

## I

(Resolutions, recommendations and opinions)

## OPINIONS

## COMMISSION

## COMMISSION OPINION

of 15 October 2009

**in application of Article 7 of Council Directive 89/686/EEC as regards a prohibition measure adopted by the Polish authorities in respect of protective clothing for motorcyclists, 'BF motorcycle hardware' with anti-impact protectors of the type 'Tested PR'**

(Text with EEA relevance)

(2009/C 249/01)

### 1. The notification by the Polish authorities

Article 7(1) of Council Directive 89/686/EEC <sup>(1)</sup> on the approximation of the laws of the Member States relating to personal protective equipment (PPE) provides that where a Member State ascertains that personal protective equipment bearing the CE marking and used in accordance with its intended purpose could compromise the safety of persons, domestic animals or property, it shall take all necessary measures to remove such personal protective equipment from the market and to prohibit the placing on the market or free movement thereof.

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 concerned, in accordance with their obligations under Article 2(1).

On 8 August 2008, the Polish authorities notified to the European Commission a measure prohibiting the placing on the market of protective clothing for motorcyclists 'BF motorcycle hardware' with elbow, forearm, knee and upper tibia anti-impact protectors of the type 'Tested PR'.

The file transmitted to the Commission contained a 'CE marking declaration' drawn up by Ashan (UK) Ltd., 68, Great Eastern Street, London, EC2A 3JT, UK on behalf of M/S Havaba Bikewear, Metzingen, Germany, with the following Annexes claiming compliance with the Directive:

- Annex 'A' Shoulder protector, type HB-S-E,
- Annex 'C' Knee protector, type HB-K-E,
- Annex 'D' Back protector, type HB-B-E,
- Annex 'E' Hip protector, type HB-H-E.

### 2. The reasons given for the notified measure

The Polish authorities indicated that the protective clothing in question had not been submitted to the EC type-examination procedure set out in Article 10 of the Directive.

<sup>(1)</sup> OJ L 399, 30.12.1989, p. 18.

In addition the instructions for use were missing.

The Polish authorities stated that the manufacturer had failed to bring the product into conformity when required to do so according to Article 13(4) of the Directive.

### 3. The Commission's Opinion

On 9 March 2009, the Commission wrote to Ashan (UK) Ltd. inviting him to communicate his observations regarding the measure taken by the Polish authorities. To date, no reply has been received.

In light of the documentation available and the comments of the parties concerned, the Commission considers that the Polish Authorities have demonstrated that the protective clothing for motorcyclists 'BF motorcycle hardwear' with impact protectors of the type 'Tested PR', fails to comply with the requirements of Directive 89/686/EEC.

Therefore having followed the required procedure, the Commission is of the opinion that the prohibition measure taken by the Polish authorities is justified.

Done at Brussels, 15 October 2009.

*For the Commission*  
Günther VERHEUGEN  
*Vice-President*

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