I

(Resolutions, recommendations and opinions)

OPINIONS

EUROPEAN COMMISSION

COMMISSION OPINION

of 14 March 2012

on interim measures taken by the government of Germany in respect of life jacket lights of model Rescue Dan M1 manufactured by Daniamant ApS in the Kingdom of Denmark

(Text with EEA relevance)

(2012/C 76/01)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Directive 96/98/EC of 20 December 1996 on Marine Equipment (  1 ), and in particular Article 13 thereof,

Whereas:

(1) In accordance with Annex A.1 of the above mentioned directive, the applicable performance and construction requirements for life jacket lights are laid down in Resolution MSC.48(66) (LSA Code) of the International Maritime Organization (IMO) and the applicable testing standards for the said equipment are laid down in Resolution MSC.81(70) of the IMO.

(2) By letter of 25 March 2011 the German authorities (the Federal Maritime and Hydrographic Agency, hereinafter 'BSH') informed the Commission of interim measures taken by this Authority in respect of life jacket lights of model Rescue Dan M1 (hereinafter, 'the life jacket lights') manufactured by Daniamant ApS in the Kingdom of Denmark (hereinafter, 'the manufacturer'), whereby the life jacket lights belonging to the batches No FP08 (2,000 pieces) and No BA139 (1,000 pieces) were recalled from the German market on grounds of failure to comply with Article 5(1) of Directive 96/98/EC.

The letter was accompanied by a detailed market surveillance report dated 2 March 2011 and a copy of (a) the EC Type Examination Certificate (module B) for the life jacket light, No MED 0850012, issued on 15 January 2008 by Lloyd's Register, valid until 14 January 2013, (b) the Quality Assurance Certificate (Module D) for the life jacket light, No MED 0950153, issued on 14 June 2009 by Lloyds Register, valid until 14 June 2012 and (c) the declarations of Conformity of the life jacket lights, respectively No MED 0600035, issued on 7 April 2008, valid until 13 June 2009 for batch No FP08, which had been manufactured in June 2009, and No MED 0950153, issued on 14 June 2009, valid until 13 June 2012 for batch No BA139, which had been manufactured in February 2010.

(3) More precisely BSH reported that two specimens from batch No FP08 did not meet the above mentioned applicable requirements during tests that were carried out by BSH within the framework of a market surveillance program.

(4) The interim measures were applied after it was found that the life jacket lights of the batches No FP08 and No BA139 did not meet the above mentioned applicable requirements during tests that were carried out by BSH.

(5) More precisely BSH reported that two specimens from batch No FP08 had initially been tested to verify compliance with the requirement in Resolution MSC.48(66) of the International Maritime Organization (IMO), section 2.2.3.1.1, whereby each life jacket light shall have a luminous intensity of not less than 0.75 candela (cd) in all directions of the upper hemisphere. The tests, which were performed in accordance with Resolution MSC.81(70) of the IMO, showed that, when measured at ambient temperature, one specimen complied with the requirement, while the other specimen did not reach the required intensity measured in the range of 0° to 10° at all and only partially in the range of 10° to 30°. After these tests further tests had

been carried out on four specimens taken from batch No BA139. The tests with the specimens from this batch showed that, when measured at ambient temperature, (a) two specimens reached the required intensity only partially in the range of 0° to 20°; (b) with respect to the third specimen nearly all results did not reach the requirement in the range of 0° to 40° and the results reached the requirement only partially in the range of 40° to 55°; (c) the fourth specimen did not show any light output at all after operating for 7.5 h in water at −1 °C.

(6) Upon receipt of the letter from BSH the Commission entered into consultation with the manufacturer, the government of the United Kingdom as the notifying Member State and the Notified Body (Lloyd's Register) having issued the type-examination certificates in question on the latter's behalf (hereinafter referred to collectively as 'the parties'). The Commission asked a number of specific questions from each party and invited them to submit any other observations they might deem appropriate.

(7) In response to the Commission's consultation, the manufacturer submitted that (a) they had not attended the tests carried out by BSH and had not been able to control the tested products and their storage conditions, (b) production-quality assurance at the time the two batches concerned were manufactured did not include any tests allowing to verify luminosity; (c) this problem had now been resolved given that production-quality assurance is now being carried out in accordance with standard ISO 24408; (d) most likely there had simply been a batch problem due to piece part tolerances and (e) they did not challenge the results of the tests carried out by BSH. The manufacturer recognised that BSH might have identified a problem with specific batches and as a matter of goodwill Daniamant ApS was willing to replace the lights from those batches. The manufacturer furthermore stated that although they could challenge the test results they chose to cooperate with BSH on the recall of the life jacket lights of the batches concerned from the German market.

(8) In its answer to the Commission Lloyd's Register concluded that the action taken (recall of the life jacket lights from the German market) was correct and that it was unclear how many lights had been returned or replaced since the recall was released. Further to this it would not be necessary, without further evidence, to recall the lights of the same model but belonging to other batches. Finally Lloyd's Register confirmed that the product had been subjected to new tests after the change of the battery and lamp, with satisfactory results.

(9) The Maritime and Coastguard Agency, for the government of the United Kingdom, replied that they were not aware that any party had challenged the results of the tests carried out by BSH and that they therefore would agree to the action taken by the German Authorities. Furthermore they would agree with the withdrawal from the European market of the batches the tested life jacket lights had been taken from.

