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#### **INFORMATION NOTE**

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from: General Secretariat  
to: Permanent Representatives Committee/Council

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Subject: New Legislative Framework Alignment Package  
(Implementation of the Goods Package)  
- Proposal for a Directive of the European Parliament and of the Council on the harmonisation of the laws of the Member States relating to equipment and protective systems intended for use in potentially explosive atmospheres  
– Outcome of the European Parliament's first reading  
(Strasbourg, 3 to 6 February 2014)

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#### **I. INTRODUCTION**

In accordance with the provisions of Article 294 of the TFEU and the joint declaration on practical arrangements for the codecision procedure <sup>1</sup>, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this dossier at first reading, thereby avoiding the need for second reading and conciliation.

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<sup>1</sup> OJ C 145, 30.6.2007, p.5

In this context, the rapporteur, Ms Zuzana ROITHOVÁ (EPP, CZ) presented one compromise amendment (amendment 38) to the proposal for Directive, on behalf of the Committee on Internal Market and Consumer Protection. One further amendment (amendment 39) was tabled, it refers to a statement of the European Parliament. These amendments had been agreed during the informal contacts referred to above.

## II. VOTE

When it voted on 5 February 2014, the plenary adopted the two amendments (amendments 38-39) to the proposal for a Directive. The Commission's proposal as thus amended and the legislative resolution constitute the Parliament's first-reading position<sup>1</sup>, it reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position.

The act would then be adopted in the wording which corresponds to the Parliament's position.

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<sup>1</sup> The text of the amendments adopted and the European Parliament's legislative resolution are set out in the Annex. The compromise amendment is presented in the form of a consolidated text, where changes to the Commission's proposal are highlighted in *bold and italics*. The symbol "■" indicates deleted text.

## **Equipment and protective systems intended for use in potentially explosive atmospheres \*\*\*I**

**European Parliament legislative resolution of 5 February 2014 on the proposal for a directive of the European Parliament and of the Council on the harmonisation of the laws of the Member States relating to equipment and protective systems intended for use in potentially explosive atmospheres (recast) (COM(2011)0772 – C7-0426/2011 – 2011/0356(COD))**

**(Ordinary legislative procedure – recast)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2011)0772),
  - having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0426/2011),
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to the opinion of the European Economic and Social Committee of 28 March 2012<sup>1</sup>,
  - having regard to the Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts<sup>2</sup>,
  - having regard to the letter of 27 March 2012 from the Committee on Legal Affairs to the Committee on the Internal Market and Consumer Protection in accordance with Rule 87(3) of its Rules of Procedure,
  - having regard to the undertaking given by the Council representative by letter of 11 October 2013 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
  - having regard to Rules 87 and 55 of its Rules of Procedure,
  - having regard to the report of the Committee on the Internal Market and Consumer Protection (A7-0255/2012),
- A. whereas, according to the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission, the proposal in question does not include any substantive amendments other than those identified as such in the proposal and whereas, as regards the codification of the unchanged provisions of the earlier acts together with those

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<sup>1</sup> OJ C 181, 21.6.2012, p. 105.

<sup>2</sup> OJ C 77, 28.3.2002, p. 1.

amendments, the proposal contains a straightforward codification of the existing texts, without any change in their substance;

1. Adopts its position at first reading hereinafter set out, taking into account the recommendations of the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission;
2. Approves its statement annexed hereto, which will be published in the L series of the *Official Journal of the European Union* together with the final legislative act;
3. Approves its statement annexed hereto, which will be published in the L series of the *Official Journal of the European Union* together with the final legislative act;
4. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
5. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

**P7\_TC1-COD(2011)0356**

**Position of the European Parliament adopted at first reading on 5 February 2014 with a view to the adoption of Directive 2014/.../EU of the European Parliament and of the Council on the harmonisation of the laws of the Member States relating to equipment and protective systems intended for use in potentially explosive atmospheres (recast)**

**(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national *parliaments*,

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

Acting in accordance with the ordinary legislative procedure<sup>2</sup>,

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<sup>1</sup> OJ C 181, 21.6.2012, p. 105.

<sup>2</sup> Position of the European Parliament of 5 February 2014.

Whereas:

- (1) Directive 94/9/EC of the European Parliament and of 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<sup>1</sup> has been substantially amended<sup>2</sup>. Since further amendments are to be made, that Directive should be recast in the interests of clarity.
- (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 market surveillance relating to the marketing of products ■<sup>3</sup> lays down rules on the accreditation of conformity assessment bodies, provides a framework for the market surveillance of products and for controls on products from third countries, and lays down the general principles of the CE marking.
- (3) Decision No 768/2008/EC of the European Parliament and of the Council of 9 July 2008 on a common framework for the marketing of products ■<sup>4</sup> lays down common principles and reference provisions intended to apply across sectoral legislation in order to provide a coherent basis for revision or recasts of that legislation. Directive 94/9/EC should ■ be adapted to that Decision.

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<sup>1</sup> OJ L 100, 19.4.1994, p. 1.

<sup>2</sup> *See Annex XI, Part A.*

<sup>3</sup> OJ L 218, 13.8.2008, p. 30.

<sup>4</sup> OJ L 218, 13.8.2008, p. 82.

- (4) *This Directive covers products which are new to the Union market when they are placed on the market; that is to say they are either new products made by a manufacturer established in the Union or products, whether new or second-hand, imported from a third country.*
- (5) *This Directive should apply to all forms of supply, including distance selling.*
- (6) It is the duty of Member States to protect, on their territory, the health and safety of persons, *especially workers*, and, where appropriate, domestic animals and property **■**, especially against the hazards resulting from the use of equipment and systems providing protection against potentially explosive atmospheres.
- (7) Directive 94/9/EC has made positive steps towards effective protection against explosion hazards for both mining and surface equipment. Those two groups of equipment are used in a large number of commercial and industrial sectors and possess considerable economic significance.

- (8) Compliance with the health and safety requirements is essential in order to ensure the safety of **■** equipment and *protective* systems. Those requirements should be subdivided into general and additional requirements which need to be met by **■** equipment and *protective* systems. In particular, the additional requirements should take account of existing or potential hazards. **■** Equipment and *protective* systems should, therefore, meet at least one of those requirements where this is necessary for their proper functioning or is to apply to their intended use. The notion of intended use is of prime importance for the explosion-proofing of **■** equipment and *protective* systems. It is essential that manufacturers supply full information. Specific, clear marking of equipment *and protective systems*, stating their use in a potentially explosive atmosphere, *should also be* necessary.
- (9) Compliance with the essential health and safety requirements *laid down in this Directive should be* imperative in order to ensure the safety of equipment *and protective systems*. For the implementation of those requirements, both the technology obtained at the time of manufacture and overriding technical and economic requirements should be taken into account.



- (10) Economic operators should be responsible for the compliance of products *with this Directive*, in relation to their respective roles in the supply chain, so as to ensure a high level of protection of health and safety *of persons, especially workers, and, where appropriate, protection of domestic animals and property*, and to guarantee fair competition on the Union market.
- (11) All economic operators intervening in the supply and distribution chain should take appropriate measures to ensure that they only make available on the market products which are in conformity with this Directive. It is necessary to provide for a clear and proportionate distribution of obligations which correspond to the role of each *economic operator* in the supply and distribution *chain*.
- (12) *In order to facilitate communication between economic operators, market surveillance authorities and consumers, Member States should encourage economic operators to include a website address in addition to the postal address.*
- (13) The manufacturer, having detailed knowledge of the design and production process, is best placed to carry out the conformity assessment procedure. Conformity assessment should therefore remain *solely* the obligation of the manufacturer .

