

COMMISSION IMPLEMENTING DECISION (EU) 2022/834**of 25 May 2022****pursuant to Article 31(1) of Directive 2010/35/EU of the European Parliament and of the Council, on a measure taken by France concerning the withdrawal from the market of certain gas cylinders manufactured by Xinchang Burong Machinery Co. Ltd before 31 October 2019***(notified under document C(2022) 3372)***(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2010/35/EU of the European Parliament and of the Council of 16 June 2010 on transportable pressure equipment and repealing Council Directives 76/767/EEC, 84/525/EEC, 84/526/EEC, 84/527/EEC and 1999/36/EC ⁽¹⁾, and in particular Article 31(1) thereof,

Whereas:

- (1) In August 2019, as part of the market surveillance of transportable pressure equipment performed in accordance with the provisions of Articles 16 to 26 of Regulation (EC) No 765/2008 of the European Parliament and of the Council ⁽²⁾ and with the provisions of Article 30 of Directive 2010/35/EU, the French Market Surveillance Authority investigated the case of a pressure cylinder manufactured by Xinchang Burong Machinery Co. Ltd (China). The cylinder was imported and distributed by VZ Trend Goods GmbH (Germany) and by Alsino GmbH (Germany) and sold online by www.amazon.fr (France), under the trademark 'PARTY FACTORY'.
- (2) The French Market Surveillance Authority examined the case in accordance with the applicable rules on manufacturing and placing on the market, as set out in Section I.1 of Annex I to Directive 2008/68/EC of the European Parliament and of the Council ⁽³⁾, in the EN ISO 11118:2015 standard and in Articles 4 and 6 of Directive 2010/35/EU. The examination revealed that the product had not undergone a conformity assessment and that it displayed an undue Pi marking. Moreover, the manufacturer held neither the certificates for initial inspections and tests, nor the certificates for supervision of the manufacture required pursuant to subsections 1.8.7.3 and 1.8.7.4 of Section I.1 of Annex I to Directive 2008/68/EC.
- (3) An anonymously purchased cylinder was put to the test by the French Market Surveillance Authority. Test report number 2019-6-RSPT-XBN-V2 revealed several non-conformities, as well as a physical defect that could have endangered the health and safety of users.
- (4) One non-conformity identified by the test report related to Article 6(3) of Directive 2010/35/EU, namely, the product's certificate of conformity had not indicated the name and address at which the importer could be contacted, this thereby preventing the distributors from complying with the obligation to place on the market only transportable pressure equipment accompanied by the certificate of conformity and the address where the importer could be contacted, provided for in Article 7(1) of that Directive.
- (5) Another non-conformity identified by the test report was that the cylinder's type approval certificate, issued by the notified body Technická inšpekcia (Slovakia) on 9 November 2018 with number 602/5/2018, did not include a complete list of the relevant parts of the technical documentation, as set out in paragraph 1.8.7.2.3 of Section I.1 of Annex I to Directive 2008/68/EC.

⁽¹⁾ OJ L 165, 30.6.2010, p. 1.

⁽²⁾ Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and repealing Regulation (EEC) No 339/93 (OJ L 218, 13.8.2008, p. 30).

⁽³⁾ Directive 2008/68/EC of the European Parliament and of the Council of 24 September 2008 on the inland transport of dangerous goods (OJ L 260, 30.9.2008, p. 13).

