manufacturing of medicinal products to avoid or at least mitigate the impact of shortages of medicinal products. However, when data on stocks are not available or cannot be provided due to national security interests, Member States should provide the Agency with estimated data on volumes of demand.*

- (22) With respect to medicinal products, an executive steering group should be established within the Agency to ensure a robust response to major events and to coordinate urgent actions within the Union in relation to the management of issues relating to the supply of medicinal products (the ‘Medicine Shortages Steering Group - MSSG’). The MSSG should establish lists of critical medicinal products to ensure monitoring of those products and it should be able to provide advice *and recommendations* on the necessary action to take to safeguard the quality, safety and efficacy of medicinal products *as well as to safeguard the supply* of medicinal products and to ensure a high level of human health protection.

- (23) *To facilitate appropriate communication between patients and consumers, on the one hand, and the MSSG, on the other, Member States could collect data on the impact of shortages of medicinal products on patients and consumers, and share relevant information with the MSSG in order to inform approaches to management of shortages of medicinal products.*
- (24) *In order to ensure the inclusivity and transparency of the work of the MSSG, there should be appropriate engagement between the MSSG and relevant third parties, including representatives of medicinal product interest groups, marketing authorisation holders, wholesale distributors, any other appropriate actors in the supply chain for medicinal products, and representatives of healthcare professionals, of patients and consumers.*
- (25) The MSSG should benefit from the Agency's extensive scientific expertise as regards the evaluation and supervision of medicinal products and should further develop the Agency's leading role in coordinating and supporting the response to shortages of medicinal products during the COVID-19 pandemic.

- (26) In order to ensure that high quality, safe and efficacious medicinal products, which have the potential to address public health emergencies, can be developed and made available within the Union as soon as possible during public health emergencies, an emergency task force should be established within the Agency to provide advice on such medicinal products (the ‘Emergency Task Force - ETF’). The ETF should provide advice on scientific questions related to the development of treatments and vaccines and on clinical trial protocols free of charge to those entities involved in their development, such as marketing authorisation holders, clinical trial sponsors, public health bodies, and academia, irrespective of their role in the development of such medicinal products. ***Decisions on clinical trial applications should remain within the competence of the Member States, in accordance with Regulation (EU) No 536/2014.***
- (27) The work of the ETF should be separate from the work of the scientific committees of the Agency and should be carried out without prejudice to the scientific assessments of those committees. The ETF should provide ***advice and*** recommendations with regard to the use of medicinal products in the fight ***to overcome*** public-health emergencies. The Committee for Medicinal Products for Human Use ('CHMP') established by Article 5 of Regulation (EC) No 726/2004 should be able to use those recommendations when preparing scientific opinions on compassionate or other early use of a medicinal product prior to marketing authorisation. ***The MSSG could also draw on the work of the ETF when developing the critical medicines lists.***

- (28) The establishment of the ETF should build on the support provided by the Agency during the COVID-19 pandemic, in particular as regards scientific advice on clinical trials design and product development as well as the ‘rolling’ review of emerging evidence, i.e. on an on-going basis, to allow a more efficient assessment of medicinal products including vaccines during public health emergencies, ***while guaranteeing a high level of human health protection.***
- (29) ***In order to ensure the better functioning of the internal market for medicinal products and to contribute to a high level of human-health protection, it is appropriate for the ETF to coordinate and provide advice to developers involved in the research and development of medicinal products that have the potential to treat, prevent or diagnose diseases causing the public health emergency.***
- (30) ***The ETF should provide advice on clinical trial protocols and to developers of clinical trials that are conducted in the Union, providing guidance on clinically relevant endpoints and targets for vaccines and treatments in order to facilitate clinical trial design meeting the criteria for effective public health interventions.***
- (31) ***Experience with clinical trials during the COVID-19 pandemic revealed a tremendous amount of duplication of investigations on the same interventions, a high number of small trials, under-representation of important population subgroups, based on gender, age, ethnicity or medical comorbidities, and a lack of collaboration, leading to a risk that research will be wasted. International regulators pointed out the need to improve the clinical research agenda in order to generate robust evidence on quality, safety and efficacy of medicinal products. The main way of obtaining reliable evidence is through coordinated, well-designed, and adequately powered large randomised controlled trials. Clinical trial results and clinical data produced after the relevant marketing authorisation has been granted should be made publicly available in a timely manner. The publication of the trial protocol at the start of the clinical trial would allow public scrutiny.***

- (32) *Whenever necessary, considering that medicinal products for human use may impact the veterinary sector, a close liaison with the national competent authorities for veterinary medicinal products should be envisaged.*
- (33) Although individual research entities may agree with each other or with another party to act as a sponsor in order to prepare a single harmonised Union-wide clinical trial protocol, experience during the COVID-19 pandemic has shown that initiatives to set up large multinational trials struggle to materialise due to the lack of a single entity that is able to take up all the responsibilities and activities of a sponsor within the Union as well as interact with multiple Member States. *To address that problem, a new Union-wide and Union-funded vaccine trial network called VACCELERATE was launched following the Commission communication of 17 February 2021 entitled ‘HERA Incubator: Anticipating together the threat of COVID-19 variants’. The Agency should identify and facilitate such initiatives by giving advice on the possibilities for acting as a sponsor or, where applicable, for allocating respective responsibilities as co-sponsors in accordance with Article 72 of Regulation (EU) No 536/2014 and coordinate the development of clinical trial protocols.* Such an approach would strengthen the research environment in the Union, would promote harmonisation and would avoid subsequent delays in availability of results of research for marketing authorisation files. A Union sponsor could benefit from Union research funding available at the time of the public health emergency as well as from existing clinical trial networks to facilitate the development, application, submission, and running of trials. This may be particularly valuable for trials established by Union or international public health or research organisations.

- (34) *The Agency publishes European Public Assessment Reports (EPARs) for medicinal products authorised in accordance with Regulation (EC) No 726/2004 which provide information on the assessment of those medicinal products by describing the data assessed and the reasons for recommending whether a medicinal product should be authorised. The EPAR includes detailed information with regard to all relevant pre-submission activities under that Regulation, including the names of the coordinators and experts involved, and, where a medicinal product developer requests scientific advice during the pre-submission phase, an overview of the scientific topics discussed in view to that advice.*
- (35) With respect to medical devices, an executive steering group on shortages of medical devices should be established to coordinate urgent actions within the Union in relation to the management of supply and demand issues of medical devices, and to establish a list of critical medical devices in the case of a public health emergency (the ‘Medical Device Shortages Steering Group - MDSSG’). *To ensure such coordination, the MDSSG should also liaise with the Medical Devices Coordination Group ('MDCG') established by Article 103 of Regulation (EU) 2017/745 of the European Parliament and of the Council<sup>15</sup>, where appropriate. In that respect, Member States should be able to appoint the same representatives to both the MDSSG and the MDCG.*
- (36) The operational phase of the work of the MSSG, the MDSSG and the ETF should be triggered by the recognition of a public health emergency in accordance with *Decision No 1082/2013/EU of the European Parliament and of the Council<sup>16</sup>* and, as regards the MSSG, also by the recognition of a major event. The continuous monitoring of risks to public health from major events, including manufacturing issues, natural disasters and bioterrorism that have the potential to affect the quality, safety, efficacy, or supply of medicinal products should also be ensured. *In addition, such monitoring should follow the One Health approach.*

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<sup>15</sup> *Regulation (EU) 2017/745 of the European Parliament and of the Council of 5 April 2017 on medical devices, amending Directive 2001/83/EC, Regulation (EC) No 178/2002 and Regulation (EC) No 1223/2009 and repealing Council Directives 90/385/EEC and 93/42/EEC (OJ L 117, 5.5.2017, p. 1).*

<sup>16</sup> *Decision No 1082/2013/EU of the European Parliament and of the Council of 22 October 2013 on serious cross-border threats to health and repealing Decision No 2119/98/EC (OJ L 293, 5.11.2013, p. 1).*



- (37) *It is understood that all recommendations, advice, guidance and opinions provided for in this Regulation are inherently non-binding. Each of those instruments is intended to allow the Commission, the Agency, the MSSG, the MDSSG and the ETF to make their views known and to suggest a line of action without imposing any legal obligation on the addressees of those instruments.*
- (38) *It is imperative to have in place robust transparency measures and standards regarding the Agency's regulatory activities in relation to medicinal products and medical devices that fall under the scope of this Regulation. Those measures should include the timely publication of all relevant information on approved medicinal products and medical devices and of clinical data, including clinical trial protocols. The Agency should be highly transparent as regards the membership, recommendations, opinions and decisions of the MSSG, the MDSSG and the ETF. Members of the MSSG, the MDSSG and the ETF should not have financial or other interests in the medicinal products or medical device industries which could affect their impartiality.*
- (39) *In order to establish the list of categories of critical medical devices and to facilitate the process of monitoring shortages, the manufacturers of those medical devices, or their authorised representatives and, where necessary, relevant notified bodies should provide information requested by the Agency. In specific situations, namely where a Member State considers the need to provide for temporary exemptions pursuant to Article 59(1) of Regulation (EU) 2017/745 or Article 54(1) of Regulation (EU) 2017/746 of the European Parliament and of the Council <sup>17</sup> with a view to mitigating actual or potential shortages of medical devices, the importer and distributor should also play a role in providing the requested information if the non-EU manufacturer has not designated an authorised representative.*

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<sup>17</sup> *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 (OJ L 117, 5.5.2017, p. 176).*

- (40) This Regulation should provide the Agency with a role in supporting the expert panels on medical devices designated in accordance with **Article 106(1) of Regulation (EU) 2017/745** (the 'expert panels') in providing independent scientific and technical assistance to the Member States, the Commission, the **█ MDCG █**, notified bodies and manufacturers, *while upholding maximum transparency as a condition for fostering trust and confidence in the Union regulatory system.*

(41) In addition to their role in clinical evaluation assessments and performance evaluations regarding certain high risk medical devices in accordance with Regulations (EU) 2017/745 and (EU) 2017/746, respectively, as well as in providing opinions in response to consultation by manufacturers and notified bodies, the [ ] expert panels are to provide scientific, technical, and clinical assistance to the Member States, the Commission and the [ ] MDCG [ ]. In particular, the expert panels are to contribute to the development of guidance on a number of points, including clinical and performance aspects of specific medical devices, categories, or groups of medical devices or specific hazards related to a category or group of medical devices, develop clinical evaluation and performance evaluation guidance in line with the state of the art, and contribute to the identification of concerns and emerging issues on safety and performance. *In that context, the expert panels could play a relevant role in preparedness for and the management of public health emergencies relating to medical devices, particularly those of high risk including those medical devices which have the potential to address public health emergencies, without prejudice to tasks and obligations under Regulations (EU) 2017/745 and (EU) 2017/746.*

- (42) Given the Agency's long-standing and proven record of expertise in the field of medicinal products and considering the Agency's experience from working with a multitude of groups of experts, it is appropriate to establish *suitable* structures within the Agency to monitor potential shortages of medical devices in the context of a public health emergency and provide that the Agency provide the secretariat for the expert panels. This would ensure that the expert panels operate sustainably in the long term and would provide clear synergies with related crisis-preparedness work in the area of medicinal products. Those structures would in no way change the regulatory system or decision-making procedures in the area of medical devices that are already in place in the Union, which should remain clearly distinct from those for medicinal products. *To ensure a smooth transition to the Agency, the Commission should provide support for the expert panels until 1 March 2022.*
- (43) In order to facilitate the work and exchanges of information under this Regulation, provision should be made for the establishment and management of IT infrastructures and to create synergies with other existing IT systems *and* IT systems under development, including the *European database on medical devices (Eudamed) provided for in Article 33 of Regulation (EU) 2017/745, alongside enhanced protection of data infrastructure and deterrence from possible cyber attacks. Within Eudamed, the European Medical Device Nomenclature provided for in Article 26 of Regulation (EU) 2017/745 and in Article 23 of Regulation (EU) 2017/746 should be used to help the gathering of relevant information on categorisation of* medical devices. That work could also be facilitated by, where appropriate, emerging digital technologies such as computational models and simulations for clinical trials, as well as by data from the Union Space Programme established by Regulation (EU) 2021/696 of the European Parliament and of the Council<sup>18</sup>, such as from the Galileo geolocation services, and Copernicus Earth observation data.