- (14) It is necessary to ensure that products from third countries entering the Union market comply with this Directive, and in particular that appropriate *conformity* assessment procedures have been carried out by manufacturers with regard to those products. Provision should therefore be made for importers to make sure that the products they place on the market comply with the requirements of this Directive and that they do not place on the market products which do not comply with such requirements or present a risk. Provision should also be made for importers to make sure that conformity assessment procedures have been carried out and that product marking and documentation drawn up by manufacturers are available for inspection by the *competent national* authorities.
- (15) When placing a product on the market, every importer should indicate on the product his name, *registered trade name or registered trade mark* and the *postal* address at which he can be contacted. Exceptions should be provided for in cases where the size or nature of the product does not allow it. This includes cases where the importer would have to open the packaging to put his name and address on the product.
- (16) The distributor makes a product available on the market after it has been placed on the market by the manufacturer or the importer and should act with due care to ensure that its handling of the product does not adversely affect the compliance of the product.

- (17) Any economic operator that either places a product on the market under his own name or trade mark or modifies a product in such a way that compliance with this Directive may be affected should be considered to be the manufacturer and should assume the obligations of the manufacturer.
- (18) Distributors and importers, *being* close to the market place, ■ should be involved in market surveillance tasks carried out by the competent national authorities, and should be prepared to participate actively, providing those *authorities* with all necessary information relating to the product concerned.

- (19) Ensuring traceability of a product throughout the whole supply chain helps to make market surveillance simpler and more efficient. An efficient traceability system facilitates the market surveillance authorities' task of tracing economic operators who made non-compliant products available on the market. *When keeping the information required under this Directive for the identification of other economic operators, economic operators should not be required to update such information in respect of other economic operators who have either supplied them with a product or to whom they have supplied a product.*
- (20) This Directive should be limited to the expression of the essential health and safety requirements. In order to facilitate conformity assessment with those requirements it is necessary to provide for a presumption of conformity for products which are in conformity with harmonised standards that are adopted in accordance with Regulation (EU) No **1025/2012** of the European Parliament and of the Council of **25 October 2012** on European Standardisation **■**<sup>1</sup> for the purpose of expressing detailed technical specifications of those requirements.

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<sup>1</sup> OJ L 316, 14.11.2012, p. 12.

- (21) Regulation (EU) No **1025/2012** provides for a procedure for objections to harmonised standards where those standards do not entirely satisfy the requirements of this Directive.
- (22) In order to enable economic operators to demonstrate and the competent authorities to ensure that products made available on the market conform to the essential health and safety requirements it is necessary to provide for conformity assessment procedures. Decision No **768/2008/EC** establishes modules for conformity assessment procedures, which include procedures from the least to the most stringent, in proportion to the level of risk involved and the level of safety required. In order to ensure inter-sectoral coherence and to avoid ad-hoc variants, conformity assessment procedures should be chosen from among those modules.
- (23) **Manufacturers** should draw up an EU declaration of conformity to provide **■** information ***required under this Directive*** on the conformity of a product with the requirements of this Directive ***and of other relevant Union harmonisation legislation***.

- (24) *To ensure effective access to information for market surveillance purposes, the information required to identify all applicable Union acts should be available in a single EU declaration of conformity. In order to reduce the administrative burden on economic operators, that single EU declaration of conformity may be a dossier made up of relevant individual declarations of conformity.*
- (25) The CE marking, indicating the conformity of a product, is the visible consequence of a whole process comprising conformity assessment in a broad sense. General principles governing the CE marking are set out in Regulation (EC) No 765/2008. Rules governing the affixing of the CE marking should be laid down in this Directive.
- (26) **Certain** conformity assessment procedures set out in this Directive require the intervention of conformity assessment bodies, which are notified by the Member States to the Commission.

- (27) Experience has shown that the criteria set out in Directive 94/9/EC that conformity assessment bodies have to fulfil to be notified to the Commission are not sufficient to ensure a uniformly high level of performance of notified bodies throughout the Union. It is, however, essential that all notified bodies perform their functions to the same level and under conditions of fair competition. That requires the setting of obligatory requirements for conformity assessment bodies wishing to be notified in order to provide conformity assessment services.
- (28) If a conformity assessment body demonstrates conformity with the criteria laid down in harmonised standards, it should be presumed to comply with the corresponding requirements set out in this Directive
- (29) In order to ensure a consistent level of quality in the performance of conformity assessment, it is also necessary to set requirements for notifying authorities and other bodies involved in the assessment, notification and monitoring of notified bodies.

- (30) The system set out in this Directive should be complemented by the accreditation system provided for in Regulation (EC) No 765/2008. Since accreditation is an essential means of verifying the competence of conformity assessment bodies, it should also be used for the purposes of notification.
- (31) Transparent accreditation as provided for in Regulation (EC) No 765/2008, ensuring the necessary level of confidence in ■ certificates *of conformity*, should be considered by the national public authorities throughout the Union as the preferred means of demonstrating the technical competence of conformity assessment bodies. However, national authorities may consider that they possess the appropriate means of carrying out *that* evaluation themselves. In such cases, in order to ensure the appropriate level of credibility of evaluations carried out by other national authorities, they should provide the Commission and the other Member States with the necessary documentary evidence demonstrating the compliance of the conformity assessment bodies evaluated with the relevant regulatory requirements.



- (32) Conformity assessment bodies frequently subcontract parts of their activities linked to the assessment of conformity or have recourse to a subsidiary. In order to safeguard the level of protection required for the products to be placed on the Union market, it is essential that conformity assessment subcontractors and subsidiaries fulfil the same requirements as notified bodies in relation to the performance of conformity assessment tasks. Therefore, it is important that the assessment of the competence and the performance of bodies to be notified and the monitoring of bodies already notified **■** cover also activities carried out by subcontractors and subsidiaries.
- (33) It is necessary to increase the efficiency and transparency of the notification procedure and, in particular, to adapt it to new technologies so as to enable online notification.
- (34) Since notified bodies may offer their services throughout the Union, it is appropriate to give the other Member States and the Commission the opportunity to raise objections concerning a notified body. It is therefore important to provide for a period during which any doubts or concerns as to the competence of conformity assessment bodies can be clarified before they start operating as notified bodies.

- (35) In the interests of competitiveness, it is crucial that notified bodies apply the conformity assessment procedures without creating unnecessary burdens for economic operators. For the same reason, and to ensure equal treatment of economic operators, consistency in the technical application of the conformity assessment procedures *needs to* be ensured. That can best be achieved through appropriate coordination and cooperation between notified bodies.
- (36) *Member States should take all appropriate measures to ensure that products covered by this Directive may be placed on the market only if, when properly stored and used for their intended purpose, or under conditions of use which can be reasonably foreseen, they do not endanger the health and safety of persons. Products covered by this Directive should be considered as non-compliant with the essential health and safety requirements laid down in this Directive only under conditions of use which can be reasonably foreseen, that is when such use could result from lawful and readily predictable human behaviour.*
- (37) In order to ensure legal certainty, it is necessary to clarify that rules on Union market surveillance and control of products entering the Union market provided for in Regulation (EC) No 765/2008 apply to products covered by this Directive. This Directive should not prevent Member States from choosing the competent authorities to carry out those tasks.

