

COMMISSION DECISION

of 14 November 2011

in application of Article 7 of Directive 94/9/EC of the European Parliament and the Council as regards a prohibition measure adopted by the German authorities in respect of a mobile phone 'Expert XP-Ex-1' ATEX DE-01-11

(notified under document C(2011) 8046)

(Text with EEA relevance)

(2011/741/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 94/9/EC of the European Parliament and the Council of 23 March 1994 on the approximation of the laws of the Member States concerning equipment and protective systems intended for use in potentially explosive atmospheres ⁽¹⁾ (the ATEX Directive), and in particular Article 7 thereof,

Whereas:

- (1) Article 2(1) of Directive 94/9/EC states that Member States shall take all appropriate measures to ensure that the equipment, protective systems and devices to which the Directive applies, may be placed on the market and put into service only if, when properly installed and maintained and used for their intended purpose, they do not endanger the health and safety of persons and, where appropriate, domestic animals or property.
- (2) Article 7(1) of Directive 94/9/EC provides that when a Member State ascertains that equipment, protective systems or devices bearing the CE conformity marking and used in accordance with its intended use are liable to endanger the safety of persons and, where appropriate, domestic animals or property, it shall take all appropriate measures to withdraw such equipment or protective systems from the market, to prohibit the placing on the market, putting into service or use thereof, or to restrict free movement thereof. The Member State shall immediately inform the Commission of any such measure, indicating the reason for its decision.
- (3) Pursuant to Article 7(2) of Directive 94/9/EC, the Commission is required, after entering into consultation with the parties concerned, to declare whether it finds such a measure justified or not. If the measure is found justified, the Commission shall inform the Member States

so that they can take all appropriate measures with respect to the equipment or protective system concerned, in accordance with their obligations under Article 2(1) of Directive 94/9/EC.

- (4) On 17 March 2011, the authorities of Germany formally notified to the European Commission a prohibition measure concerning the placing on the market and the withdrawal from the market/retailers of a Mobile Phone, mark and type XP-Ex-1, manufactured by Experts Intrinsic Safety Specialists, Groningseweg 7, 2994 LC Barendrecht, Netherlands. According to the documents submitted to the Commission, this product was subject to the conformity assessment procedure referred to in Article 8(1)(b) of Directive 94/9/EC, attested by the EC-Type Examination Certificate No BKI09ATEX0014 X issued by BKIEx — ExVÁ Robbanásbiztos Berendezések Vizsgáló Állomása Kft., Mikoviny Samuel u. 2-4, 1037 Hungary — Notified Body No 1418.
- (5) The German authorities indicated that their measure was based on the non-conformity of the product with the essential health and safety requirements referred to in Article 3 of Directive 94/9/EC and set out in Annex II, in particular in points 1.0.5 (Marking) and 1.3 (Potential ignition sources), related to the incorrect application or shortcomings of the harmonised standard EN 60079-11:2007 Explosive atmospheres — Part 11 — Equipment protection by intrinsic safety 'i' (IEC 60079-11:2006), which is referred in the EC-Type Examination Certificate issued by BKIEx — ExVÁ:
- paragraph 5.3 (energy and power limitation not in accordance)
 - paragraph 6.3.1.1 (minimum distances not kept: voltage 4,2 V needs a distance of 1,5 mm; the existing distance is about 0,2 mm)
 - paragraph 10.5.3 (power supply not in accordance)
 - diagram/table (capacitance of the main circuit board without limiting elements; maximum amount 299 µF is a multiple of 3 000 of the permissible limit).

⁽¹⁾ OJ L 100, 19.4.1994, p. 1.

- (6) The German authorities submitted the Order of Regierungspräsidium Darmstadt Unit IV/Wiesbaden informing about sales ban concerning Mobile Phone Expert XP-Ex-1, with the related grounds, reports and letters, and a Quality report by KEMA No 211518000/A on Mobile Phone XP-Ex-1, to substantiate their findings.
- (7) According to the German authorities, the Mobile Phone does not meet the essential health and safety requirements of Directive 94/9/EC for electrical equipment of Category 2: it can produce hazardous sparks in case of faults, therefore the requirements of the intrinsic safety protection mode are not fulfilled. The German authorities conclude that this product is not safe for use in Zone 1 environments (Category 2G) and represents a real ignition danger in the case of intended use.
- (8) On 8 April 2011, the Commission wrote to the manufacturer — Experts Intrinsic Safety Specialists — and to the Notified Body who issued the EC-Type Examination Certificate — BKIEx — ExVÁ Robbanásbiztos Berendezések Vizsgáló Állomása Kft. — inviting them to communicate their observations regarding the measure taken by the German authorities.
- (9) To date, no reply has been received.
- (10) In light of the documentation available, and the comments or the absence of comments of the parties

concerned, the Commission considers that the Mobile Phone 'Expert XP-Ex-1' fails to comply with the essential health and safety requirements referred to in Article 3 of the Directive 94/9/EC and set out in Annex II, in particular in points 1.0.5 (Marking) and 1.3 (Potential ignition sources). These non-conformities and the related technical deficiencies give rise to serious risks for users,

HAS ADOPTED THIS DECISION:

Article 1

The measure taken by the authorities of Germany prohibiting the placing on the market and the withdrawal from the market/retailers of a Mobile Phone, mark and type 'Expert XP-Ex-1', manufactured by Experts Intrinsic Safety Specialists, is justified.

Article 2

This Decision is addressed to the Member States

Done at Brussels, 14 November 2011.

For the Commission

Antonio TAJANI

Vice-President
