

DECISIONS

COMMISSION DECISION

of 16 August 2013

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 Swedish authorities in respect of a fluorescent lamp 'GW 80 455' (ATEX-SE-01-2012)

(notified under document C(2013) 5315)

(Text with EEA relevance)

(2013/438/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) On 2 October 2012, the authorities of Sweden formally notified to the European Commission a prohibition measure, taken on 19 September 2012, concerning the placing on the market of a fluorescent lamp, mark and type 'GW 80 455', manufactured by Gewiss SpA, via A. Volta 1, 24069 Cenate Sotto (Bergamo), Italy.

- (4) The Swedish 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 the Directive 94/9/EC and set out in Annex II, in particular in points 1.0.5 (Marking) and 1.0.6 (Instructions), related to the incorrect application or shortcomings of the harmonised standard EN 60079-0:2006 — Electrical apparatus for explosive gas atmospheres — Part 0: General requirements (IEC 60079-0:2004, modified), which is referred in the manufacturer's EC Declaration of Conformity.

- (5) The Swedish authorities submitted the test report on examination of explosion protection lamp, dated 3 April 2012. According to the Swedish authorities, the list of deviations includes:

— Serious criticism:

- Accompanying instructions (sub-clause 30.1 in EN 60079-0:2006): the marking 'Potential electrostatic charging hazard – See instructions' refers to the instructions for further information. Such information can not be found in the instructions.

— Criticism:

- Marking (sub-clause 29.1 in EN 60079-0:2006)
 - If the lamp is mounted directly on a ceiling, it is difficult to see part of the marking on the label (Ex code and ambient temperature on the upper part of the label).
- Marking (sub-clause 29.2(z1) in EN 60079-0:2006) — Explosion group (II, IIA, IIB or IIC) is missing in the Ex code.
- Marking (sub-clause 29.1 in EN 60079-0:2006)
 - Address of the manufacturer is missing.
- Accompanying instructions (sub-clause 30.1 in EN 60079-0:2006) — The instructions are not in Swedish (they are in five other languages incl. Italian, English, French and German).

⁽¹⁾ OJ L 100, 19.4.1994, p. 1.

- Accompanying instructions (sub-clause 30.1 in EN 60079-0:2006) — Marked information shall be recapitulated in the instructions. Some of this information can not be found in the instructions:
- (a) Warning text in the marking (or corresponding text which describes the warnings) is missing in the instructions.
 - (b) Temperature class 'T3' (for gas) and maximum temperature 'T78 °C' (for dust) for the lamp, can not be found in the instructions.
 - (c) Explosion group (II, IIA, IIB or IIC), which shall be included in the Ex code according to 29.2(e) in EN 60079-0:2006, can not be found in the instructions.
- (6) On 6 November 2012, the Commission wrote to the manufacturer, Gewiss SpA, inviting them to communicate their observations regarding the measure taken by the Swedish authorities.
- (7) On 11 January 2013, Gewiss SpA replied, providing specific answers and technical analysis for each one of the deviations pointed out by the Swedish authorities:
- Regarding the 'serious criticism' on accompanying instructions, the manufacturer indicated that the marking and the instructions have been developed according to the risk assessment of the product for gases and dusts, in order to comply with the specific requirements of the relevant harmonised standard. In particular, information on 'potential electrostatic charging hazard' is reproduced on the product itself within a general interpretation of the term 'instructions', diverging from the interpretation of the Swedish authorities who make reference to 'accompanying instructions'.
- Regarding the 'criticisms', the manufacturer indicated that the deviations are not really critical, being related to possible differences in interpretation of the relevant clauses of the standard.
- (8) In its reply, the manufacturer underlined that accompanying instructions and marking of the product have been improved and modified according to the most recent versions of the applicable harmonised standards (2009, 2010 and 2012). In fact, the product based on the 2006 version of the harmonised standard EN 60079-0 is no longer available on the EU market. Copies of the new markings, instructions and Declaration of

Conformity of the product are provided in the reply; in particular, accompanying instructions are available now also in Swedish.

- (9) The Swedish authorities produced no further documentation after the reply of the manufacturer.
- (10) In light of the documentation available, and the comments of the parties concerned, the Commission considers that the fluorescent lamp, mark and type 'GW 80 455', in its configuration as analysed by the Swedish authorities making reference to the harmonised standard EN 60079-0:2006, failed 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 1.0.6 (Instructions). These non-conformities and the related technical deficiencies gave rise to serious risks for users because they refer to essential health and safety requirements, established in Annex II to Directive 94/9/EC, which had not been fulfilled by the product, taking into consideration that:
- for the 'serious criticism', the reference to 'instructions' is to be interpreted as the 'accompanying instructions', according to point 1.0.6(a) of Annex II, and not in a general manner as instruction in any kind of form,
- for the 'criticisms', the missing elements in markings and instructions have been detected with regard not to different interpretations of the standard, but directly to the specific prescriptions of points 1.0.5 and 1.0.6(a) and (b) of Annex II,

HAS ADOPTED THIS DECISION:

Article 1

The measure taken by the authorities of Sweden prohibiting the placing on the market of a fluorescent lamp, mark and type 'GW 80 455', formerly manufactured by Gewiss SpA, referred to the 2006 edition of standard EN 60079-0 and now obsolete, is justified.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 16 August 2013.

For the Commission
Antonio TAJANI
Vice-President