- (38) Directive 94/9/EC already provides for a safeguard procedure *which is necessary to allow the possibility for contesting the conformity of a product*. In order to increase transparency and to reduce processing time, it is necessary to improve the existing safeguard procedure, with a view to making it more efficient and drawing on the expertise available in Member States.
- (39) The existing system should be supplemented by a procedure under which interested parties are informed of measures intended to be taken with regard to products presenting a risk to the health *or* safety of persons, *especially workers, or to domestic animals or property*. It should also allow market surveillance authorities, in cooperation with the relevant economic operators, to act at an earlier stage in respect of such products.
- (40) Where the Member States and the Commission agree as to the justification of a measure taken by a Member State, no further involvement of the Commission should be required, except where non-compliance can be attributed to shortcomings of a harmonised standard.

- (41) *In order to ensure uniform conditions for the implementation of this Directive, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers<sup>1</sup>.*
- (42) *The advisory procedure should be used for the adoption of implementing acts requesting the notifying Member State to take the necessary corrective measures in respect of notified bodies that do not meet or no longer meet the requirements for their notification.*
- (43) *The examination procedure should be used for the adoption of implementing acts with respect to compliant products which present a risk to the health or safety of persons or to other aspects of public interest protection.*

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<sup>1</sup> *OJ L 55, 28.2.2011, p. 13.*

- (44) *The Commission should adopt immediately applicable implementing acts where, in duly justified cases relating to compliant products which present a risk to the health or safety of persons or to domestic animals or property, imperative grounds of urgency so require.*
- (45) *In line with established practice, the committee set up by this Directive can play a useful role in examining matters concerning the application of this Directive raised either by its chair or by a representative of a Member State in accordance with its rules of procedure.*
- (46) *When matters relating to this Directive, other than its implementation or infringements, are being examined, i.e. in a Commission expert group, the European Parliament should in line with existing practice receive full information and documentation and, where appropriate, an invitation to attend such meetings.*
- (47) *The Commission should, by means of implementing acts and, given their special nature, acting without the application of Regulation (EU) No 182/2011, determine whether measures taken by Member States in respect of non-compliant products are justified or not.*
- (48) **█** Member States should lay down rules on penalties applicable to infringements of the provisions of national law adopted pursuant to this Directive and ensure that *those rules are enforced. The penalties provided for* should be effective, proportionate and dissuasive.

- (49) It is necessary to provide for *reasonable* transitional arrangements that allow *the* making available on the market and putting into service, *without the need to comply with further product requirements, of* products that have already been placed on the market in accordance with Directive 94/9/EC *before the date for application of national measures transposing this Directive. Distributors should therefore be able to supply products that have been placed on the market, namely stock that is already in the distribution chain, before the date of application of national measures transposing this Directive.*
- (50) Since the objective of this Directive, namely to ensure that products on the market fulfil the requirements providing for a high level of protection of health and safety *of persons, especially workers, and, where appropriate, protection of domestic animals and property,* while guaranteeing the functioning of the internal market, cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

- (51) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive *amendment* as compared *to the earlier* Directive █. The obligation to transpose the provisions which are unchanged arises under the earlier Directive.
- (52) This Directive should be without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law and the dates of application of the Directive █ set out in Annex XI, Part B,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER 1  
GENERAL PROVISIONS

Article 1

Scope

1. This Directive shall apply to the following, *hereinafter referred to as "products"*:
  - (a) equipment and protective systems intended for use in potentially explosive atmospheres;
  - (b) safety devices, controlling devices and regulating devices intended for use outside potentially explosive atmospheres but required for or contributing to the safe functioning of equipment and protective systems with respect to the risks of explosion;
  - (c) *components intended to be incorporated into equipment and protective systems referred to in point (a).*



2. This Directive shall not apply to **II** :

- (a) medical devices intended for use in a medical environment;
- (b) equipment and protective systems where the explosion hazard results exclusively from the presence of explosive substances or unstable chemical substances;
- (c) equipment intended for use in domestic and non-commercial environments where potentially explosive atmospheres may only rarely be created, solely as a result of the accidental leakage of fuel gas;
- (d) personal protective equipment covered by Council Directive 89/686/EEC of 21 December 1989 on the approximation of the laws of the Member States relating to *personal protective equipment*<sup>1</sup>;
- (e) seagoing vessels and mobile offshore units together with equipment on board such vessels or units;

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

- (f) means of transport, i.e. vehicles and their trailers intended solely for transporting passengers by air or by road, rail or water networks, as well as means of transport in so far as such means are designed for transporting goods by air, by public road or rail networks or by water. Vehicles intended for use in a potentially explosive atmosphere shall not be excluded from the scope of this Directive;
- (g) the equipment covered by point (b) of Article 346(1) of the Treaty on the Functioning of the European Union.

## Article 2

### Definitions

For the purposes of this Directive, the following definitions *shall* apply:

- (1) 'equipment' means machines, apparatus, fixed or mobile devices, control components and instrumentation thereof and detection or prevention systems which, separately or jointly, are intended for the generation, transfer, storage, measurement, control and conversion of energy and/or the processing of material and which are capable of causing an explosion through their own potential sources of ignition;

- (2) 'protective systems' means devices other than components of equipment which are intended to halt incipient explosions immediately and/or to limit the effective range of an explosion and which are separately made available on the market for use as autonomous systems;
- (3) 'components' means any item essential to the safe functioning of equipment and protective systems but with no autonomous function;
- (4) 'explosive atmosphere' means a mixture with air, under atmospheric conditions, of flammable substances in the form of gases, vapours, mists or dusts in which, after ignition has occurred, combustion spreads to the entire unburned mixture;
- (5) 'potentially explosive atmosphere' means an atmosphere which could become explosive due to local and operational conditions;
- (6) 'equipment-group I' means equipment intended for use in underground parts of mines, and in those parts of surface installations of such mines, liable to be endangered by firedamp and/or combustible dust, comprising equipment categories M 1 and M 2 as set out in Annex I;

- (7) 'equipment-group II' means equipment intended for use in other places liable to be endangered by explosive atmospheres, comprising equipment categories 1, 2 and 3 as set out in Annex I;
- (8) '*equipment category*' means *the classification of equipment, within each equipment group, specified in Annex I, determining the requisite level of protection to be ensured*;
- (9) 'intended use' means the use of *a product prescribed by the manufacturer by assigning the equipment to a particular* equipment group and category *or by providing* all the information **■** which is required for the safe functioning of *a protective system, device or component*;
- (10) 'making available on the market' means any supply of a product for distribution, consumption or use on the Union market in the course of a commercial activity, whether in return for payment or free of charge;
- (11) 'placing on the market' means the first making available of a product on the Union market;

- (12) 'manufacturer' means any natural or legal person who manufactures a product or has a product designed or manufactured, and markets that product under his name or trade mark *or uses it for his own purposes*;
- (13) 'authorised representative' means any natural or legal person established within the Union who has received a written mandate from a manufacturer to act on his behalf in relation to specified tasks;
- (14) 'importer' means any natural or legal person established within the Union who places a product from a third country on the Union market;
- (15) 'distributor' means any natural or legal person in the supply chain, other than the manufacturer or the importer, who makes a product available on the market;
- (16) 'economic operators' means the manufacturer, the authorised representative, the importer and the distributor;
- (17) 'technical specification' means a document that prescribes technical requirements to be fulfilled by a product ■ ;
- (18) 'harmonised standard' means harmonised standard as defined in *point (c) of point (1) of Article 2 ■ of Regulation (EU) No 1025/2012*;

- (19) 'accreditation' means accreditation as defined in *point 10 of* Article 2 of Regulation (EC) No 765/2008;
- (20) 'national accreditation body' means national accreditation body as defined in *point 11 of* Article 2 of Regulation (EC) No 765/2008;
- (21) 'conformity assessment' means the process demonstrating whether the essential health and safety requirements *of this Directive* relating to a product have been fulfilled;
- (22) 'conformity assessment body' means a body that performs conformity assessment activities including calibration, testing, certification and inspection;
- (23) 'recall' means any measure aimed at achieving the return of a product that has already been made available to the end-user;
- (24) 'withdrawal' means any measure aimed at preventing a product in the supply chain from being made available on the market;
- (25) 'Union harmonisation legislation' means any Union legislation harmonising the conditions for the marketing of products;
- (26) 'CE marking' means a marking by which the manufacturer indicates that the product is in conformity with the applicable requirements set out in Union harmonisation legislation providing for its affixing.

