

COMMISSION DECISION

of 31 March 2011

in application of Article 7 of Council Directive 89/686/EEC as regards a prohibition measure adopted by the UK authorities in respect of guided type fall arrester, of the type HACA Leitern 0529.7102

(notified under document C(2011) 2010)

(Text with EEA relevance)

(2011/211/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 89/686/EEC of 21 December 1989 on the approximation of the laws of the Member States relating to personal protective equipment ⁽¹⁾, and in particular Article 7 thereof,

Whereas:

- (1) Article 7(1) of Directive 89/686/EEC 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.
- (2) Pursuant to Article 7(2) of Directive 89/686/EEC, 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) of Directive 89/686/EEC.
- (3) On 31 January 2008, the UK authorities notified to the European Commission a measure prohibiting the placing on the market of a guided type fall arrester, of the type HACA Leitern 0529.7102, manufactured by HACA Leitern – Lorenz Hasenbach GmbH u. Co. KG, Diesselstrasse 12, 65520 Bad Camberg, Germany (HACA). According to the documents submitted to the Commission this protective equipment was subject to the conformity assessment procedure set out in Article 11A of the Directive, attested by the following

documents issued by EXAM BBG Prüf- und Zertifizier GmbH (since become DEKRA EXAM GmbH) — notified body No 0158):

— No ZQ/B 212/06,

— No ZQ/B 212/07.

- (4) The UK authorities indicated that their measure was based on the fact that the guided type fall arrester concerned failed to comply with the basic health and safety requirements (BHSR) referred to in Article 3 of Directive 89/686/EEC and, in particular, with BHSR 3.1.2.2 and BHSR 1 and 1.1.1 in Annex II to Directive 89/686/EEC. The UK authorities submitted a test report by TUV NEL Ltd to substantiate their findings.
- (5) According to the UK authorities, in particular in the foreseeable situation where a person fell backwards before falling down (the ‘fall-back’ situation), the protective equipment did not provide adequate protection against all risks encountered as required by BHSR 1 ⁽²⁾. As a result, the guided type fall arrester did not comply with BHSR 1.1.1 ⁽³⁾, which requires a user to be able to perform a risk-related activity normally whilst enjoying appropriate protection to the highest possible level. Further the UK authorities explained that the protective equipment did not comply with BHSR 3.1.2.2 ⁽⁴⁾ because tests showed that, under foreseeable conditions of use, the vertical drop of the user was not minimised to prevent collision with obstacles and the braking force exceeded the threshold value at which physical injury might occur.

The UK authorities further indicated that they intended to launch a formal objection pursuant to Article 6 of the Directive against standard EN 353-1 — Personal protective equipment against falls from a height — Part 1: Guided type fall arresters including a rigid anchor line, which refers to standard EN 364 — Personal protective equipment against falls from a height — test methods.

- (6) On 1 August 2008, the Commission wrote to the manufacturer and, on 26 September 2008, to the notified body that had intervened in the production control

⁽²⁾ BHSR 1 — General requirements applicable to all PPE.

⁽³⁾ BHSR 1.1.1 — Ergonomics.

⁽⁴⁾ BHSR 3.1.2.2 — Prevention of falls from a height.

⁽¹⁾ OJ L 399, 30.12.1989, p. 18.

phase according to Article 11A of Directive 89/686/EEC, inviting them to communicate their observations regarding the measure taken by the UK authorities.

- (7) In their reply dated 28 October 2008, HACA contested the findings of the tests carried out for the UK authorities by TUV NEL. In particular, they emphasised that their equipment was safe to use and prevented falls from a height, including 'fall-back', if used with the correct types of belt. HACA further pointed out that the test carried out by TUV NEL did not comply with the requirements of standard EN 364 which did not foresee the use of an anthropomorphic dummy.
- (8) In their reply dated 15 October 2008, DEKRA EXAM confirmed that they had issued the relevant Article 11A documents. DEKRA EXAM emphasised that tests had been carried out according to standard EN 353-1 and that the samples tested had fulfilled all the requirements of that standard. They explained that the test standard EN 364 allowed the use of a steel weight or a sand bag for the dynamic performance test. During testing, they had used a sand bag for measuring the braking force which was always below the allowed value. They observed that TUV NEL had used a steel weight which — in their opinion — would give higher braking forces than a sand bag.

As regards the 'fall-back' tests using an anthropomorphic dummy, DEKRA EXAM recalled that such a test was not foreseen by EN 353-1. They agreed that the 'fall-back' situation was indeed a foreseeable condition of use of such guided type fall arresters. However, this situation was not addressed in standard EN 353-1. Depending on the kind of fall arrester used and the model of full body harness worn by the user, accidents could occur. It was therefore necessary to pay attention to the right combination of fall arrester and full body harness, which should be specified by the manufacturer in the information given to the user.

- (9) Due to the complexity of the file, the Commission obtained the assistance of an independent expert. The Commission met the UK authorities. The UK authorities explained the exact test methods it relied upon and showed a video of the tests.

TUV NEL had carried out two series of tests for the UK authorities. During the second series of tests, a representative of the manufacturer had been present. Each series included a dynamic performance test using a steel weight and 'fall-back' tests using an anthropomorphic dummy. The HACA fall arrester had failed all of these tests.

The UK considered that the use of a steel weight for the dynamic performance test gave more reliable results than a sand bag and could explain the difference between the results obtained by TUV NEL and those obtained by DEKRA EXAM.

Concerning the 'fall-back' test, the UK had carried out tests using an anthropomorphic dummy in order to simulate as closely as possible the foreseeable 'fall-back' situation. The results of these tests had shown that the HACA fall arrester did not adequately prevent a fall in that situation. These results also revealed a deficiency in the relevant harmonised standard EN 353-1 since the standard did not take account of the 'fall-back' situation. This was the main grounds for the formal objection lodged by the UK against the standard.

- (10) The report of the independent expert ⁽¹⁾ concluded that 'fall-back', either from a standing or sitting position, is a foreseeable situation which is not taken into account in standard EN 353-1.
- (11) Following the positive opinion of the Standing Committee set up by Article 5 of Directive 98/34/EC of the European Parliament and of the Council ⁽²⁾ on 19 March 2010, the Commission decided to withdraw the reference of standard EN 353-1 from the *Official Journal of the European Union*.
- (12) In light of the documentation available, the comments of the parties concerned and the report of the independent expert, the Commission considers that the guided type fall arrester of the type HACA Leitern 0529.7102 fails to comply with BHSRs 1, 1.1.1 and 3.1.2.2 of Annex II to Directive 89/686/EEC, since it does not adequately prevent falls in a 'fall-back' situation, and that this non-conformity gives rise to a serious risk for users,

HAS ADOPTED THIS DECISION:

Article 1

The measure taken by the UK authorities prohibiting the placing on the market of a guided type fall arrester, of the type HACA Leitern 0529.7102, manufactured by HACA Leitern – Lorenz Hasenbach GmbH, is justified.

⁽¹⁾ Reference No P804674.

⁽²⁾ OJ L 204, 21.7.1998, p. 37.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 31 March 2011.

For the Commission
Antonio TAJANI
Vice-President