- (6) Type approval certificate number 602/5/2018 did not indicate helium among the gases the cylinder's valve had been approved for. Therefore, the cylinder should not have been filled with helium.
- (7) The marking affixed on the cylinder by the manufacturer did not comply with Article 15 of Directive 2010/35/EU concerning the physical shape of the Greek letter Pi symbol. Nor did it comply with either the requirements in subsection 6.2.2.8 of Section I.1 to Annex I to Directive 2008/68/EC or with paragraph 12.2.2 of the EN ISO 11118:2015 standard regarding the height of the Pi symbol and of the wording 'DO NOT REFILL'. In addition, the marking did not comply with the requirements in paragraphs 6.2.2.7.2 to 6.2.2.7.4 of Section I.1 of Annex I to Directive 2008/68/EC, or with the EN ISO 11118:2015 standard regarding the information to be displayed. Namely, the working pressure indication was missing, and the reference standard and the number of the notified body were wrongly indicated. The dimensions of the label for 'non-flammable, non-toxic gases' were also smaller than those set out in paragraph 5.2.2.2.1.1.2 of Section I.1 of Annex I to Directive 2008/68/EC.
- (8) The marking on the packaging also presented non-conformities, namely a CE marking, which is not authorised by Directive 2010/35/EU, and a wrong number of the notified body.
- (9) The tested cylinder had a crack at the bottom of the neck, in the brazing weld. A crystal deposit indicated that a leak had occurred.
- (10) The French Market Surveillance Authority informed the importer and distributor regarding the non-conformities observed during the investigation. However, no appropriate answer was provided by those economic operators.
- (11) On 31 October 2019, a new certificate of approval was issued by the notified body Technická inšpekcia (Slovakia).
- (12) In accordance with Article 30(4) of Directive 2010/35/EU, the French Market Surveillance Authority provisionally withdrew from the market the cylinders manufactured before 31 October 2019 and notified the measure to the Commission and to the Member States. The decision was published on 3 January 2020.
- (13) On 23 January 2020, the Swedish Civil Contingencies Agency objected to one of the findings of the test report drawn up by the French Market Surveillance Authority. The objection triggered the application of Article 31(1) of Directive 2010/35/EU, according to which the Commission has to adopt a decision, after consulting the Member States and the relevant economic operators.
- (14) On 15 April 2021, the Commission invited the Member States, the manufacturer and the importers to provide their views on the case, in particular regarding the appropriateness of the measure adopted by the French Market Surveillance Authority and the risk posed by the product.
- (15) On 10 June 2021, the case was presented by the Commission to the Administrative Cooperation Group of the Market Surveillance Authorities, established in accordance with Article 28(b) of Directive 2010/35/EU. On 14 June 2021, the Commission presented the case to the Expert Group on Transport of Dangerous Goods, established in accordance with Article 8a(4) of Directive 2008/68/EC.
- (16) Six Member States and no economic operator submitted contributions in the consultation process. The opinions forwarded to the Commission confirmed that the product presents non-conformities regarding the packaging, documentation, marking and labelling, the initial inspection and test, and the supervision of the manufacture. In addition, the cylinder posed a clear risk for the safety of the users. No Member State considered that the measure adopted by the French Market Surveillance Authority not to be justified.
- (17) Examination of the evidence provided by the French Market Surveillance Authority confirms that the above-mentioned helium cylinders fail to comply with the requirements set out in Directive 2008/68/EC and in Directive 2010/35/EU. These helium cylinders therefore present a clear risk for the safety of the users and should be withdrawn from the market.

- (18) The measures provided for in this Decision are in accordance with the opinion of the Committee established under Article 9 of Directive 2008/68/EC of the European Parliament and of the Council of 24 September 2008 on the inland transport of dangerous goods,

HAS ADOPTED THIS DECISION:

Article 1

The measure taken by France, consisting of the withdrawal from the market of gas cylinder type BR1C, manufactured by Xinchang Burong Machinery Co. Ltd before 31 October 2019 and having the following characteristics:

- cylinder type: non-refillable,
- filled with gas: UN 1046 – HELIUM, COMPRESSED,
- working pressure: PW = 12 bar,
- hydraulic test pressure: PH = 28 bar,
- temperature range: TS = – 20 / + 60 °C,
- volume: V = 0,75 l

is justified.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 25 May 2022.

For the Commission
Adina VĂLEAN
Member of the Commission