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## Article 3

### Making available on the market and putting into service

1. Member States shall take all appropriate measures to ensure that products may be made available on the market and put into service only if, when properly installed and maintained and *used in accordance with* their intended *use*, they comply with this Directive.
2. This Directive shall not affect Member States' entitlement to lay down such requirements as they may deem necessary to ensure that persons and, in particular, workers are protected when using relevant products provided that this does not mean that such products are modified in a way not specified in this Directive.
3. At trade fairs, exhibitions and demonstrations, Member States shall not prevent the showing of products which do not comply with this Directive, provided that a visible sign clearly indicates that such products do not comply *with this Directive* and that they are not for sale until they have been brought into conformity by the manufacturer **■**. During demonstrations, adequate safety measures shall be taken to ensure the protection of persons.

## Article 4

### Essential health and safety requirements

Products shall meet the essential health and safety requirements set out in Annex II which apply to them, account being taken of their intended use.

## Article 5

### Free movement

Member States shall not prohibit, restrict or impede the making available on the market and putting into service in their territory of products which comply with this Directive.

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## CHAPTER 2

### OBLIGATIONS OF ECONOMIC OPERATORS


## Article 6

### Obligations of manufacturers

1. When placing their products on the market *or using them for their own purposes*, manufacturers shall ensure that they have been designed and manufactured in accordance with the essential health and safety requirements set out in Annex II.



2. Manufacturers shall draw up the technical documentation referred to in *Annexes III to IX* and carry out the relevant conformity assessment procedure referred to in Article 13 or have it carried out.

Where compliance of a product, *other than a component*, with the applicable requirements has been demonstrated by that procedure, manufacturers shall draw up an EU declaration of conformity and affix the CE marking  .

*Where compliance of a component with the applicable requirements has been demonstrated by the relevant conformity assessment procedure, manufacturers shall draw up a written attestation of conformity as referred to in Article 13(3).*

*Manufacturers shall ensure that each product is accompanied by a copy of the EU declaration of conformity or of the attestation of conformity, as appropriate. However, where a large number of products is delivered to a single user, the batch or consignment concerned may be accompanied by a single copy.*

3. Manufacturers shall keep the technical documentation and the EU declaration of conformity *or, where applicable, the attestation of conformity* for 10 years after the product has been placed on the market.
4. Manufacturers shall ensure that procedures are in place for series production to remain in conformity *with this Directive*. Changes in a product design or characteristics and changes in the harmonised standards or in *other* technical specifications by reference to which conformity of a product is declared shall be adequately taken into account.

*When deemed appropriate with regard to the risks presented by a product, manufacturers shall, to protect the health and safety of end-users, carry out sample testing of products made available on the market, investigate, and, if necessary, keep a register of complaints, of non-conforming products and product recalls, and shall keep distributors informed of any such monitoring.*

5. Manufacturers shall ensure that products *which they have placed on the market* bear a type, batch or serial number or other element allowing their identification, or, where the size or nature of the product does not allow it, that the required information is provided on the packaging or in a document accompanying the product.

6. *Manufacturers shall ensure that products, other than components, which they have placed on the market bear the specific marking of explosion protection and, where applicable, the other markings and information referred to in point 1.0.5 of Annex II.*
7. Manufacturers shall indicate, *on the product*, their name, *registered trade name or registered trade mark* and the *postal* address at which they can be contacted **█** or, where that is not possible, on its packaging or in a document accompanying the product. The address *shall* indicate a single point at which the manufacturer can be contacted. *The contact details shall be in a language easily understood by end-users and market surveillance authorities.*
8. Manufacturers shall ensure that the product is accompanied by instructions and safety information in a language which can be easily understood by end-users, as determined by the Member State concerned. *Such instructions and safety information, as well as any labelling, shall be clear, understandable and intelligible.*

9. Manufacturers who consider or have reason to believe that a product which they have placed on the market is not in conformity with this Directive shall immediately take the corrective measures *necessary* to bring that product into conformity, to withdraw it or recall it, if appropriate. Furthermore, where the product presents a risk, manufacturers shall immediately inform the competent national authorities of the Member States in which they made the product available *on the market* to that effect, giving details, in particular, of the non-compliance and of any corrective measures taken.
  
10. Manufacturers shall, further to a reasoned request from a competent national authority, provide it with all the information and documentation *in paper or electronic form* necessary to demonstrate the conformity of the product *with this Directive*, in a language which can be easily understood by that authority. They shall cooperate with that authority, at its request, on any action taken to eliminate the risks posed by products which they have placed on the market.

## Article 7

### Authorised representatives

1. A manufacturer may, by a written mandate, appoint an authorised representative.

The obligations laid down in Article 6(1) and the ***obligation to draw up*** technical documentation referred to in Article 6(2) shall not form part of the authorised representative's mandate.

2. An authorised representative shall perform the tasks specified in the mandate received from the manufacturer. The mandate shall allow the authorised representative to do at least the following:
  - (a) keep the EU declaration of conformity ***or, where applicable, the attestation of conformity*** and the technical documentation at the disposal of national market surveillance authorities for **10** years after the product has been placed on the market;
  - (b) further to a reasoned request from a competent national authority, provide that authority with all the information and documentation necessary to demonstrate the conformity of a product;

- (c) cooperate with the competent national authorities, at their request, on any action taken to eliminate the risks posed by products covered by the authorised representative's mandate.

## Article 8

### Obligations of importers

1. Importers shall place only compliant products on the market.
2. Before placing a product on the market importers shall ensure that the appropriate conformity assessment procedure referred to in Article 13 has been carried out by the manufacturer. They shall ensure that the manufacturer has drawn up the technical documentation, that the product bears the CE marking, *where applicable*, is accompanied by the *EU declaration of conformity or the attestation of conformity and the* required documents, and that the manufacturer has complied with the requirements set out in Article 6(5), (6) and (7).

Where an importer considers or has reason to believe that a product is not in conformity with the essential health and safety requirements set out in Annex II, he shall not place the product on the market until it has been brought into conformity. Furthermore, where the product presents a risk, the importer shall inform the manufacturer and the market surveillance authorities to that effect.