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<sup>18</sup> Regulation (EU) 2021/696 of the European Parliament and of the Council of 28 April 2021 establishing the Union Space Programme and the European Union Agency for the Space Programme and repealing Regulations (EU) No 912/2010, (EU) No 1285/2013 and (EU) No 377/2014 and Decision No 541/2014/EU (OJ L 170, 12.5.2021, p. 69).

- (44) *In order to ensure the completeness of information and data obtained by the Agency and considering the specific characteristics of the medical device sector, until Eudamed is fully functional, it should be possible to constitute the list of single points of contact for monitoring the shortages of medical devices included on the public health emergency critical devices list using as a source of information the relevant databases or medical device associations at Union or national level.*

- (45) Rapid access to and exchanges of health data, including real world data, i.e. health data generated outside of clinical studies, are essential to ensuring the effective management of public health emergencies and major events. This Regulation should allow the Agency to use and facilitate such exchanges and to be part of the establishment and operation of the European Health Data Space *interoperable* infrastructure, *taking advantage of all the potential of supercomputing, artificial intelligence and big data science to develop predicting models and take better and more timely and effective decisions, without compromising privacy rights.*

- (46) *In order to facilitate the reliable exchange of information on medicinal products in a robust and consistent manner, the identification of medicinal products should be based on the standards developed by the International Organization for Standardization for the identification of medicinal products for human use.*
- (47) *The handling of sensitive data, crucial for dealing with potential public health emergencies, requires a high level of protection against cyber attacks. Healthcare organisations have also been facing heightened cybersecurity threats in the midst of the COVID-19 pandemic. The Agency itself was the target of a cyber attack that resulted in some documents related to COVID-19 medicinal products and vaccines belonging to third parties being illegally accessed and some of those documents then being leaked on the internet. It is therefore necessary for the Agency to be equipped with a high level of security controls and processes against cyber attacks to ensure that the Agency operates normally at all times and especially during public health emergencies and major events. To that end, the Agency should establish a plan to prevent, detect, mitigate and respond to cyber attacks so that its operations are secure at all times, while preventing any illegal access to documentation held by the Agency.*

(48) *Due to the sensitive nature of health data, the Agency should safeguard its processing operations and ensure that they respect the data protection principles of lawfulness, fairness and transparency, purpose limitation, data minimisation, accuracy, storage limitation, integrity and confidentiality. Where the processing of personal data is necessary for the purposes of this Regulation, such processing should be done in accordance with Union law on the protection of personal data. Any processing of personal data under this Regulation should take place in accordance with Regulations (EU) 2016/679<sup>19</sup> and (EU) 2018/1725<sup>20</sup> of the European Parliament and of the Council.*

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<sup>19</sup> *Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).*

<sup>20</sup> *Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).*



- (49) *The credibility of the Agency and public trust in its decisions depend on a high degree of transparency. Therefore, the use of adequate communication tools to proactively engage with the general public should be provided for. In addition, the rapid strengthening of transparency standards and measures regarding the Agency's working bodies and clinical data that has been assessed for the evaluation and surveillance of medicinal products and medical devices are paramount to gain and uphold public trust. This Regulation should establish a framework for those strengthened transparency standards and measures, on the basis of the transparency standards and measures adopted by the Agency during the COVID-19 pandemic.*
- (50) During public health emergencies or major events, the Agency should ensure cooperation with the European Centre for Disease Prevention and Control ('ECDC') established by Regulation (EC) No 851/2004 of the European Parliament and of the Council<sup>21</sup> and other Union agencies, as appropriate. Such cooperation should include the sharing of data, including data on epidemiological forecasting, regular communication at an executive level, and inviting representatives of the ECDC and other Union agencies to attend meetings of the ETF, the MSSG and the MDSSG, as appropriate. *Such cooperation should also include strategic discussions with relevant entities of the Union that are in a position to assist research and development regarding appropriate solutions and technologies for mitigating the effects of the public health emergency or major event or preventing future similar public health emergencies or major events.*

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<sup>21</sup> Regulation (EC) No 851/2004 of the European Parliament and of the Council of 21 April 2004 establishing a European Centre for disease prevention and control (OJ L 142, 30.4.2004, p. 1).

- (51) *In cases of public health emergencies, or in relation to major events, it should be possible for the Agency to enable regular exchanges of information with Member States, marketing authorisation holders, relevant actors of the supply chain for medicinal products, and representatives of healthcare professionals, of patients and consumers, to ensure early discussions on potential shortages of medicinal products in the market and on supply constraints, so as to allow better coordination and synergies to mitigate and respond to the public health emergency or major event.*
- (52) *Given that the COVID-19 pandemic has not come to an end, and that the duration and evolution of public health emergencies, such as pandemics, are uncertain, provision should be made for a review of the effectiveness of the functioning of the structures and mechanisms established in accordance with this Regulation. In light of that review, those structures and mechanisms should be adjusted, if appropriate.*
- (53) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States alone due to the cross-border dimension of public health emergencies and major events but can rather, by reason of the scale or effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

- (54) In order to ensure that sufficient resources, *including appropriate staffing and adequate expertise*, are available for carrying out the tasks provided for under this Regulation, expenditure of the Agency should be covered by the contribution from the Union to the Agency's revenue. *That expenditure should include remuneration for rapporteurs who are appointed to provide scientific services in relation to the ETF and, in line with usual practice, reimbursement of travel, accommodation and subsistence expenses related to meetings of the MSSG, the MDSSG, the ETF and their working parties.*
- (55) *The EU4Health Programme established by Regulation (EU) 2021/522 or the Recovery and Resilience Facility established by Regulation (EU) 2021/241 of the European Parliament and of the Council<sup>22</sup> are some of the tools to provide additional support to national competent authorities in relation to shortages of medicinal products, including through the implementation of actions to mitigate shortages of medicinal products and improve the security of supply. Member States should be able to request financial support from the Union specifically for the implementation of their obligations set out in this Regulation.*
- (56) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) No 2018/1725 and delivered formal comments on 4 March 2021.

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<sup>22</sup> Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility (OJ L 57, 18.2.2021, p. 17).

- (57) In accordance with Article 168(7) TFEU, this Regulation fully respects the responsibilities of the Member States for the definition of their health policy and for the organisation and delivery of health services and medical care as well as the fundamental rights and principles recognised by the Charter including the protection of personal data.
- (58) *One of the aims of this Regulation is to ensure a strengthened framework for monitoring of and reporting on shortages of medicinal products during public health emergencies and major events. As announced in the communication of the Commission of 25 November 2020 entitled ‘Pharmaceutical Strategy for Europe’, the Commission will propose to revise the pharmaceutical legislation to enhance the security of supply and address shortages of medicinal products through specific measures. That legislation could cover a further coordinating role for the Agency in monitoring and managing shortages of medicinal products. If, as a result of that revision, strengthened measures regarding monitoring of and reporting on supply of and demand for medicinal products at Union level are required, the ESMP should be considered as a suitable system to facilitate any new provisions relating to monitoring of and reporting on shortages of medicinal products. As part of the reporting on this Regulation, the Commission should consider the need to extend the scope of this Regulation to include veterinary medicinal products and personal protective equipment, to amend definitions and to introduce measures at Union or national level to strengthen compliance with the obligations set out in this Regulation. That review should include consideration of the remit and functioning of the ESMP. The extension of the functioning of the ESMP and the need for national shortages monitoring systems should be considered if necessary. In order to prepare for shortages of medicinal products during public health emergencies and major events and to support the monitoring of such shortages, capacity building that is supported by Union funding mechanisms should be considered in order to enhance cooperation among Member States. This could include the exploration of best practices and the coordination of the development of IT tools for monitoring and managing shortages of medicinal products in Member States and for connecting to the ESMP. To ensure that the ESMP is used to its full potential and to identify and forecast problems relating to supply of and demand for medicinal products, where appropriate, the ESMP should facilitate the use of big data techniques and artificial intelligence.*

(59) *In order to allow for the prompt application of the measures provided for in this Regulation, it should enter into force on the day following that of its publication in the Official Journal of the European Union,*

HAVE ADOPTED THIS REGULATION:

CHAPTER I  
GENERAL PROVISIONS

Article 1  
Subject Matter

Within the European Medicines Agency (the ‘Agency’), this Regulation provides for a framework for and the means of:

- (a) preparing for, *preventing, coordinating* and managing the impact of public health emergencies on medicinal products and on medical devices and the impact of major events on medicinal products and on medical devices *at Union level*;
- (b) monitoring, *preventing*, and reporting on shortages of medicinal products and on shortages of medical devices;
- (c) *setting up an interoperable information technology (IT) platform at Union level to monitor and report on shortages of medicinal products*;
- (d) providing advice on medicinal products that have the potential to address public health emergencies;
- (e) providing support for the expert panels provided for in *Article 106(1) of Regulation (EU) 2017/745*.

Article 2  
Definitions

For the purposes of this Regulation, the following definitions apply:

- (a) ‘public health emergency’ means a situation of public health emergency recognised by the Commission in accordance with Article 12(1) of **Decision No 1082/2013/EU**;
- (b) ‘major event’ means an event which is likely to pose a serious risk to public health in relation to medicinal products in more than one Member **State**, which concerns a deadly threat or otherwise serious threat to health of biological, chemical, environmental or other origin, or a serious incident that can affect the supply of **or demand for** medicinal products, or quality, safety or efficacy of medicinal products, which may lead to shortages of medicinal products in more than one Member State and necessitates urgent coordination at Union level in order to ensure a high level of human health protection;
- (c) ‘medicinal product’ means a medicinal product as defined in Article 1, point (2), of Directive **2001/83/EC**;
- (d) ***‘veterinary medicinal product’ means a veterinary medicinal product as defined in Article 4, point (1), of Regulation (EU) 2019/6 of the European Parliament and the Council<sup>23</sup>***;
- (e) ‘medical device’ means **■** a medical device as defined in Article 2, point (1), of Regulation (EU) **2017/745** or an *in vitro* diagnostic medical device as defined in Article 2, point (2), of Regulation (EU) **2017/746**, and includes accessories for such devices within the meaning of Article 2, point (2), of Regulation (EU) **2017/745**, and Article 2, point (4), of Regulation (EU) **2017/746**, respectively;
- (f) ***‘supply’ means the total volume of stock of a given medicinal product or medical device that is placed on the market by a marketing authorisation holder or a manufacturer***;

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<sup>23</sup> Regulation (EU) **2019/6** of the European Parliament and of the Council of 11 December 2018 on veterinary medicinal products and repealing Directive **2001/82/EC** (OJ L 4, 7.1.2019, p. 43).

