

I

(Resolutions, recommendations and opinions)

OPINIONS

COMMISSION

COMMISSION OPINION

of 21 February 2008

**in application of Article 7 of Directive 94/9/EC of the European Parliament and the Council
Directive as regards a prohibition measure adopted by the Swedish authorities in respect of a
Barrier Gland 'MCT Brattberg — RGSFB'**

ATEX SE-01-07

(Text with EEA relevance)

(2008/C 50/01)

**1. THE NOTIFICATION BY THE AUTHORITIES OF THE
KINGDOM OF SWEDEN**

Article 2(1) of Directive 94/9/EC on the approximation of the laws of the Member States concerning equipment and protective systems intended for use in potentially explosive atmospheres 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.

Article 7(1) of the Directive provides that where 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.

On 26 March 2007, the authorities of Sweden formally notified to the European Commission a prohibition measure concerning the placing on the market and the withdrawal from the market of a Barrier Gland bearing the trademark MCT Brattberg, model RGSFB, manufactured by MCT Brattberg AB, S-371 92 Karlskrona.

Pursuant to Article 7(2) of the Directive, the Commission is required, after consulting 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).

2. THE REASONS GIVEN BY THE SWEDISH AUTHORITIES

The measures taken by the Swedish authorities were founded on the non-conformity of the product with the essential health and safety requirements of Annex II to the ATEX Directive 94/9/EC, with reference to the incorrect application of the specification of the following harmonised European standards which are referred to in the EC Type Examination Certificate:

— EN 50018:2000 + A1:2002 Electrical apparatus for potentially explosive atmospheres — *Flameproof enclosure 'd'*:

Technical deficiencies: Non compliance with sealing test requirement (sub-clause C.3.1.1 of the standard, essential health and safety requirement 1.2.9 of Annex II to the Directive).

The gland did not pass the sealing test, intended to be performed on a test sample at a pressure of 30 bar for 2 minutes:

— a few leakages occurred at a pressure below 0,5 bar,

- leakages occurred from several places at 1 bar and from multiple places at 2 bar,
- at 3 bar, the modules that provide the sealing in the cable entry began to press out from the frame and finally popped out within 5 seconds.

Administrative deficiencies: Certificate (sub-clause 13.1 of the standard).

No specification of types and variants of barrier glands; Gland certified as 'apparatus' instead of Ex-component.

- EN 50014:1997 + A1:1999 + A2:1999 *Electrical apparatus for potentially explosive atmospheres — General requirements:*

Administrative deficiencies: Instructions (clause 27 of the standard, essential health and safety requirement 1.0.6 of Annex II to the Directive).

Recapitulation of marking is missing; there are obscurities regarding certified types and variants (which of the glands are covered by the certificate), settle time (what time applies for certified glands) and certified glands for pipes (whether the certified glands are allowed to be used for pipes); the document referred to in the certificate ('Nomenclature of drilled modules') could not be identified in the instructions.

3. THE COMMISSION'S OPINION

On 27 March 2007, the Commission wrote to the manufacturer — MCT Brattberg AB — and to the Notified Body who issued the EC Type Examination Certificate — LCIE Fontenay-aux-Roses — inviting them to communicate their observations regarding the measure taken by the Swedish authorities.

On 14 May 2007, LCIE Fontenay-aux-Roses replied by letter, contesting the administrative deficiencies detected by the Swedish authorities and stating that they were 'not critical'. They also attached a letter from the manufacturer, MCT Brattberg, cancelling the contract with LCIE and asking them to withdraw the certificate.

On 31 August 2007, the Swedish authorities transmitted to the Commission a letter addressed to them by the manufacturer, MCT Brattberg, dated 8 February 2007, stating the following: 'We have withdrawn the LCIE Certificate from all daughter companies and agents and are not selling any equipment with ATEX accreditation at this time. All equipment with ATEX markings has now been withdrawn and quarantined within our Quality Assurance System'.

In light of the documentation available, the comments of the interested parties and the measures taken by the manufacturer, the Commission considers that the product subject to the restrictive measures fails to comply with the essential health and safety requirements referred to above. These non-conformities, in particular the technical deficiencies, give rise to serious risks for persons using the product in question.

Consequently, having followed the required procedure, the Commission is of the opinion that the measures taken by the Swedish authorities are justified.

Done at Brussels, 21 February 2008

For the Commission
Günter VERHEUGEN
Vice-President