3. Importers shall indicate *on the product* their name, *registered trade name or registered trade mark* and the *postal* address at which they can be contacted ■ or, where that is not possible, on its packaging or in a document accompanying the product. *The contact details shall be in a language easily understood by end-users and market surveillance authorities.*
4. Importers shall ensure that the product is accompanied by instructions and safety information in a language which can be easily understood by end-users, as determined by the Member State concerned.
5. Importers shall ensure that, while a product is under their responsibility, *its* storage or transport conditions do not jeopardise its compliance with the essential health and safety requirements set out in Annex II.
6. *When deemed appropriate with regard to the risks presented by a product, importers shall, to protect the health and safety of end-users, carry out sample testing of products made available on the market, investigate, and, if necessary, keep a register of complaints, of non-conforming products and product recalls, and shall keep distributors informed of any such monitoring.*

7. Importers who consider or have reason to believe that a product which they have placed on the market is not in conformity with this Directive shall immediately take the corrective measures necessary to bring that product into conformity, to withdraw it or recall it, if appropriate. Furthermore, where the product presents a risk, importers shall immediately inform the competent national authorities of the Member States in which they made the product available *on the market* to that effect, giving details, in particular, of the non-compliance and of any corrective measures taken.
8. Importers shall, for ■ 10 years after the product has been placed on the market, keep a copy of the EU declaration of conformity *or, where applicable, of the attestation of conformity* at the disposal of the market surveillance authorities and ensure that the technical documentation can be made available to those authorities, upon request.
9. Importers shall, further to a reasoned request from a competent national authority, provide it with all the information and documentation *in paper or electronic form* necessary to demonstrate the conformity of a product in a language which can be easily understood by that authority. They shall cooperate with that authority, at its request, on any action taken to eliminate the risks posed by products which they have placed on the market.



## Article 9

### Obligations of distributors

1. When making a product available on the market distributors shall act with due care in relation to the requirements of this Directive.
2. Before making a product available on the market **■** distributors shall verify that the product bears the CE marking **■**, *where applicable*, that it is accompanied by the ***EU declaration of conformity or the attestation of conformity and the*** required documents and by instructions ***and safety information***, in a language which can be easily understood by end-users in the Member State in which the product is to be made available on the market, and that the manufacturer and the importer have complied with the requirements set out in Article 6(5), (6) and (7) and Article 8(3) ***respectively***.

Where a distributor considers or has reason to believe that a product is not in conformity with the essential health and safety requirements set out in Annex II, he shall not make the product available on the market until it has been brought into conformity. Furthermore, where the product presents a risk, the distributor shall inform the manufacturer or the importer to that effect as well as the market surveillance authorities.

3. Distributors shall ensure that, while a product is under their responsibility, *its* storage or transport conditions do not jeopardise its compliance with the essential health and safety requirements set out in Annex II.
4. Distributors who consider or have reason to believe that a product which they have made available on the market is not in conformity with this Directive shall make sure that the corrective measures necessary to bring that product into conformity, to withdraw it or recall it, if appropriate, are taken. Furthermore, where the product presents a risk, distributors shall immediately inform the competent national authorities of the Member States in which they made the product available *on the market* to that effect, giving details, in particular, of the non-compliance and of any corrective measures taken.
5. Distributors shall, further to a reasoned request from a competent national authority, provide it with all the information and documentation *in paper or electronic form* necessary to demonstrate the conformity of a product. They shall cooperate with that authority, at its request, on any action taken to eliminate the risks posed by products which they have made available on the market.

## Article 10

### Cases in which obligations of manufacturers apply to importers and distributors

An importer or distributor shall be considered a manufacturer for the purposes of this Directive and he shall be subject to the obligations of the manufacturer under Article 6, where he places a product on the market under his name or trade mark or modifies a product already placed on the market in such a way that compliance with this Directive may be affected.

## Article 11

### Identification of economic operators

Economic operators shall, on request, identify the following to the market surveillance authorities **■** :

- (a) any economic operator who has supplied them with a product;
- (b) any economic operator to whom they have supplied a product.

Economic operators shall be able to present the information referred to in the first *paragraph* for 10 years after they have been supplied with the product and for 10 years after they have supplied the product.

CHAPTER 3  
CONFORMITY OF THE PRODUCT

Article 12

Presumption of conformity of products

1. Products which are in conformity with harmonised standards or parts thereof the references of which have been published in the *Official Journal of the European Union* shall be presumed to be in conformity with the essential health and safety requirements *set out in Annex II* covered by those standards or parts thereof **■**.

**■**

2. In the absence of harmonised standards, Member States shall take any steps which they deem necessary to bring to the attention of the parties concerned the existing national **■** standards and *technical* specifications regarded as important or relevant to the proper implementation of the essential health and safety requirements set out in Annex II.

Article 13

Conformity assessment procedures

1. The procedures to be followed for assessing the conformity of *equipment and, where necessary, the devices referred to in point (b) of Article 1(1)* shall be as follows:

- (a) for equipment-group I and II, equipment-category M 1 and 1, the EU-type examination set out in Annex III, in conjunction with either of the following:
- ■ Conformity to type based on quality assurance of the production process set out in Annex IV;
  - ■ Conformity to type based on product verification set out in Annex V;
- (b) for equipment-group I and II, equipment-category M 2 and 2:
- (i) in the case of internal combustion engines and electrical equipment in these groups and categories, the EU-type examination set out in Annex III, in conjunction with either of the following ■ :
- ■ Conformity to type based on internal production control plus supervised product testing set out in Annex VI;
  - ■ Conformity to type based on product quality assurance set out in Annex VII;

- (ii) in the case of other equipment in these groups and categories, internal production control set out in Annex VIII and the communication of the *technical documentation* provided for in Annex VIII, point 2, to a notified body, which shall acknowledge receipt of it as soon as possible and shall retain it;
  - (c) for equipment-group II, equipment-category 3, internal production control set out in Annex VIII;
  - (d) for equipment-groups I and II, in addition to the procedures referred to in points (a), (b) and (c) of this paragraph, conformity based on unit verification set out in Annex IX may also be followed.
2. **The** procedure referred to in points (a) or (d) of paragraph 1 shall be used for conformity assessment of **■** protective systems.

3. The procedures referred to in paragraph 1 shall be applied in respect of components **■** with the exception of the affixing of the CE marking **and the drawing up of the EU declaration of conformity**. A written attestation of conformity shall be issued by the manufacturer **■**, declaring the conformity of the components with **the applicable provisions of this Directive and stating their characteristics and how they must be incorporated into equipment or protective systems** to assist compliance with the essential health and safety requirements **set out in Annex II** applicable to finished **equipment or protective systems**.
4. **■** With regard to the safety aspects referred to in point 1.2.7 of Annex II, **in addition to the conformity assessment procedures referred to in paragraphs 1 and 2, the procedure referred to in Annex VIII may also** be followed.
5. By derogation from paragraphs 1, **2 and 4**, the competent authorities may, on a duly justified request, authorise the placing on the market and putting into service on the territory of the Member State concerned of the products **other than components** in respect of which the procedures referred to in paragraphs 1, **2 and 4** have not been applied and the use of which is in the interests of protection.
6. Documents and correspondence relating to the conformity assessment procedures referred to in paragraphs 1 to 4 shall be drawn up in a language **■**, determined by the Member State concerned.

## Article 14

### EU declaration of conformity

1. The EU declaration of conformity shall state that the fulfilment of the essential health and safety requirements set out in Annex II has been demonstrated.
2. The EU declaration of conformity shall have the model structure set out in Annex X, shall contain the elements specified in the relevant conformity assessment procedures set out in Annexes III to IX ■ and shall be continuously updated. It shall be translated into the language or languages required by the Member State in which ■ the product is placed or made available *on the market*.
3. Where a product is subject to more than one Union act requiring an EU declaration of conformity, a single EU declaration of conformity shall be drawn up in respect of all such Union acts. That declaration shall contain the identification of the *Union* acts concerned, including *their* publication references.
4. By drawing up the EU declaration of conformity, the manufacturer shall assume ■ responsibility for the compliance of the product *with the requirements laid down in this Directive*.