- (g) *'demand' means the request for a medicinal product or a medical device by a healthcare professional or patient in response to clinical need; the demand is satisfactorily met when the medicinal product or the medical device is acquired in appropriate time and in sufficient quantity to allow continuity of the best care of patients;*
- (h) *'shortage' means a situation in which the supply of a medicinal product **that is authorised and placed on the market in a Member State** or of a **CE-marked** medical device does not meet demand for that medicinal product or medical device **at a national level, whatever the cause;***



- (i) ‘developer’ means any legal or natural person seeking to generate scientific data with regard to the quality, safety and efficacy of a medicinal product as part of the development of that product.

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CHAPTER II  
MONITORING AND MITIGATING  
SHORTAGES OF CRITICAL MEDICINAL PRODUCTS  
AND MANAGEMENT OF MAJOR EVENTS

Article 3

Executive Steering Group on Shortages and Safety of Medicinal Products

1. The Executive Steering Group on Shortages and Safety of Medicinal Products (the ‘Medicine *Shortages* Steering Group - MSSG’) is hereby established within the Agency.

The MSSG shall be responsible for fulfilling the tasks referred to in *Article 4(3)* and (4) and Articles 5 to 8.

The MSSG shall meet *regularly and also whenever the situation requires*, either in person or remotely, in preparation for or during a public health emergency or when an issue of concern has been raised with the MSSG or when the Commission has recognised a major event in accordance with Article 4(3).

The Agency shall provide the secretariat of the MSSG.

2. The members of the MSSG shall consist of a representative of the Agency, a representative of the Commission and one representative appointed by each Member State.

Members of the MSSG may be accompanied to meetings of the MSSG by experts in specific scientific or technical fields.

*The list of the members of the MSSG shall be published on the Agency's web portal.*

*A representative of the Agency's Patients' and Consumers' Working Party ('PCWP') and a representative of the Agency's Healthcare Professionals' Working Party ('HCPWP') may attend meetings of the MSSG as observers.*

3. The MSSG shall be *co-chaired* by the representative of the Agency *and by one of the representatives of the Member States, who shall be elected by and from among the representatives* of the Member States in the *MSSG*.

The *co-chairs* of the MSSG, *on their own initiative or at the request of one or more members* of the MSSG, *may invite, as observers and to provide expert advice, representatives of national competent authorities for veterinary medicinal products, representatives of other relevant competent authorities and* third parties, including representatives of medicinal product interest groups **■**, marketing authorisation holders, *wholesale distributors, any other appropriate actor in the supply chain for medicinal products, and representatives of healthcare professionals, of patients and consumers*, to attend its meetings, *as necessary*.

4. *The MSSG, in coordination with the national competent authorities for medicinal products, shall facilitate appropriate communication with marketing authorisation holders or their representatives, manufacturers, other relevant actors of the supply chain for medicinal products, and representatives of healthcare professionals, of patients and consumers, with a view to receiving relevant information on actual or potential shortages of medicinal products considered to be critical during a public health emergency or a major event as provided for in Article 6.*

5. The MSSG shall establish its rules of procedure, including procedures relating to the working party referred to *in* paragraph 6 of this Article and procedures for adoption of the critical medicines lists, sets of information and recommendations referred to in Article 8(3) and (4).

The rules of procedure referred to in the first subparagraph shall enter into force once the MSSG has received a favourable opinion from the Commission and the Management Board of the Agency.

6. The MSSG shall be supported in its work by a working party established in accordance with Article 9(1), point (d).

The working party referred to in the first subparagraph shall consist of representatives of the national competent authorities for medicinal products, who shall be the single points of contact in relation to shortages of medicinal products.

7. *The MSSG may consult with the Committee for Medicinal Products for Veterinary Use ('CVMP') established by Article 56(1), point (b), of Regulation (EC) No 726/2004 whenever the MSSG deems necessary to do so, in particular, in order to deal with public health emergencies or major events related to zoonoses or diseases that only affect animals and that have or may have a major impact on human health or where the use of active substances for veterinary medicinal products may be useful in addressing the public health emergency or major event.*

## Article 4

### Monitoring of events and preparedness for public health emergencies and major events

1. The Agency, *in collaboration with Member States*, shall continuously monitor any event that is likely to lead to a public health emergency or major event. *As necessary, the Agency shall cooperate with the European Centre for Disease Prevention and Control ('ECDC') and, where relevant, other Union agencies.*
2. To facilitate the monitoring referred to in paragraph 1, the national competent authorities for medicinal products, acting through the single points of contact referred to in Article 3(6), *or the platform referred to in Article 13 (the 'ESMP'), once it is fully functional*, shall report *in a timely manner* to the Agency on any event that is likely to lead to a public health emergency or major event, including an actual or potential shortage of a medicinal product in a given Member State. Such reporting shall be based on the reporting methods and criteria pursuant to Article 9(1), point (b).

Where a national competent authority informs the Agency of a shortage of a medicinal product as referred to in the first subparagraph **■**, it shall provide the Agency with any information that it has received from the marketing authorisation holder pursuant to Article 23a of Directive 2001/83/EC, if that information is not available in the ESMP.

Where the Agency receives a report of an event from a national competent authority for medicinal products, the Agency may request information from the national competent authorities, through the working party referred to in Article 3(6), in order to evaluate the impact of the event in other Member States.

3. Where the Agency considers that an actual or imminent major event needs to be addressed, it shall *raise the issue of concern with the MSSG*.

*Following a positive opinion of the MSSG, the Commission may recognise the major event.*

The Commission *or at least one Member State* may *raise the issue of concern with the MSSG on its own initiative*.

4. The MSSG shall inform the Commission and the Executive Director of the Agency once the MSSG considers that the major event has been sufficiently addressed and considers that its assistance is no longer needed.

On the basis of the information referred to in the first subparagraph or on its own initiative, the Commission or the Executive Director may confirm that the major event has been sufficiently addressed and therefore that the assistance of the MSSG is no longer needed.

5. Following the recognition of a public health emergency or the recognition of a major event in accordance with paragraph 3 of this Article, Articles 5 to 12 apply as follows:
- (a) where the public health emergency or the major event may affect the quality, safety or efficacy of medicinal products, Article 5 applies;
  - (b) where the public health emergency or the major event may lead to shortages of medicinal products in more than one Member State, Articles 6 to 12 apply.

#### Article 5

Evaluation of information and provision of recommendations on action in relation to the quality, safety and efficacy of medicinal products related to public health emergencies and major events

- 1.* Following the recognition of a public health emergency or the recognition of a major event in accordance with Article 4(3), the MSSG shall evaluate information related to the public health emergency or the major event and consider the need for urgent and coordinated action with regard to the quality, safety and efficacy of the medicinal products concerned.

2. The MSSG shall provide *recommendations* to the Commission and Member States on any appropriate action that it believes needs to be taken at Union level on the medicinal products concerned in accordance with Directive 2001/83/EC or Regulation (EC) No 726/2004. **¶**
  
3. *The MSSG may consult with the CVMP whenever the MSSG deems necessary to do so, in particular, in order to deal with public health emergencies or major events related to zoonoses or diseases that only affect animals and that have or may have a major impact on human health, or where the use of active substances for veterinary medicinal products may be useful in addressing the public health emergency or the major event.*



## Article 6

Lists of critical medicinal products and information to be provided

- 1. Without prejudice to paragraph 2, the MSSG shall establish a list with the main therapeutic groups of medicinal products that are necessary for emergency care, surgery and intensive care, in order to inform the preparation of the critical medicines lists as referred to in paragraphs 2 and 3 to be used to respond to a public health emergency or major event. The list shall be established by ... [six months after the date of entry into force of this Regulation] and updated annually and whenever necessary.*
2. Immediately following the recognition of a major event in accordance with Article 4(3) of this Regulation, the MSSG shall consult the working party referred to in Article 3(6) of this Regulation. Immediately following that consultation, the MSSG shall adopt a list of medicinal products authorised in accordance with Directive 2001/83/EC or Regulation (EC) No 726/2004 which it considers to be critical during the major event (the ‘major event critical medicines list’).

The MSSG shall update the major event critical medicines list whenever necessary until the major event has been sufficiently addressed *and it has been confirmed that the assistance of the MSSG is no longer needed pursuant to Article 4(4) of this Regulation.*

3. Immediately following the recognition of a public health emergency, the MSSG shall consult the working party referred to in Article 3(6) of this Regulation. Immediately following that consultation, the MSSG shall adopt a list of medicinal products authorised in accordance with Directive 2001/83/EC or Regulation (EC) No 726/2004 which it considers to be critical during the public health emergency (the 'public health emergency critical medicines list'). The MSSG shall update the public health emergency critical medicines list whenever necessary until the termination of the recognition of the public health emergency. ***The public health emergency critical medicines list may be updated to take into account the results of the review process under Article 18 of this Regulation, where appropriate. In such cases, the MSSG shall liaise with the Emergency Task Force referred to in Article 15 of this Regulation ('ETF').***
4. For the purposes of Article 9(2), the MSSG shall adopt ***and make publicly available*** the set of information referred to in Article 9(2), points (c) and (d), that is necessary to monitor the supply of and demand for medicinal products included on the lists referred to in paragraphs 2 and 3 of this Article (the 'critical medicines lists') and shall inform the working party referred to in Article 3(6) of that set of information.
5. Following the adoption of critical medicines lists in accordance with paragraphs 2 and 3, the Agency shall immediately publish those lists and any updates to those lists on its web portal as referred to in Article 26 of Regulation (EC) No 726/2004.

6. *The Agency shall establish within its web portal a publicly accessible webpage that provides information on actual shortages of medicinal products included in the critical medicines lists in cases in which the Agency has assessed the shortage and has provided recommendations to healthcare professionals and patients. The webpage shall provide at least the following information:*

- (a) the name and common name of the medicinal product on the critical medicines lists;*
- (b) the therapeutic indications for the medicinal product on the critical medicines lists;*
- (c) the reason for the shortage of the medicinal product on the critical medicines lists;*
- (d) the start and end dates of the shortage of the medicinal product on the critical medicines lists;*
- (e) the Member States affected by the shortage of the medicinal product on the critical medicines lists;*
- (f) other relevant information for healthcare professionals and patients, including information on whether alternative medicinal products are available.*

*The webpage referred to in the first subparagraph shall also provide references to national registries on shortages of medicinal products.*

## Article 7

### Monitoring shortages of medicinal products on the critical medicines lists

*Following the recognition of a public health emergency or the recognition of a major event in accordance with Article 4(3), the MSSG shall monitor the supply of and demand for medicinal products included on the critical medicines lists, with a view to identifying any actual or potential shortages of those medicinal products. The MSSG shall conduct such monitoring using the critical medicines lists and the information and data provided, in accordance with Articles 10 and 11, and available through the ESMP, once it is fully functional.*

For the purposes of the monitoring referred to in the first paragraph of this Article, where relevant, the MSSG shall liaise with the Health Security Committee established by Article 17 of *Decision No 1082/2013/EU ('HSC')* and, in the case of a public health emergency, with *any other relevant advisory committee* on public health emergencies established pursuant to *Union law and with the ECDC*.