(10) The Commission asked BSH for their views on the observations received. In their answer BSH considered that (a) the tested specimens were commercially available and had been delivered in the original packaging, (b) doubts about the impartiality of the accredited testing laboratory of BSH and about the neutrality of the market surveillance authority BSH would not be appropriate, (c) the deficiencies in the luminosity of the tested life jacket lights were detected in specimens from the two batches which had been tested, (d) the manufacturer had conceded in a letter to BSH dated 13 October 2010, which was attached to BSH's answer, that during testing at its own laboratory a few life jacket lights had failed to reach the minimum required luminosity of 0.75 cd. It was not stated when those tests had been carried out. BSH concluded that the statements from the manufacturer and the notified body did not warrant changes to the initial assessment and the reasons for the recall of the product remained, in their view, valid.

(11) BSH acted within the framework of a market surveillance program on life jacket lights, in accordance with Article 12 of Directive 96/98/EC.

(12) The manufacturer was informed of the results of the above mentioned tests and was given by BSH the possibility to present its observations and defend itself before the said Authority adopted any measures in respect of the product in question. Similarly, the notified body was informed and was given by BSH the possibility to present its observations.

(13) The results from the tests carried out by BSH were not contested by either the United Kingdom authorities or the notified body; moreover, both agreed with the action taken (recall of the life jacket lights from the German market). Furthermore the Maritime and Coastguard Agency would agree to a recall from the European market.

(14) The Commission notes that, in its answer, the manufacturer speculates that most likely there had been a batch problem due to piece part tolerances thereby implicitly admitting that the life jacket lights possibly did not perform adequately. The manufacturer's argument that the storage conditions were unknown, while probably true, does not detract from the fact that BSH had bought the tested specimens in the original packaging and it must be assumed that the specimens were exactly in the same specific condition as would have been available to ship owners for placing on
board their ships. No objective elements have been provided that might call into question the storage conditions of the tested specimens between their purchase by BSH and their testing; in particular, the test reports do not refer to any external signs of deterioration.

(15) The Commission further notes that the manufacturer referred to ISO 24408 which is intended to assess the conformity of life jacket lights with the relevant IMO requirements during the production phase. For this purpose standard ISO 24408 was introduced in Annex A.1 of Directive 96/98/EC by Commission Directive 2009/26/EC (1), which became applicable in the Member States’ legal orders as from 6 April 2010. This standard was subsequently removed from Annex A.1 by Commission Directive 2010/68/EC (2).

(16) In accordance with Annex B of Directive 96/98/EC, production-quality assurance under Module D requires the manufacturer to ensure and declare that the products concerned conform to type as described in the EC type-examination certificate. Therefore this obligation was incumbent on the manufacturer regardless of whether or not specific production testing requirements were applicable in accordance with standard ISO 24408.

(17) Based on the above considerations and the evidence submitted to the Commission, in particular the above mentioned results of the tests carried out on six specimens taken at random from two different batches of lifejacket lights produced by Daniamant ApS, namely batches No FP08 and No BA139, it is reasonable to conclude that at least these two production batches do not conform to the applicable requirements for this type of equipment. Furthermore from the evidence submitted it seems reasonable to conclude that the cause of the non-conformity lies with all likelihood in the production phase of the life jacket lights and not in the type approval phase.

(18) Life jacket lights are important safety devices, which are used in emergency situations. The luminosity of those lights may be of crucial importance. This is especially true in cases where people in distress have to be located in the dusk or dark. A too low luminosity may hamper such location. For these reasons minimum requirements have been set and people in distress, rescuers and seafarers should be able to trust that those requirements are met.

(19) The Commission notes that the recall of the product only concerned the German market. The manufacturer has indicated that the product has only been distributed in Germany. However, it is unknown to what ships under which flags the products have been further disseminated.

(20) The duration of a recall in this particular case does not have to be limited until the moment measures have been taken such that the lights do comply with the applicable requirements and may be placed on the market again, since the model Rescue Dan M1 has already been replaced by a another model.

HAS ADOPTED THIS OPINION:

1. The interim measures notified by the German government to the Commission by letter of 25 March 2011 in respect of life jacket lights of model Rescue Dan M1, batches No FP08 and No BA139, manufactured by Daniamant ApS in the Kingdom of Denmark are adequate and proportionate for the protection of maritime safety and are therefore justified.

2. The Commission recommends that the Member States ensure that life jacket lights of the model Rescue Dan M1 from batches No FP08 and No BA139, manufactured by Daniamant ApS, are removed from their markets.

3. The Commission recommends that the Member States take all appropriate action in order to remove the life jacket lights of the model Rescue Dan M1 from batches No FP08 and No BA139, manufactured by Daniamant ApS, from the ships flying their flag and have them replaced by other life jacket lights fulfilling the requirements of Article 5(1) of Directive 96/98/EC.

4. The Commission recommends that the Member States and Notified Body Lloyd's Register cooperate to verify that life jacket lights model Rescue Dan M1, other than those belonging to batches FP08 and BA139, manufactured by Daniamant ApS, comply with the requirements of Article 5(1) of Directive 96/98/EC.

5. The Member States should as soon as possible inform the Commission and the other Member States of any measures taken pursuant to this opinion.

Done at Brussels, 14 March 2012.

For the Commission
Siim KALLAS
Vice-President