## Article 15

### General principles of the CE marking

The CE marking shall be subject to the general principles set out in Article 30 of Regulation (EC) No 765/2008.

## Article 16

### Rules and conditions for affixing the CE marking and other markings

1. The CE marking shall be affixed visibly, legibly and indelibly to the product or to its data plate. Where that is not possible or not warranted on account of the nature of the product, it shall be affixed to the packaging and to the accompanying documents.
2. The CE marking shall be affixed before the product is placed on the market.
3. The CE marking shall be followed by the identification number of the notified body, where that body is involved in the production control phase.

The identification number of the notified body shall be affixed by the body itself or, under its instructions, by the manufacturer or his authorised representative.

4. *The CE marking and, where applicable, the identification number of the notified body shall be followed by the specific marking of explosion protection  $\text{Ex}$ , the symbols of the equipment group and category and, where applicable, the other markings and information referred to in point 1.0.5 of Annex II.*

5. The CE marking *and the markings, symbols and information referred to in paragraph 4*, and, where applicable, the identification number *of the notified body*, may be followed by **■** any other mark indicating a special risk or use.

**■**

Products that are designed for a particular explosive atmosphere shall be marked accordingly.

6. *Member States shall build upon existing mechanisms to ensure correct application of the regime governing the CE marking and shall take appropriate action in the event of improper use of that marking.*

CHAPTER 4  
NOTIFICATION OF CONFORMITY ASSESSMENT BODIES

Article 17  
Notification

Member States shall notify the Commission and the other Member States of bodies authorised to carry out third-party conformity assessment tasks under this Directive.

Article 18  
Notifying authorities

1. Member States shall designate a notifying authority that shall be responsible for setting up and carrying out the necessary procedures for the assessment and notification of conformity assessment bodies and the monitoring of notified bodies, including compliance with the provisions of Article 23.
2. Member States may decide that the assessment and monitoring referred to in paragraph 1 *is to* be carried out by a national accreditation body within the meaning of and in accordance with Regulation (EC) No 765/2008.

3. Where the notifying authority delegates or otherwise entrusts the assessment, notification or monitoring referred to in paragraph 1 to a body which is not a governmental entity, that body shall be a legal entity and shall comply *mutatis mutandis* with the requirements laid down in Article 19 **■** . In addition it shall have arrangements to cover liabilities arising out of its activities.
4. The notifying authority shall take full responsibility for the tasks performed by the body referred to in paragraph 3.

#### Article 19

##### Requirements relating to notifying authorities

1. A notifying authority shall be established in such a way that no conflict of interest with conformity assessment bodies occurs.
2. A notifying authority shall be organised and operated so as to safeguard the objectivity and impartiality of its activities.

3. A notifying authority shall be organised in such a way that each decision relating to notification of a conformity assessment body is taken by competent persons different from those who carried out the assessment.
4. A notifying authority shall not offer or provide any activities that conformity assessment bodies perform or consultancy services on a commercial or competitive basis.
5. A notifying authority shall safeguard the confidentiality of the information it obtains.
6. A notifying authority shall have a sufficient number of competent personnel at its disposal for the proper performance of its tasks.

## Article 20

### Information obligation on notifying authorities

Member States shall inform the Commission of their procedures for the assessment and notification of conformity assessment bodies and the monitoring of notified bodies, and of any changes thereto.

The Commission shall make that information publicly available.

## Article 21

### Requirements relating to notified bodies

1. For the purposes of notification, a conformity assessment body shall meet the requirements laid down in paragraphs 2 to 11.
2. A conformity assessment body shall be established under the national law *of a Member State* and have legal personality.
3. A conformity assessment body shall be a third-party body independent of the organisation or the product it assesses.

A body belonging to a business association or professional federation representing undertakings involved in the design, manufacturing, provision, assembly, use or maintenance of products which it assesses, may, on condition that its independence and the absence of any conflict of interest are demonstrated, be considered such a body.

4. A conformity assessment body, its top level management and the personnel responsible for carrying out the conformity assessment tasks shall not be the designer, manufacturer, supplier, installer, purchaser, owner, user or maintainer of the products which they assess, nor the **■** representative of any of those parties. This shall not preclude the use of assessed products that are necessary for the operations of the conformity assessment body or the use of such products for personal purposes.

A conformity assessment body, its top level management and the personnel responsible for carrying out the conformity assessment tasks shall not be directly involved in the design, manufacture or construction, the marketing, installation, use or maintenance of those products, or represent the parties engaged in those activities. They shall not engage in any activity that may conflict with their independence of judgement or integrity in relation to conformity assessment activities for which they are notified. This shall in particular apply to consultancy services.

Conformity assessment bodies shall ensure that the activities of their subsidiaries or subcontractors do not affect the confidentiality, objectivity or impartiality of their conformity assessment activities.

5. Conformity assessment bodies and their personnel shall carry out the conformity assessment activities with the highest degree of professional integrity and the requisite technical competence in the specific field and shall be free from all pressures and inducements, particularly financial, which might influence their judgement or the results of their conformity assessment activities, especially as regards persons or groups of persons with an interest in the results of those activities.

6. A conformity assessment body shall be capable of carrying out all the conformity assessment tasks assigned to it by Annexes III to *VII and Annex IX* and in relation to which it has been notified, whether those tasks are carried out by the conformity assessment body itself or on its behalf and under its responsibility.

At all times and for each conformity assessment procedure and each kind or category of products in relation to which it has been notified, a conformity assessment body shall have at its disposal the necessary:

- (a) personnel with technical knowledge and sufficient and appropriate experience to perform the conformity assessment tasks;
- (b) descriptions of procedures in accordance with which conformity assessment is carried out, ensuring the transparency and the ability of reproduction of those procedures. It shall have appropriate policies and procedures in place that distinguish between tasks it carries out as a notified body and other activities;
- (c) procedures for the performance of activities which take due account of the size of an undertaking, the sector in which it operates, its structure, the degree of complexity of the product technology in question and the mass or serial nature of the production process.



*A conformity assessment body* shall have the means necessary to perform the technical and administrative tasks connected with the conformity assessment activities in an appropriate manner and shall have access to all necessary equipment or facilities.

7. The personnel responsible for carrying out conformity assessment *tasks* shall have the following:
- (a) sound technical and vocational training covering all the conformity assessment activities in relation to which the conformity assessment body has been notified;
  - (b) satisfactory knowledge of the requirements of the assessments they carry out and adequate authority to carry out those assessments;
  - (c) appropriate knowledge and understanding of the essential health and safety requirements set out in Annex II, of the applicable harmonised standards, **■** of the relevant provisions of Union harmonisation legislation and of national legislation;
  - (d) the ability to draw up certificates, records and reports demonstrating that assessments have been carried out.

8. The impartiality of the conformity assessment bodies, their top level management, and of *the personnel responsible for carrying out the conformity assessment tasks* shall be guaranteed.

The remuneration of the top level management and **█** personnel *responsible for carrying out the conformity assessment tasks* of a conformity assessment body shall not depend on the number of assessments carried out or on the results of those assessments.