## Article 8

### Reporting and recommendations on shortages of medicinal products

1. For the duration of a public health emergency, or following the recognition of a major event as referred to in Article 4(3) until it has been confirmed that the major event has been sufficiently addressed pursuant to Article 4(4), the MSSG shall regularly report the results of the monitoring referred to in Article 7 to the Commission and the single points of contact referred to in Article 3(6), and, in particular, shall signal any actual or potential shortages of medicinal products included on the critical medicines lists ***or any event that is likely to lead to a major event.***  
***The reports referred to in the first subparagraph may also be made available to other actors in the supply chain for medicinal products, where appropriate, in accordance with competition law.***
2. Where requested by the Commission or one or more single point of contact as referred to in Article 3(6), the MSSG shall provide aggregated data and demand forecasts to support its findings and conclusions. In that regard, the MSSG shall:
  - (a) ***use data from the ESMP, once it is fully functional;***
  - (b) liaise with the ECDC to obtain epidemiological data, ***models and development scenarios*** to help forecast medicinal product needs; and
  - (c) liaise with the Executive Steering Group on Shortages of Medical Devices referred to in Article 21 ('MDSSG') where medicinal products included on the critical medicines lists are used jointly with a medical device.

*The aggregated data and demand forecasts referred to in the first subparagraph may also be made available to other actors in the supply chain for medicinal products, where appropriate, in accordance with competition law, with a view to better preventing or mitigating actual or potential shortages of medicinal products.*

3. As part of the reporting referred to in paragraphs 1 and 2, the MSSG may provide recommendations on measures that the Commission, Member States, marketing authorisation holders and other entities, *including representatives of healthcare professionals and of patients*, could take to prevent or mitigate actual or potential shortages of medicinal products.

*Member States may request the MSSG to provide recommendations on measures referred to in the first subparagraph.*

For the purposes of the second subparagraph, the MSSG shall liaise, as relevant, with the HSC and, in the case of a public health emergency, with *any other relevant advisory committee* on public health emergencies *established pursuant to Union law*.

4. The MSSG, on its own initiative or at the request of the Commission *or a Member State*, may provide recommendations on measures that the Commission, Member States, marketing authorisation holders, *representatives of healthcare professionals* and other entities could take to ensure preparedness for dealing with actual or potential shortages of medicinal products caused by public health emergencies or major events.

5. Where requested by the Commission, the MSSG may coordinate measures taken by the national competent authorities, the marketing authorisation holders and other entities, *including representatives of healthcare professionals and of patients*, as relevant, to prevent or mitigate actual or potential shortages of medicinal products in the context of a public health emergency or major event.

#### *Article 9*

##### *Working methods and provision of information on medicinal products*

1. In order to prepare for the fulfilment of the tasks referred to in Articles 4 to 8, the Agency, shall:
  - (a) specify the procedures *and criteria* for establishing *and reviewing* the critical medicines lists;
  - (b) specify the methods of and criteria for the monitoring, data collection and reporting provided for in Articles 4, 7 and 8, *with a basic minimum data set*;

- (c) develop streamlined IT monitoring and reporting systems, *in coordination with the relevant national competent authorities, that facilitate interoperability with other existing IT systems and IT systems under development until the ESMP is fully functional, on the basis of data fields that are harmonised across Member States*;
- (d) establish the working party referred to in Article 3(6) and ensure that each Member State is represented on that working party;
- (e) establish and maintain a list of single points of contact for marketing authorisation holders for all medicinal products authorised in the Union, through the database provided for in Article 57(1), point (I), of Regulation (EC) No 726/2004;
- (f) specify the methods for the provision of recommendations referred to in Article 5(2) and Article 8(3) and (4) and for the coordination of measures referred to in Article 8(5);
- (g) *publish information covered by points (a), (b) and (f) on a dedicated webpage on its web portal.*

For the purposes of the first subparagraph, point (a), Member States, marketing authorisation holders, other relevant actors in the supply chain for medicinal products and representatives of healthcare professionals, of patients and consumers, may be consulted as necessary.



2. Following the recognition of a public health emergency or the recognition of a major event in accordance with Article 4(3), the Agency shall:
  - (a) establish a *list* of single points of contact for the marketing authorisation holders for the medicinal products included on the critical medicines lists;
  - (b) maintain the list of single points of contact referred to in point (a) for the duration of the public health emergency or major event;
  - (c) request relevant information on medicinal products on the critical medicines lists from the single points of contact referred to in point (a) and set a deadline for the submission of that information, *if that information is not available in the ESMP*;
  - (d) request information on medicinal products on the critical medicines lists from the single points of contact referred to in Article 3(6) on the basis of the set of information referred to in Article 6(4), and set a deadline for the submission of that information, *if that information is not available in the ESMP*.
3. The information referred to in paragraph 2, point (c), shall include at least:
  - (a) the name of the marketing authorisation holder of the medicinal product;
  - (b) the name of the medicinal product;

- (c) *the identification of active manufacturing sites for finished products and active substances of the medicinal product;*
- (d) the Member State in which the marketing authorisation is valid and the marketing status of the medicinal product in each Member State;
- (e) details of the actual or potential shortage of the medicinal product, such as actual or estimated start and end dates and suspected or known cause;
- (f) sales and market share data of the medicinal product;
- (g) *available stocks of the medicinal product;*
- (h) *the forecast of supply for the medicinal product, including information on potential vulnerabilities in the supply chain, quantities already delivered and projected deliveries;*
- (i) *demand forecasts for the medicinal product;*
- (j) details of available alternative medicinal products;
- (k) *shortage prevention and mitigation plans that include, at a minimum, information on production and supply capacity* ■ *and approved production sites of the finished medicinal product and of active substances, potential alternative production sites and minimum stock levels of the medicinal product.*

■ 4. *In order to supplement the shortage prevention and mitigation plans for critical medicinal products referred to in paragraph 3, point (k), the Agency and national competent authorities for medicinal products may request information from wholesale distributors and other relevant actors regarding any logistical challenges incurred in the wholesale supply chain.*

## Article 10

### Obligations on marketing authorisation holders

1. Marketing authorisation holders for medicinal products authorised in the Union shall provide the information for the purposes of Article 9(1), point (e), of this Regulation by ... [six months from the date of application of this Regulation], in the form of an electronic submission *to* the database referred to in Article 57(1), point (I), of Regulation (EC) No 726/2004. Those marketing authorisation holders shall provide updates when necessary.
2. In order to facilitate the monitoring referred to in Article 7, the Agency may request marketing authorisation holders for medicinal products included on the critical medicines lists to submit the information referred to in Article 9(2) point (c).

The marketing authorisation holders referred to in the first subparagraph of this paragraph shall submit the requested information by the deadline set by the Agency, through the single points of contact referred to in Article 9(2), point (b), using the monitoring and reporting methods and systems established pursuant to Article 9(1), points (b) and (c), respectively. Those marketing authorisation holders shall provide updates where necessary.

3. The marketing authorisation holders referred to in paragraphs 1 and 2 shall justify any failure to provide any requested information and any delays in providing requested information by the deadline set by the Agency.

4. Where the marketing authorisation holders referred to in paragraph 2 indicate that the information that they submitted *at the request of the Agency or the national competent authorities* for medicinal products contains information of a commercially confidential nature, they shall identify the relevant parts of that information having such nature and explain why that information is of a commercially confidential nature.

The Agency shall assess the merits of each indication of information as being of a commercially confidential nature and protect such commercially confidential information against unjustified disclosure.

5. Where the marketing authorisation holders referred to in paragraph 2 *or other relevant actors in the supply chain* for medicinal products have any information in addition to that required under paragraph 2, second subparagraph, which provides evidence of an actual or potential shortage of medicinal products, they shall immediately provide such information to the Agency.

6. Following the reporting on the results of the monitoring referred to in Article 7 and any recommendations on preventive or mitigating measures provided in accordance with Article 8(3) and (4), the marketing authorisation holders referred to in paragraph 2 shall:

- (a) provide any comments they have to the Agency;
- (b) take into account any recommendations referred to in Article 8(3) and (4) and any guidelines referred to in Article 12, point (c);
- (c) comply with any measures taken at Union or Member State-level pursuant to Articles 11 and 12;

- (d) inform the MSSG of any measures taken and report on the *monitoring and* results of those measures, including providing information on the resolution of the actual or potential shortage of medicinal products.

## Article 11

### **Role of Member States in the monitoring and mitigation of shortages of medicinal products**

1. In order to facilitate the monitoring referred to in Article 7, unless *the information concerned is available on the ESMP*, the Agency *may request a Member State to:*
  - (a) submit the set of information referred to in Article 6(4) including available and estimated data on volume of demand and demand forecasts, through the single point of contact referred to in Article 3(6) and using the reporting methods and systems established pursuant to Article 9(1), points (b) and (c), respectively;
  - (b) indicate the existence of any commercially confidential information and explain why that information is of a commercially confidential nature, *in accordance with Article 10(4)*;

- (c) indicate any failure to provide requested information, and whether there are any delays in providing that information by the deadline set by the Agency in accordance with Article 10(3).

Member States shall comply with the Agency's request by the deadline set by the Agency.

- 2. For the purposes of paragraph 1, *wholesale* distributors and other *persons or legal entities that are authorised or* entitled to supply medicinal products included on the critical medicines lists *to the public shall provide that Member State with relevant information and data, including information and data on the levels of stock of those medicinal products at the request of that Member State.*
- 3. Where Member States have any information in addition to the information to be provided in accordance with paragraphs 1 and 2 of this Article on volumes of sales of and volumes of prescriptions for medicinal products which provides evidence of an actual or potential shortage of a medicinal product included on the critical medicines lists, including data referred to in Article 23a, third paragraph, of Directive 2001/83/EC, they shall immediately provide such information to the MSSG through their respective single points of contact referred to in Article 3(6) of this Regulation .
- 4. Following the reporting on the results of the monitoring referred to in Article 7 and any recommendations on preventive or mitigating measures provided in accordance with Article 8 (3) and (4), Member States shall:
  - (a) *take* into account any recommendations and guidelines referred to in Article 12, point (c), and *coordinate their actions in relation to* any actions taken at Union level pursuant to Article 12, point (a);

- (b) inform the MSSG of any measures taken and report on the results of the actions referred to in point (a), including providing information on the resolution of the actual or potential shortage of medicinal products.