9. Conformity assessment bodies shall take out liability insurance unless liability is assumed by the State in accordance with national law, or the Member State itself is directly responsible for the conformity assessment.
10. The personnel of a conformity assessment body shall observe professional secrecy with regard to all information obtained in carrying out their tasks under Annexes III to **VII and Annex IX** or any provision of national law giving effect to it, except in relation to the competent authorities of the Member State in which its activities are carried out. Proprietary rights shall be protected.

11. Conformity assessment bodies shall participate in, or ensure that their **■** personnel *responsible for carrying out the conformity assessment tasks* are informed of, the relevant standardisation activities and the activities of the notified body coordination group established under the relevant Union harmonisation legislation and *shall* apply as general guidance the administrative decisions and documents produced as a result of the work of that group.

## Article 22

### Presumption of conformity *of notified bodies*

Where a conformity assessment body demonstrates its conformity with the criteria laid down in the relevant harmonised standards or parts thereof the references of which have been published in the *Official Journal of the European Union*, it shall be presumed to comply with the requirements set out in Article 21 in so far as the applicable harmonised standards cover those requirements.

## Article 23

### Subsidiaries of and subcontracting by notified bodies

1. Where a notified body subcontracts specific tasks connected with conformity assessment or has recourse to a subsidiary, it shall ensure that the subcontractor or the subsidiary meets the requirements set out in Article 21 and shall inform the notifying authority accordingly.
2. Notified bodies shall take full responsibility for the tasks performed by subcontractors or subsidiaries wherever these are established.
3. Activities may be subcontracted or carried out by a subsidiary only with the agreement of the client.
4. Notified bodies shall keep at the disposal of the notifying authority the relevant documents concerning the assessment of the qualifications of the subcontractor or the subsidiary and the work carried out by them under Annexes III to *VII and Annex IX*.

## Article 24

### Application for notification

1. A conformity assessment body shall submit an application for notification to the notifying authority of the Member State in which it is established.
2. **The application for notification** shall be accompanied by a description of the conformity assessment activities, the conformity assessment module or modules and the product or products for which that body claims to be competent, as well as by an accreditation certificate, where one exists, issued by a national accreditation body attesting that the conformity assessment body fulfils the requirements laid down in Article 21.
3. Where the conformity assessment body concerned cannot provide an accreditation certificate, it shall provide the notifying authority with all the documentary evidence necessary for the verification, recognition and regular monitoring of its compliance with the requirements laid down in Article 21.

## Article 25

### Notification procedure

1. Notifying authorities may notify only conformity assessment bodies which have satisfied the requirements laid down in Article 21.
2. They shall notify the Commission and the other Member States using the electronic notification tool developed and managed by the Commission.
3. The notification shall include full details of the conformity assessment activities, the conformity assessment module or modules and *the* product or products concerned and the relevant attestation of competence.
4. Where a notification is not based on an accreditation certificate as referred to in Article 24(2), the notifying authority shall provide the Commission and the other Member States with documentary evidence which attests to the conformity assessment body's competence and the arrangements in place to ensure that that body will be monitored regularly and will continue to satisfy the requirements laid down in Article 21.

5. The body concerned may perform the activities of a notified body only where no objections are raised by the Commission or the other Member States within two weeks of a notification where an accreditation certificate is used or within two months of a notification where accreditation is not used.

Only such a body shall be considered a notified body for the purposes of this Directive.

6. The notifying authority shall notify the Commission and the other Member States of any subsequent relevant changes to the notification.

## Article 26

### Identification numbers and lists of notified bodies

1. The Commission shall assign an identification number to a notified body.

It shall assign a single such number even where the body is notified under several Union acts.

2. The Commission shall make publicly available the list of the bodies notified under this Directive, including the identification numbers that have been *assigned* to them and the activities for which they have been notified.

The Commission shall ensure that *the* list is kept up to date.

## Article 27

### Changes to notifications

1. Where a notifying authority has ascertained or has been informed that a notified body no longer meets the requirements laid down in Article 21, or that it is failing to fulfil its obligations, the notifying authority shall restrict, suspend or withdraw notification as appropriate, depending on the seriousness of the failure to meet those requirements or fulfil those obligations. It shall immediately inform the Commission and the other Member States accordingly.
2. In the event of restriction, suspension or withdrawal of notification, or where the notified body has ceased its activity, the notifying Member State shall take appropriate steps to ensure that the files of that body are either processed by another notified body or kept available for the responsible notifying and market surveillance authorities at their request.



## Article 28

### Challenge of the competence of notified bodies

1. The Commission shall investigate all cases where it doubts, or doubt is brought to its attention regarding, the competence of a notified body or the continued fulfilment by a notified body of the requirements and responsibilities to which it is subject.
2. The notifying Member State shall provide the Commission, on request, with all information relating to the basis for the notification or the maintenance of the competence of the *notified* body concerned.
3. The Commission shall ensure that all sensitive information obtained in the course of its investigations is treated confidentially.
4. Where the Commission ascertains that a notified body does not meet or no longer meets the requirements for its notification, it shall ***adopt an implementing act requesting*** the notifying Member State ■ to take the necessary corrective measures, including ***withdrawal of*** notification if necessary.

***That implementing act shall be adopted in accordance with the advisory procedure referred to in Article 39(2).***

## Article 29

### Operational obligations of notified bodies

1. Notified bodies shall carry out conformity assessments in accordance with the conformity assessment procedures provided for in Annexes III to *VII and Annex IX*.
2. Conformity assessments shall be carried out in a proportionate manner, avoiding unnecessary burdens for economic operators. Conformity assessment bodies shall perform their activities taking due account of the size of an undertaking, the sector in which it operates, its structure, the degree of complexity of the product technology in question and the mass or serial nature of the production process.

In so doing they shall nevertheless respect the degree of rigour and the level of protection required for the compliance of the product with the requirements of this Directive.

3. Where a notified body finds that the essential health and safety requirements set out in Annex II or corresponding harmonised standards or other technical specifications have not been met by a manufacturer, it shall require that manufacturer to take appropriate corrective measures and shall not issue a **■** certificate *of conformity*.

4. Where, in the course of the monitoring of conformity following the issue of a certificate, a notified body finds that a product no longer complies, it shall require the manufacturer to take appropriate corrective measures and shall suspend or withdraw the certificate if necessary.
5. Where corrective measures are not taken or do not have the required effect, the notified body shall restrict, suspend or withdraw any certificates, as appropriate.

#### Article 30

##### Appeal against decisions of notified bodies

Member States shall ensure that an appeal procedure against *decisions* of the notified bodies is available.

## Article 31

### Information obligation on notified bodies

1. Notified bodies shall inform the notifying authority of the following:
  - (a) any refusal, restriction, suspension or withdrawal of a certificate;
  - (b) any circumstances affecting the scope of *or* conditions for notification;
  - (c) any request for information which they have received from market surveillance authorities regarding conformity assessment activities;
  - (d) on request, conformity assessment activities performed within the scope of their notification and any other activity performed, including cross-border activities and subcontracting.
  
2. Notified bodies shall provide the other bodies notified under this Directive carrying out similar conformity assessment activities covering the same products with relevant information on issues relating to negative and, on request, positive conformity assessment results.

## Article 32

### Exchange of experience

The Commission shall provide for the organisation of exchange of experience between the Member States' national authorities responsible for notification policy.

## Article 33

### Coordination of notified bodies

The Commission shall ensure that appropriate coordination and cooperation between bodies notified under this Directive are put in place and properly operated in the form of a sectoral group of notified bodies.