*For the purposes of the first subparagraph, points (a) and (b), Member States that take an alternative course of action at national level shall share the reasons for doing so with the MSSG in a timely manner.*

*The recommendations, guidelines and actions referred to in the first subparagraph, point (a), and a summary report of the lessons learned, shall be made publicly available via the web portal referred to in Article 14.*

## Article 12

Role of the Commission regarding the monitoring and mitigation of shortages of medicinal products

The Commission shall take into account the information from and recommendations of the MSSG referred to in Article 8(1) and (2) and in Article 8(3) and (4), respectively, and shall:

- (a) take all necessary action within the limits of the powers conferred on the Commission, with a view to mitigating actual or potential shortages of medicinal products included on the critical medicines lists;

- (b) *facilitate the coordination between marketing authorisation holders and other relevant entities to address demand surges, where necessary;*
- (c) consider the need for guidelines *and recommendations* to be addressed to Member States, marketing authorisation holders, and other entities, *including relevant entities from the supply chain for medicinal products, where relevant;*
- (d) inform the MSSG of any measures taken by the Commission and report on the results of those measures;
- (e) request the MSSG to provide recommendations or coordinate measures as provided for in Article 8(3), (4) and (5);
- (f) consider the need for medical countermeasures in accordance with **Decision No 1082/2013/EU and other applicable Union law;**<sup>1</sup>
- (g) liaise with third countries and relevant international organisations, as appropriate, to mitigate actual or potential shortages of medicinal products included on the critical medicines lists or their active substances, where those medicinal products or active substances are imported into the Union and where such actual or potential shortages have international implications, *and report on any related actions as well as the results of those actions to the MSSG, where relevant.*



## Article 13

### European shortages monitoring platform

1. *The Agency shall set up, maintain, and manage an IT platform to be known as the European shortages monitoring platform ('ESMP'), which shall be linked to the database referred to in Article 57(1), point (l), of Regulation (EC) No 726/2004.*

*The ESMP shall be used to facilitate the collection of information on shortages of, supply of, and demand for medicinal products, including information on whether the medicinal product is placed or ceases to be placed on the market in a Member State.*

2. *The information collected through the ESMP shall be used to monitor, prevent, and manage:*
  - (a) *actual or potential shortages of medicinal products on the critical medicines lists during public health emergencies and major events; and*
  - (b) *actual or potential shortages of medicinal products that are likely to lead to a public health emergency or a major event in accordance with Article 4(2).*

3. *For the purposes of paragraph 2, during public health emergencies and major events:*
- (a) *marketing authorisation holders shall use the ESMP to report information relating to medicinal products on the critical medicines lists to the Agency, through the single points of contact referred to in Article 9(2), point (a), in accordance with Articles 9 and 10;*
  - (b) *Member States shall use the ESMP to report information relating to medicinal products on the critical medicines lists to the Agency, through the single points of contact referred to in Article 9(1), point (d), in accordance with Articles 9 and 11.*

*The reporting referred to in the first subparagraph, point (b), shall include information in addition to that referred to in that point received from marketing authorisation holders and wholesale distributors, or other persons or legal entities that are authorised or entitled to supply to the public medicinal products included on the critical medicines lists, where relevant.*

4. *For the purposes of paragraph 2, and as regards ensuring preparedness for public health emergencies and major events:*

(a) *marketing authorisation holders shall use the ESMP to report to the Agency:*

(i) *the information referred to in Article 13(4) of Regulation (EC) No 726/2004 for authorisations granted in accordance with that Regulation;*

(ii) *information based on the categories set out in Article 9(3) that relate to actual or potential shortages of medicinal products that are likely to lead to a public health emergency or major event, where appropriate;*

(b) *Member States shall use the ESMP to report to the Agency on shortages of medicinal products that are likely to lead to a public health emergency or major event in accordance with Article 4(2), through the single points of contact referred to in Article 9(1), point (e).*

5. *The reporting referred to in paragraph 4, point (b):*

(a) *shall include the information referred to in Article 23a of the Directive 2001/83/EC that was reported to national competent authorities for medicinal products for authorisations granted in accordance with that Directive;*

(b) *may include additional information received from marketing authorisation holders, wholesale distributors and other persons or legal entities that are authorised or entitled to supply medicinal products to the public.*

6. *To ensure the optimal use of the ESMP, the Agency shall:*
- (a) *develop the technical and functional specifications of the ESMP, including the data exchange mechanism for exchanging with the existing national systems and the format for electronic submissions, in collaboration with the MSSG;*
  - (b) *require that data submitted to the ESMP comply with the standards developed by the International Organization for Standardization for the identification of medicinal products and be based on the domains of master data in pharmaceutical regulatory processes, namely substance, product, organisation, and referential data, where relevant;*
  - (c) *develop standardised reporting terminology to be used by marketing authorisation holders and Member States when reporting to the ESMP, in collaboration with the MSSG;*
  - (d) *establish relevant guidance for reporting through the ESMP, in collaboration with the MSSG;*

- (e) *ensure that data is interoperable between the ESMP, Member States' IT systems and other relevant IT systems and databases, without any duplication of reporting;*
- (f) *ensure that the Commission, the Agency, national competent authorities and the MSSG have appropriate levels of access to the information contained in the ESMP;*
- (g) *ensure that commercially confidential information submitted to the system is protected against unjustified disclosure;*
- (h) *ensure the ESMP is fully operational by ... [36 months after the date of entry into force of this Regulation] and draw up a plan for the implementation of the ESMP.*

## Article 14

### Communication regarding the MSSG

**1.** The Agency shall provide information to the public and interest groups with regard to the work of the MSSG in a timely manner *and shall respond to disinformation targeting the work of the MSSG as appropriate, via a dedicated webpage on its web portal and other appropriate means, in cooperation with national competent authorities.*

**2.** *Proceedings of the MSSG shall be transparent.*

*The summaries of the agenda and of the minutes of the meetings of the MSSG, as well as its rules of procedure referred to in Article 3(5) and recommendations referred to in Article 8(3) and (4), shall be documented and made publicly available on a dedicated webpage on the Agency web portal.*

*Where the rules of procedure referred to in Article 3(5) allow members of the MSSG to have divergent opinions recorded, the MSSG shall make such divergent opinions, and the grounds on which they are based, available to national competent authorities for medicinal products at their request.*

CHAPTER III  
MEDICINAL PRODUCTS WITH THE POTENTIAL  
TO ADDRESS PUBLIC HEALTH EMERGENCIES

Article 15

Emergency Task Force

1. The Emergency Task Force ('ETF') is hereby established within the Agency.  
The ETF shall be convened *in preparation for and* during public health emergencies, either in person or remotely.  
The Agency shall provide the secretariat of the ETF.
2. During public health emergencies, the ETF shall undertake the following tasks:
  - (a) *in liaison with the scientific committees, working parties, and scientific advisory groups of the Agency*, providing scientific advice and reviewing the available scientific data on medicinal products that have the potential to address the public health emergency, including requesting data from developers and engaging with them in preliminary discussions;

- (b) ***providing advice on the main aspects of*** clinical trial protocols, and providing advice to developers on clinical trials ■ for medicinal products intended to treat, prevent or diagnose the disease causing the public health emergency, in accordance with Article 16 ***of this Regulation without prejudice to the tasks of the Member States as regards the assessment of submitted clinical trial applications to be conducted within their territories in accordance with Regulation (EU) No 536/2014;***
- (c) providing scientific support to facilitate clinical trials ■ for medicinal products intended to treat, prevent or diagnose the disease causing the public health emergency;
- (d) contributing to the work of the scientific committees, working parties and scientific advisory groups of the Agency;
- (e) ***in liaison with the scientific committees, working parties, and scientific advisory groups of the Agency,*** providing scientific recommendations with regard to the use of any medicinal product which have the potential to address public health emergencies, in accordance with Article 18;



- (f) cooperating with *national competent authorities*, Union bodies and agencies, the World Health Organization, third countries, and international scientific organisations, on scientific and technical issues that relate to the public health emergency and to medicinal products which have the potential to address public health emergencies, as necessary.

The support referred to in the first subparagraph, point (c), shall include advice to sponsors of similar or linked planned clinical trials on the establishment of joint clinical trials and may include advice on establishing agreements to act as a sponsor or as co-sponsor in accordance with Article 2(2), point (14), and Article 72 of Regulation (EU) No 536/2014.

3. The members of the ETF shall consist of:

- (a) *chairs or vice chairs, or both*, of the scientific committees *of the Agency, and other representatives of those committees*;
- (b) representatives of the working parties of the Agency, *including representatives of the PCWP and* representatives of the *HCPWP*;
- (c) staff members of the Agency;
- (d) representatives of the coordination group established in accordance with Article 27 of Directive 2001/83/EC;
- (e) representatives of the Clinical Trials Coordination and Advisory Group established in accordance with Article 85 of Regulation (EU) No 536/2014; and
- (f) *other clinical trial experts who represent national competent authorities for medicinal products.* **¶**

The members of the ETF shall be nominated by the entities they represent.

External experts may be appointed to the ETF on an ad hoc basis, as necessary, *especially in the cases referred to in Article 5(3)*.

Representatives of other Union bodies and agencies shall be invited on an ad hoc basis, as necessary, to participate in the work of the ETF, especially in the cases referred to in Article 5(3).

The ETF shall be chaired by the representative of the Agency *and co-chaired by the chair or vice-chair of the CHMP.*

4. The composition of the ETF shall be approved by the Management Board of the Agency, *taking into account specific expertise relevant to the therapeutic response to the public health emergency.*

The Executive Director of the Agency or the representative of the Executive Director, as well as representatives of the Commission *and of the Management Board of the Agency*, shall be entitled to attend all meetings of the ETF.

*The composition of the ETF shall be made publicly available.*

5. The *co-chairs* of the ETF may invite *other* representatives of Member States, members of scientific committees and working parties of the Agency, and third parties, including representatives of medicinal product interest groups, marketing authorisation holders, developers, clinical trial sponsors, representatives of clinical trial networks, *independent clinical trial experts and researchers*, and representatives of healthcare professionals and of patients to attend its meetings.
6. The ETF shall establish its rules of procedure, including rules on the adoption of recommendations.

The rules of procedure referred to in the first subparagraph shall enter into force once the ETF has received a favourable opinion from the Commission and the Management Board of the Agency.

7. The ETF shall perform its tasks as *an advisory and support* body separate from, and without prejudice to, the tasks of the scientific committees of the Agency as regards the authorisation, supervision and pharmacovigilance of the medicinal products concerned and related regulatory actions to ensure the quality, safety and efficacy of those medicinal products.

*The CHMP and other relevant scientific committees of the Agency shall take the ETF recommendations into consideration when adopting their opinions.*

The ETF shall take account of any scientific opinion issued by the committees referred to in the second subparagraph of this paragraph in accordance with Regulation (EC) No 726/2004 and Directive 2001/83/EC.

8. Article 63 of Regulation (EC) No 726/2004 applies to the ETF as regards transparency and the independence of its members.

9. The Agency shall publish information regarding the medicinal products that the ETF considers to have the potential to address public health emergencies and any updates on its web portal. *The Agency shall inform Member States and the HSC, as appropriate, of any such publication without undue delay and, in any case, prior to such publication.*

#### Article 16

##### Advice on clinical trials

1. During a public health emergency, the ETF shall *provide advice on the main aspects of* clinical trials and clinical trial protocols submitted or intended to be submitted in a clinical trial application by developers as part of an accelerated scientific advice process, without prejudice of the responsibility of the Member State or States concerned under Regulation (EU) No 536/2014.
2. Where a developer engages in an accelerated scientific advice process, the ETF shall provide the advice referred to in paragraph 1 free of charge at the latest 20 days after the developer submits a complete set of the requested information and data to the Agency. The advice shall be endorsed by the CHMP.

3. The ETF shall establish procedures *and guidance* for requesting and submitting of the set of information and data required, including information on the Member State or States where an application for authorisation of a clinical trial is submitted or is intended to be submitted.
4. **The** ETF shall involve representatives of the Member States *with clinical trial expertise* in the preparation of the scientific advice, *in particular in cases* where an application for authorisation of a clinical trial is submitted or is intended to be submitted .
5. When authorising a clinical trial application for which the ETF has provided scientific advice, Member States shall take that advice into *consideration*. *The scientific advice provided by the ETF shall be without prejudice to the ethical review provided for in Regulation (EU) No 536/2014.*
6. Where a developer is the recipient of the scientific advice referred to in paragraph 5 of this Article, that developer shall subsequently submit the data resulting from clinical trials to the Agency if the Agency makes a request for those data pursuant to Article 18.

7. Without prejudice to paragraphs 1 to 6 of this Article, the scientific advice referred to in paragraph 5 of this Article shall otherwise be provided in accordance with the procedures established pursuant to Article 57 of Regulation (EC) No 726/2004.

### *Article 17*

#### *Public information regarding clinical trials and marketing authorisation decisions*

1. *For the duration of a public health emergency, the sponsors of clinical trials conducted in the Union shall, in particular, make the following information publicly available through the EU portal and EU database established respectively by Articles 80 and 81 of Regulation (EU) No 536/2014:*
- (a) *the clinical trial protocol, at the start of each trial for all trials authorised under Regulation (EU) No 536/2014 that examine medicinal products which have the potential to address the public health emergency;*

*(b) the summary of the results, within a timeline set by the Agency that is shorter than the timeline laid down in Article 37 of Regulation (EU) No 536/2014.*

*2. Where a medicinal product of relevance to the public health emergency receives a marketing authorisation, the Agency shall publish, in particular:*

*(a) the product information with details of the conditions of use at the time of the marketing authorisation;*

*(b) the European Public Assessment Reports as soon as possible and, where possible, within seven days of the marketing authorisation;*

*(c) the clinical data submitted to the Agency in support of the application, where possible within two months of the marketing authorisation by the Commission;*

*(d) the entire risk management plan referred to in Article 1, point 28c, of Directive 2001/83/EC, and any updated versions thereof.*

*For the purposes of the first subparagraph, point (c), the Agency shall anonymise all personal data and redact commercially confidential information.*

## Article 18

### Review of medicinal products and recommendations on their use

1. Following the recognition of a public health emergency, the ETF shall undertake a review of the available scientific data on medicinal products which have the potential to be used to address the public health emergency. That review shall be updated *whenever needed* during the public health emergency, *including where the ETF and the CHMP agree on the preparation of the assessment of a marketing authorisation application*.
2. In the preparation of the review referred to in paragraph 1, the ETF may request information and data from marketing authorisation holders and from developers and may engage with them in preliminary discussions. The ETF may also make use of health data generated outside of clinical studies, where available, taking into account the reliability of those data.

*The ETF may liaise with the third country agencies for medicinal products with respect to additional information and data exchanges.*



3. Following a request from one or more Member States, or the Commission, the ETF shall provide recommendations to the CHMP for an opinion in accordance with paragraph 4 on:
  - (a) the compassionate use of medicinal products falling under the scope of Directive 2001/83/EC or Regulation (EC) No 726/2004; or
  - (b) the use and distribution of an unauthorised medicinal product in accordance with Article 5(2) of Directive 2001/83/EC.
4. Following receipt of a recommendation provided pursuant to paragraph 3, the CHMP shall adopt *its* opinion on the conditions to be imposed on the use and distribution of the medicinal product concerned and on the patients targeted. That opinion shall be updated where necessary.
5. Member States shall take account of the opinions referred to in paragraph 4 of this Article. Article 5(3) and (4) of Directive 2001/83/EC applies to the use of such an opinion.
6. In the preparation of its recommendations provided pursuant to paragraphs 3, the ETF may consult the Member State concerned and request it to provide any available information or data *that the* Member State used for its decision to make the medicinal product available for compassionate use. Following such a request, the Member State shall provide all of the requested information and data.

## Article 19

### Communication regarding the ETF

The Agency shall provide information *to* the public and relevant interest groups with regard to the work of the ETF *in a timely manner and shall respond to disinformation targeting the work of the ETF, as appropriate, via a dedicated webpage on its web portal and other appropriate means, in cooperation with national competent authorities.*

*The Agency shall regularly publish on its web portal the list of the members of the ETF, the rules of procedure referred to in Article 15(6) and the list of medicinal products under review, as well as the opinions adopted pursuant to Article 18(4).*

Article 20  
IT tools and data

In preparation for and to support the work of the ETF during public health emergencies, the Agency shall:

- (a) develop and maintain IT tools, ***including an interoperable IT platform***, for the submission of information and data, including electronic health data generated outside █ of clinical studies, that ***facilitate interoperability with other existing IT tools and with IT tools under development, and provide adequate support to national competent authorities***;
- (b) coordinate independent monitoring studies on the ***use***, effectiveness and safety ***of medicinal products intended to treat, prevent or diagnose diseases related to the public health emergency***, using relevant data, ***including, where relevant, data*** held by public authorities █ ;

- (c) as part of its regulatory tasks, make use of digital infrastructures or IT tools in order to facilitate rapid access to or analysis of available electronic health data generated outside of clinical studies and to facilitate the exchange of such data between Member States, the Agency and other Union bodies;
- (d) provide the ETF with access to external sources of electronic health data to which the Agency has access, including health data generated outside ■ of clinical studies.

*For the purposes of the first paragraph, point (b), coordination as regards vaccines shall be conducted in conjunction with the ECDC, in particular, through a new vaccine monitoring IT platform.*

CHAPTER IV  
MONITORING AND MITIGATING  
SHORTAGES OF CRITICAL MEDICAL DEVICES  
AND SUPPORT FOR EXPERT PANELS

Article 21

Executive Steering Group on *Shortages of* Medical Devices

1. The Executive Steering Group on *Shortages of* Medical Devices (the ‘Medical Device *Shortages* Steering Group - MDSSG’) is hereby established within the Agency.

The MDSSG shall be responsible for fulfilling the tasks referred to in Articles 22, 23 and 24.

The MDSSG shall meet *regularly and also whenever the situation requires*, either in person or remotely, in preparation for or during a public health emergency.

The Agency shall provide the secretariat of the MDSSG.

2. The members of the MDSSG shall consist of a representative of the Agency, a representative of the Commission and one representative *appointed* by each Member State.

The representatives of the Member States shall have *expertise in the field of medical devices, as relevant. Those representatives may be the same as the representatives appointed to the Medical Devices Coordination Group established by Article 103 of Regulation (EU) 2017/745 ('MDCG'), where appropriate.*

Members of the MDSSG may be accompanied to meetings of the MDSSG by experts in specific scientific or technical fields.

*The list of the members of the MDSSG shall be published on the Agency’s web portal.*

*A representative of the PCWP and a representative of the HCPWP may attend meetings of the MDSSG as observers.*

3. The MDSSG shall be *co*-chaired by the representative of the Agency *and by one of the representatives of the Member States, who shall be elected by and from among the representatives* of the Member States in the *MDSSG*.

The *co-chairs* of the MDSSG, *on their own initiative or at the request of one or more members of the MDSSG, may invite, as observers and to provide expert advice*, third parties, ■ including representatives of medical device interest groups, *such as representatives of manufacturers and notified bodies, or any other relevant actor in the supply chain for medical devices, and representatives of healthcare professionals, of patients and consumers*, to attend its meetings, *as necessary*.

4. The MDSSG shall establish its rules of procedure, including procedures relating to the working party referred to in paragraph 5 of this Article, and procedures for adoption of the lists referred to in Article 22, sets of information and recommendations referred to in Article 24(3) and (4).

The rules of procedure referred to in the first subparagraph shall enter into force once the MDSSG has received a favourable opinion from the Commission and the Management Board of the Agency.

5. The MDSSG shall be supported in its work by a working party established in accordance with Article 25(1).

The working party referred to in the first subparagraph shall consist of representatives of the national competent authorities responsible for shortage monitoring and management of medical devices, who shall be the single points of contact in relation to shortages of medical devices.

## Article 22

### List of critical medical devices and information to be provided

1. Immediately following the recognition of a public health emergency, the MDSSG shall consult the working party referred to in Article 21(5). Immediately following that consultation, the MDSSG shall adopt a list of *categories of critical medical devices* which it considers to be critical during the public health emergency ('public health emergency critical devices list').

*To the extent possible, relevant information on critical medical devices and related manufacturers shall be gathered from Eudamed, once it is fully functional. The information shall also be gathered from importers and distributors, as appropriate. Until Eudamed is fully functional, available information may also be gathered from national databases or other available sources.*

The MDSSG shall update the public health emergency critical devices list whenever necessary until the termination of the recognition of the public health emergency.

2. For the purposes of Article 25(2), the MDSSG shall adopt *and make publicly available* the set of information referred to in Article 25(2), points (b) and (c), that is necessary to monitor the supply of and demand for medical devices included on the public health emergency critical devices list, and inform the working party referred to in Article 21(5) of that set of information.
3. The Agency shall publish on a dedicated webpage on its web portal:
  - (a) the public health emergency critical devices list, as well as any updates to that list; and
  - (b) information on actual shortages of critical medical devices included on the public health emergency critical devices list.



## Article 23

### Monitoring shortages of medical devices on the public health emergency critical devices list

1. ***During a*** public health emergency the MDSSG shall monitor the supply of and demand for ***medical devices*** included on the public health emergency critical devices list, with a view to identifying any actual or potential shortages of those medical devices. The MDSSG shall conduct such monitoring using the public health emergency critical devices list and the information and data provided in accordance with Articles 26 and 27.

For the purposes of the monitoring referred to in the first subparagraph of this paragraph, where relevant, the MDSSG shall liaise with the ***MDCG, the HSC and any other relevant advisory committee*** on public health emergencies established pursuant to ***Union law***.

2. For the purposes of the monitoring referred to in paragraph 1 of this Article, the MDSSG may make use of data from device registries and databases where such data is available to the Agency. In so doing, the MDSSG ***may*** take into account the data generated pursuant to Article 108 of Regulation (EU) 2017/745 and Article 101 of Regulation (EU) 2017/746.

## Article 24

### Reporting and recommendations on shortages of medical devices

1. For the duration of the public health emergency, the MDSSG shall regularly report the results of the monitoring referred to in Article 23 to the Commission and the *single points of contact* referred to in Article 25(2), point (a), and, in particular, shall signal any actual or potential shortages of *medical devices* included on the public health emergency critical devices list.
2. Where requested by the Commission, *Member States* or one or more *single point of contact* referred to in Article 25(2), point (a), the MDSSG shall provide aggregated data and demand forecasts to support its findings and conclusions.

For the purposes of the first subparagraph, the MDSSG shall liaise with the ECDC to obtain epidemiological data to help forecast medical device needs, and with the MSSG where medical devices included on the public health emergency critical devices list are used jointly with a medicinal product.

*The findings and conclusions of the MDSSG referred to in the first subparagraph may be made available to other actors in the medical device sector, where appropriate, in accordance with competition law, with a view to better preventing or mitigating or actual or potential shortages.*

3. As part of the reporting referred to in paragraphs 1 and 2, the MDSSG may provide recommendations on measures that the Commission, Member States, medical device manufacturers, notified bodies and other entities could take to prevent or mitigate actual or potential shortages of medical devices.

For the purposes of the first subparagraph, the MDSSG shall liaise, where relevant, with the *MDCG, with the HSC and with any other relevant advisory committee* on public health emergencies *established pursuant to Union law*.

4. The MDSSG, on its own initiative or at the request of the Commission, may provide recommendations on measures that the Commission, Member States, manufacturers of medical devices, notified bodies and other entities could take to ensure preparedness for dealing with actual or potential shortages of *medical devices* caused by public health emergencies.

5. Where requested by the Commission, *the* MDSSG may coordinate measures ■ taken by the national competent authorities for medical devices, manufacturers of medical devices, notified bodies, and other entities, as relevant, to prevent or mitigate actual or potential shortages of medical devices in the context of a public health emergency or major event.

#### Article 25

##### Working methods and provision of information on medical devices

1. In order to prepare for the fulfilment of the tasks referred to in Articles 22, 23 and 24, the Agency shall:
- (a) specify the procedures *and criteria* for establishing *and reviewing* the ■ public health emergency critical devices list.;
  - (b) develop streamlined IT monitoring and reporting systems, *in coordination with the relevant national competent authorities, that facilitate interoperability with existing IT tools and Eudamed, once it is fully functional, and provide the adequate support to national competent authorities for monitoring and reporting;*

- (c) establish the working party referred to in Article 21(5) and ensure that each Member State is represented on that working party;

■

- (d) specify the methods for the provision of recommendations referred to in Article 24(3) and (4) and for the coordination of measures referred to in Article 24.

For the purposes of the first subparagraph, point (a), the MDCG, representatives of manufacturers, other relevant actors in the supply chain for the medical device sector and representatives of healthcare professionals, of patients and consumers may be consulted as necessary.

2. Following the recognition of a public health emergency, the Agency shall:

- (a) establish a ■ *list* of single points of contact for the manufacturers of medical devices, *or their authorised representatives, importers* and notified bodies, for the medical devices included on the public health emergency critical devices list;
- (b) maintain the list of single points of contact referred to in point (a) for the duration of the public health emergency;

- (c) request *relevant* information on medical devices included on the public health emergency critical devices list from the *single* points of contact *referred to* in *point (a)* on the basis of the set of information adopted by the MDSSG and set a deadline for the submission of that information;
- (d) request *relevant* information on medical devices included on the public health emergency critical devices list from the single points of contact referred to in Article 21(5), second subparagraph, on the basis of the set of information adopted by the MDSSG in accordance with Article 22(2) and set a deadline for the submission of that information.

*The Agency may use sources other than those referred to in the first subparagraph, including existing databases and databases in development, to gather information required under paragraph 3.*

For the purposes of the first subparagraph, point (a), where it is considered relevant, national or Union databases, including Eudamed, once it is fully functional, or medical device associations may be used as sources of information.

3. The information referred to in paragraph 2, point (c), shall include at least:
- (a) the name of the manufacturer of the medical device and, if applicable, the name of its authorised representative;
  - (b) the information identifying the medical device *and* the intended purpose *and where necessary, specific characteristics of the medical device*;
  - (c) if applicable, the name and number of the notified body and information regarding the relevant certificate or certificates;
  - (d) details of the actual or potential shortage of the medical device, such as actual or estimated start and end dates and the suspected or known cause;
  - (e) sales and market share data of the medical device;
  - (f) *available stocks of the medical device*;

- (g) *the forecast of supply of the medical device, including information on the potential vulnerabilities in the supply chain;*
- (h) *quantities already delivered and projected deliveries of the medical device;*
- (i) *the demand forecasts for the medical device;*
- (j) shortage *prevention and* mitigation plans *that* include, *at a minimum, information on* production and supply capacity;
- (k) information from relevant notified bodies regarding their capacity to process applications and carry out and complete conformity assessments in relation to medical devices *included in the public health emergency critical devices list, within an appropriate period of time considering the emergency;*
- (l) information on the number of applications received by relevant notified bodies in relation to *medical devices* included in the public health emergency critical devices list and on the relevant conformity assessment procedures;
- (m) where conformity assessments are ongoing, the status of the conformity assessment by the relevant notified bodies in relation to medical devices included in the public health emergency critical devices list and possible *critical* issues *on the final outcome of the assessment and* which need to be *considered* in order to complete the conformity assessment process.

*For the purposes of the first subparagraph, point (k), the relevant notified bodies shall communicate the date by which the assessment is expected to be completed.* In that regard, notified bodies shall prioritise conformity assessments of medical devices included in the public health emergency critical devices list.



## Article 26

### Obligations on manufacturers of medical devices, authorised representatives, *importers, distributors* and notified bodies

1. In order to facilitate the monitoring referred to in Article 23, the Agency may request manufacturers of medical devices, *or their authorised representatives, as applicable, and, if appropriate, importers and distributors*, included on the public health emergency critical devices list and, where necessary, relevant notified bodies, to submit the information requested by a deadline set by the Agency.

The manufacturers of medical devices, or their authorised representatives, as applicable, and, if appropriate, importers and distributors, referred to in the first subparagraph, shall submit the requested information through the single points of contact referred to in Article 25(2), point (a), using the monitoring and reporting systems established pursuant to Article 25(1), point (b). They shall provide updates where necessary.

2. Manufacturers of medical devices, *or their authorised representatives, as applicable*, notified bodies *and, if appropriate, importers or distributors* shall justify any failure to provide requested information and any delays in providing requested information by the deadline set by the Agency.

3. Where manufacturers of medical devices, *or their authorised representatives, notified bodies, or, if appropriate, importers or distributors* indicate that the information that they submitted contains information of a commercially confidential nature, they shall identify the relevant parts of that information having such nature and explain why that information is of a commercially confidential nature.

The Agency shall assess the merits of each indication of information as being of a commercially confidential nature and protect such commercially confidential information against unjustified disclosure.

4. Where manufacturers of medical devices, *or their authorised representatives, notified bodies, or, if appropriate, importers or distributors* have any information in addition to that required under paragraph 1, which provides evidence of an actual or potential shortage of medical devices, they shall immediately provide such information to the Agency.
5. Following the reporting on the results of the monitoring referred to in Article 23 and any recommendations on preventive or mitigating measures provided in accordance with Article 24, manufacturers of medical devices, *or their authorised representatives, and, if appropriate, importers and distributors* referred to in paragraph 1, shall:

(a) provide any comments they have to the Agency;

■

(b) take into account any recommendations referred to in Article 24(3) and (4) and any guidelines referred to in Article 28, point (b);

(c) comply with any measures taken at Union or Member State level pursuant to Article 27 or 28;

(d) inform the MDSSG of any measures taken and report on the results of those measures, including providing information on the resolution of the actual or potential shortage of medical devices.

6. Where manufacturers of medical devices referred to in paragraph 1 are established outside the Union ■, the information requested ■ in accordance with this Article ■ shall be provided by the authorised representatives, *or, if appropriate, by importers or distributors.*

## Article 27

### **Role of Member States in the monitoring and mitigation of shortages of medical devices**

1. In order to facilitate the monitoring referred to in Article 23, the Agency may request a Member State to:
  - (a) submit the set of information referred to in Article 22(2), including *available* information about needs related to the *medical devices* included in the public health emergency critical devices list, and available and estimated data on volume of demand and demand forecasts for those medical devices, through the respective single point of contact referred to in Article 25(2), point (a), and using the monitoring and reporting methods and systems established pursuant to Article 25(1), point (b);
  - (b) indicate the existence of any commercially confidential information and explain why that information is of a commercially confidential nature, *in accordance with Article 26(3)*;
  - (c) indicate any failure to provide requested information and whether there are any delays in providing that information by the deadline set by the Agency in accordance with Article 26(2).

Member States shall comply with the Agency's request by the deadline set by the Agency.

2. For the purposes of paragraph 1, Member States shall gather information from manufacturers of medical devices *and their authorised representatives, healthcare providers*, importers and distributors, *as applicable*, and notified bodies on medical devices included on the public health emergency critical devices list.

3. Where Member States have any information in addition to the information to be provided in accordance with paragraphs 1 and 2 of this Article, which provides evidence of an actual or potential shortage of medical devices, they shall immediately provide such information to the MDSSG through their respective single point of contact referred to in Article 25(2), point (a).
4. Following the reporting on the results of the monitoring referred to in Article 23 and any recommendations on preventive or mitigating measures provided in accordance with Article 24, Member States shall:
  - (a) consider the need to provide for temporary exemptions at Member State level pursuant to Article 59(1) of Regulation (EU) 2017/745 or Article 54(1) of Regulation (EU) 2017/746 with a view to mitigating actual or potential shortages of medical devices included on the public health emergency critical devices list *while ensuring a high level of patient and product safety*;
  - (b) *take* into account any recommendations referred to in Article 24(3) and any guidelines referred to in Article 28, point (b), and *coordinate their actions in relation to* any actions taken at Union level pursuant to Article 12, point (a);
  - (c) inform the MDSSG of any measures taken and report on the results of the actions referred to in point (b), including providing information on the resolution of the actual or potential shortage of medical devices concerned.

For the purposes of the first subparagraph, points (b) and (c), Member States that take an alternative course of action at national level shall share the reasons for doing so with the MDSSG.

The recommendations, guidelines and actions referred to in the first subparagraph, point (b), of this paragraph, and a summary report of the lessons learned shall be made publicly available via the web portal referred to in Article 29.

## Article 28

Role of the Commission regarding the monitoring and mitigation of shortages of *medical devices*

The Commission shall take into account the information from and recommendations of the MDSSG and shall:

- (a) take all necessary action within the limits of the powers conferred on the Commission, with a view to mitigating actual or potential shortages of *medical devices* included on the public health emergency critical devices list, including, where necessary, granting temporary exemptions at Union level pursuant to Article 59(3) of Regulation (EU) 2017/745 or Article 54(3) of Regulation (EU) 2017/746, ***while respecting the conditions set out in those Articles and seeking to ensure both patient and product safety;***
- (b) consider the need for guidelines ***and recommendations*** to be addressed to Member States, manufacturers of medical devices, notified bodies, and other entities, ***where relevant;***
- (c) request the MDSSG to provide recommendations or coordinate measures provided for in Article 24(3), (4) and (5);

- (d) consider the need for medical countermeasures in accordance with *Decision No 1082/2013/EU and other applicable Union law*;<sup>1</sup>
- (e) liaise with third countries and relevant international organisations, as appropriate, to mitigate actual or potential shortages of *medical devices* included on the public health emergency critical devices list or their component parts, where those devices or parts of such devices are imported into the Union, and where such actual or potential shortages have international implications, *and report on any related actions as well as the results of those actions to the MDSSG, where relevant.*

#### Article 29

#### Communication regarding the MDSSG

- I.* The Agency shall provide information to the public and relevant interest groups with regard to the work of the MDSSG in a timely manner *and shall respond to disinformation targeting the work of the MDSSG, as appropriate, via a dedicated webpage on its web portal and other appropriate means, in cooperation with national competent authorities.*

2. *Proceedings of the MDSSG shall be transparent.*

*The summaries of the agenda and of the minutes of the meetings of the MDSSG, as well as its rules of procedure referred to in Article 21(4) and recommendations referred to in Article 24(3) and (4), shall be documented and made publicly available on the dedicated webpage on the Agency web portal.*

*Where the rules of procedure referred to in Article 21(4) allow members of the MDSSG to have divergent opinions recorded, the MDSSG shall make such divergent opinions, and the grounds on which they are based, available to national competent authorities at their request.*

Article 30

Support for the expert panels on medical devices

From 1 March 2022, on behalf of the Commission, the Agency shall provide the secretariat for the expert panels designated in accordance with **Article 106(1) of Regulation (EU) 2017/745** (the 'expert panels') and shall provide the support necessary to ensure that those expert panels can efficiently perform the tasks set out in Article 106(9) and (10) of that Regulation.

The Agency shall:

- (a) provide administrative and technical support to the expert panels for the provision of scientific opinions, views and advice;



- (b) facilitate and manage remote and physical meetings of the expert panels;
- (c) ensure that the work of the expert panels is carried out in an independent manner in accordance with Article 106(3), second subparagraph, *and Article 107* of Regulation (EU) 2017/745 and *with the* systems and procedures *established by the Commission pursuant to that Regulation* to actively manage and prevent potential conflicts of interest in accordance with Article 106(3), third subparagraph, ■ of that Regulation;
- (d) maintain and regularly update a webpage for the expert panels and make all necessary information *not already publicly available in Eudamed* publicly available on that webpage in order to ensure the transparency of the activities of the expert panels, including providing the justifications of notified bodies where those bodies did not follow the advice of the expert panels provided pursuant to Article 106(9) of Regulation (EU) 2017/745;
- (e) publish the scientific opinions, views and advice of the expert panels while ensuring confidentiality in accordance with Article 106(12), second subparagraph, and Article 109 of Regulation (EU) 2017/745;

- (f) ensure that remuneration and expenses are provided to the experts in accordance with *implementing acts adopted by the Commission pursuant to Article 106(1) of Regulation (EU) 2017/745*;
- (g) monitor compliance with the expert panels' common rules of procedure and available guidelines and methodologies relevant to the functioning of the expert panels;
- (h) provide annual reports to the Commission *and the MDCG* on the work of the expert panels, including information on the number of opinions delivered and the views and advice provided by the expert panels.

CHAPTER V  
FINAL PROVISIONS

Article 31

Cooperation between the MSSG, the MDSSG, *the ETF and the expert panels*

1. The Agency shall ensure that the MSSG and the MDSSG cooperate in relation to measures to address public health emergencies and major events.
2. Members of the MSSG and MDSSG, and members of the working parties referred to in Article 3(6) and in Article 25(2), point (a), respectively, may attend one another's meetings and working parties and, where appropriate, cooperate on monitoring exercises, reporting and the preparation of opinions.
3. With the agreement of the respective chairs or co-chairs, joint meetings of the MSSG and the *MDSSG* may be held.
4. *Where relevant, the Agency shall ensure that the ETF and the expert panels cooperate in relation to preparedness and management of public health emergencies.*

## Article 32

### *Transparency and conflicts of interest*

- 1. The MSSG and the MDSSG shall carry out their activities in an independent, impartial and transparent manner.*
- 2. The members of the MSSG and of the MDSSG and, where relevant, observers, shall not have any financial or other interests in the medicinal products industry or medical devices industry which could affect their independence or impartiality.*
- 3. The members of the MSSG and the MDSSG and, where relevant, observers, shall make a declaration of their financial and other interests and shall update those declarations of interest annually and whenever necessary.*

*The declarations referred to in the first subparagraph shall be made publicly available on the Agency's web portal.*

- 4. The members of the MSSG and the MDSSG and, where relevant, observers, shall disclose any other facts of which they become aware that might reasonably be expected in good faith to involve or give rise to a conflict of interest.*

5. *Before each meeting, the members of the MSSG and the MDSSG and, where relevant, observers who participate in meetings of the MSSG and the MDSSG shall declare any interests which could be considered to be prejudicial to their independence or impartiality with respect to the items on the agenda.*
6. *Where the Agency decides that an interest declared in accordance with paragraph 5 constitutes a conflict of interest, the member or observer concerned shall not take part in any discussions or decision making, or obtain any information, concerning the item of concern on the agenda.*
7. *The declarations and the decisions of the Agency referred to in paragraphs 5 and 6, respectively, shall be recorded in the summary minutes of the meeting.*
8. *The members of the MSSG and the MDSSG and, where relevant, observers, shall be subject to a requirement of professional secrecy, even after their duties have ceased.*
9. *Members of the ETF shall update the annual declaration of their financial or other interests provided for in Article 63 of Regulation (EC) No 726/2004 whenever a relevant change to their declaration occurs.*

### Article 33

#### *Protection against cyber attacks*

*The Agency shall equip itself with a high level of security controls and processes against cyber attacks, cyber espionage and other data breaches to ensure the protection of health data and the normal functioning of the Agency at all times, especially during public health emergencies or major events at Union level.*

*For the purposes of the first paragraph, the Agency shall actively identify and implement cybersecurity best practices adopted within Union institutions, bodies, offices and agencies for preventing, detecting, mitigating, and responding to cyber attacks.*

### Article 34

#### Confidentiality

1. Unless otherwise provided for in this Regulation and without prejudice to Regulation (EC) No 1049/2001 of the European Parliament and of the Council<sup>24</sup> *and Directive (EU) 2019/1937 of the European Parliament and of the Council*<sup>25</sup>, and existing national provisions and practices in the Member States on confidentiality, all parties involved in the application of this Regulation shall respect the confidentiality of information and data obtained in carrying out their tasks in order to protect █ the commercially confidential information and trade secrets of natural or legal persons *in accordance with Directive (EU) 2016/943 of the European Parliament and of the Council*<sup>26</sup>, including intellectual property rights.

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<sup>24</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.05.2001, p. 43).

<sup>25</sup> *Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law (OJ L 305, 26.11.2019, p. 17).*

<sup>26</sup> *Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure (OJ L 157, 15.6.2016, p. 1).*

2. *Without prejudice to paragraph 1, all* parties involved in the application of this Regulation shall ensure that no commercially confidential information is shared in a way which has the potential to enable undertakings to restrict or distort competition within the meaning of Article 101 TFEU.
3. Without prejudice to paragraph 1, information exchanged on a confidential basis between national competent authorities and between national competent authorities and the Commission and the Agency shall not be disclosed without the prior agreement of the authority from which that information originates.
4. Paragraphs 1, 2, and 3 do not affect the rights and obligations of the Commission, the Agency, Member States or other actors identified in this Regulation with regard to the exchange of information and the dissemination of warnings, nor do they affect the obligations of the persons concerned to provide information under criminal law.
5. The Commission, the Agency, and Member States may exchange commercially confidential information ■ with regulatory authorities of third countries with which they have concluded bilateral or multilateral confidentiality arrangements.

## Article 35

### Personal data protection

1. *Transfers of personal data under this Regulation shall be subject to Regulations (EU) 2016/679 and (EU) 2018/1725, as applicable.*
2. *As regards transfers of personal data to a third country, in the absence of an adequacy decision or appropriate safeguards as referred to in Article 46 of Regulation (EU) 2016/679 and Article 48 of Regulation (EU) 2018/1725 respectively, the Commission, the Agency, and Member States may carry out certain transfers of personal data to regulatory authorities of third countries with which they have put in place confidentiality arrangements where those transfers are necessary for important reasons of public interest, such as the protection of public health. Such transfers shall be made in conformity with the conditions laid down in Article 49 of Regulation (EU) 2016/679 and Article 50 of Regulation (EU) 2018/1725.*



## *Article 36*

### *Reporting and review*

- 1. By 31 December 2026, and every fourth year thereafter, the Commission shall present a report to the European Parliament and the Council on the application of this Regulation. In particular, that report shall review:*
  - (a) the crisis preparedness and management framework for medicinal products and medical devices, including the outcomes of periodic stress tests;*
  - (b) instances of non-compliance with the obligations set out in Articles 10 and 26 by marketing authorisation holders, manufacturers of medical devices, authorised representatives, importers, distributors and notified bodies;*
  - (c) the remit and functioning of the ESMP.*
- 2. Notwithstanding paragraph 1, following a public health emergency or a major event, the Commission shall present , in a timely manner, a report to the European Parliament and the Council on the instances referred to in paragraph 1, point (b).*

3. *Based on the report referred to in paragraph 1, the Commission shall, where appropriate, present a legislative proposal in order to amend this Regulation. In particular, the Commission shall consider the need for:*
- (a) extending the scope of this Regulation to veterinary medicinal products and to personal protective equipment for medical use;*
  - (b) amending Article 2;*
  - (c) introducing measures to strengthen at Union or national level compliance with the obligations established in Articles 10 and 26; and*
  - (d) expanding the remit of the ESMP, the need for further facilitating the ESMP interoperability with national and Union IT systems, the need for national shortage monitoring platforms, and the need for meeting any additional requirements to address structural shortages of medicinal products that may be introduced in the context of a revision of Directive 2001/83/EC and Regulation (EC) No 726/2004.*

## Article 37

### Union financing

1. *The Union shall provide the financing of the Agency's activities in support of the work of the MSSG and the MDSSG, the ETF, the working parties referred to in Article 3(6) and in Article 25(1), point (c), and the expert panels, that involve its cooperation with the Commission and the ECDC.*

*The Union's financial assistance to the activities under this Regulation shall be implemented in accordance with Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council<sup>27</sup>.*

2. *The Agency shall remunerate the assessment activities of the rapporteurs in relation to the ETF under this Regulation, in addition to reimbursing the expenses incurred by Member States' representatives and experts in relation to the meetings of the MSSG, the MDSSG, the ETF and the working parties referred to in Article 3(6) and in Article 21(5), in accordance with financial arrangements established by the Management Board of the Agency. Such remuneration shall be paid to the relevant national competent authorities.*

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<sup>27</sup> *Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).*

3. *The Union contribution provided for in Article 67 of Regulation (EC) No 726/2004 shall cover the tasks of the Agency provided for under this Regulation, and shall cover the full amount of remuneration paid to national competent authorities for medicinal products where fee exemptions apply in accordance with Council Regulation (EC) No 297/95<sup>28</sup>.*

Article 38

Entry into Force *and date of application*

This Regulation shall enter into force on the █ day following that of its publication in the *Official Journal of the European Union*.

*It shall apply from 1 March 2022.*

*However, with the exception of Article 30, Chapter IV shall apply from... [12 months after the date of entry into force of this Regulation].*

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the European Parliament*

*For the Council*

*The President*

*The President*

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<sup>28</sup> *Council Regulation (EC) No 297/95 of 10 February 1995 on fees payable to the European Agency for the Evaluation of Medicinal Products (OJ L 35, 15.2.95, p. 1).*