Member States shall ensure that the bodies notified by them participate in the work of that group, directly or by means of designated representatives.

## CHAPTER 5

### UNION MARKET SURVEILLANCE, CONTROL OF PRODUCTS ENTERING THE UNION MARKET AND *UNION SAFEGUARD PROCEDURE*

#### Article 34

Union market surveillance and control of products entering the Union market

Article 15(3) and Articles 16 to 29 of Regulation (EC) No 765/2008 shall apply to products *covered by Article 1 of this Directive*.

#### Article 35

Procedure for dealing with products presenting a risk at national level

1. Where the market surveillance authorities of one Member State have sufficient reason to believe that a product presents a risk to the health or safety of persons *or to domestic animals or property*, they shall carry out an evaluation in relation to the product concerned covering all *relevant* requirements laid down in this Directive. The relevant economic operators shall cooperate as necessary with the market surveillance authorities *for that purpose*.

Where, in the course of *the evaluation referred to in the first subparagraph*, the market surveillance authorities find that the product does not comply with the requirements laid down in this Directive, they shall without delay require the relevant economic operator to take all appropriate corrective *actions* to bring the product into compliance with those requirements, to withdraw the product from the market, or to recall it within a reasonable period, commensurate with the nature of the risk, as they may prescribe.

The market surveillance authorities shall inform the relevant notified body accordingly.

Article 21 of Regulation (EC) No 765/2008 shall apply to the measures referred to in the second subparagraph *of this paragraph*.

2. Where the market surveillance authorities consider that non-compliance is not restricted to their national territory, they shall inform the Commission and the other Member States of the results of the evaluation and of the actions which they have required the economic operator to take.
3. The economic operator shall ensure that all appropriate corrective action is taken in respect of all the products concerned that it has made available on the market throughout the Union.

4. Where the relevant economic operator does not take adequate corrective action within the period referred to in the second subparagraph of paragraph 1, the market surveillance authorities shall take all appropriate provisional measures to prohibit or restrict the **products** being made available on their national market, to withdraw the product from that market or to recall it.

The market surveillance authorities shall inform the Commission and the other Member States, without delay, of those measures.

5. The information referred to in **the second subparagraph of** paragraph 4 shall include all available details, in particular the data necessary for the identification of the non-compliant product, the origin of the product, the nature of the non-compliance alleged and the risk involved, the nature and duration of the national measures taken and the arguments put forward by the relevant economic operator. In particular, the market surveillance authorities shall indicate whether the non-compliance is due to **either** of the following:
- (a) ■ failure of the product to meet requirements relating to the health or safety of persons or to **the protection of domestic animals or property**; or
  - (b) shortcomings in the harmonised standards referred to in **Article 12** conferring a presumption of conformity.



6. Member States other than the Member State initiating the procedure *under this Article* shall without delay inform the Commission and the other Member States of any measures adopted and of any additional information at their disposal relating to the non-compliance of the product concerned, and, in the event of disagreement with the *adopted* national measure, of their objections.
7. Where, within *three* months of receipt of the information referred to in *the second subparagraph of* paragraph 4, no objection has been raised by either a Member State or the Commission in respect of a provisional measure taken by a Member State, that measure shall be deemed justified.
8. Member States shall ensure that appropriate restrictive measures, *such as withdrawal of the product from the market*, are taken in respect of the product concerned without delay.

## Article 36

### Union safeguard procedure

1. Where, on completion of the procedure set out in Article 35(3) and (4), objections are raised against a measure taken by a Member State, or where the Commission considers a national measure to be contrary to Union legislation, the Commission shall without delay enter into consultation with the Member States and the relevant economic operator or operators and shall evaluate the national measure. On the basis of the results of that evaluation, the Commission shall ***adopt an implementing act determining*** whether the national measure is justified or not.

The Commission shall address its decision to all Member States and shall immediately communicate it to them and ***to*** the relevant economic operator or operators.

2. If the national measure is considered justified, all Member States shall take the ***necessary*** measures **■** to ensure that the non-compliant product is withdrawn from their market, and shall inform the Commission accordingly. If the national measure is considered unjustified, the Member State concerned shall withdraw ***that*** measure.

3. Where the national measure is considered justified and the non-compliance of the product is attributed to shortcomings in the harmonised standards referred to in *point (b) of* Article 35(5) of this Directive, the Commission shall apply the procedure provided for in Article 11 of Regulation (EU) No 1025/2012.

#### Article 37

##### Compliant products which present a risk

1. Where, having *carried out* an evaluation under Article 35(1), a Member State finds that although a product is in compliance with this Directive, it presents a risk to the health or safety of persons or *to domestic animals or property*, it shall require the relevant economic operator to take all appropriate measures to ensure that the product concerned, when placed on the market, no longer presents that risk, to withdraw the product from the market or to recall it within a reasonable period, commensurate with the nature of the risk, as it may prescribe.
2. The economic operator shall ensure that corrective action is taken in respect of all the products concerned that he has made available on the market throughout the Union.

3. The Member State shall immediately inform the Commission and the other Member States. That information shall include all available details, in particular the data necessary for the identification of the product concerned, the origin and the supply chain of the product, the nature of the risk involved and the nature and duration of the national measures taken.
4. The Commission shall without delay enter into consultation with the Member States and the relevant economic operator or operators and shall evaluate the national measures taken. On the basis of the results of that evaluation, the Commission shall decide *by means of implementing acts* whether the *national* measure is justified or not, and where necessary, propose appropriate measures.



*The implementing acts referred to in the first subparagraph of this paragraph shall be adopted in accordance with the examination procedure referred to in Article 39(3).*

*On duly justified imperative grounds of urgency relating to the protection of health and safety of persons or to the protection of domestic animals or property, the Commission shall adopt immediately applicable implementing acts in accordance with the procedure referred to in Article 39(4).*

5. The Commission shall address its decision to all Member States and shall immediately communicate it to them and the relevant economic operator or operators.

Article 38

Formal non-compliance

1. Without prejudice to Article 35, where a Member State makes one of the following findings, it shall require the relevant economic operator to put an end to the non-compliance concerned:
  - (a) the CE marking  has been affixed in violation of Article 30 of Regulation (EC) No 765/2008 or of Article 16 of this Directive;
  - (b) the CE marking, *where required*, has not been affixed;
  - (c) *the specific marking of explosion protection , the symbols of the equipment group and category and, where applicable, the other markings and information have been affixed in violation of point 1.0.5 of Annex II or have not been affixed;*
  - (d) *the identification number of the notified body, where that body is involved in the production control phase, has been affixed in violation of Article 16 or has not been affixed;*
  - (e) the EU declaration of conformity *or the attestation of conformity*, as appropriate, *does not accompany the product;*

- (f) the EU declaration of conformity *or, where required, the attestation of conformity* has not been drawn up correctly;
  - (g) technical documentation is either not available or not complete;
  - (h) *the information referred to in Article 6(7) or Article 8(3) is absent, false or incomplete;*
  - (i) *any other administrative requirement provided for in Article 6 or Article 8 is not fulfilled.*
2. Where the non-compliance referred to in paragraph 1 persists, the Member State concerned shall take all appropriate measures to restrict or prohibit the product being made available on the market or ensure that it is recalled or withdrawn from the market.

CHAPTER 6  
COMMITTEE, TRANSITIONAL AND FINAL PROVISIONS

*Article 39*  
*Committee procedure*

1. *The Commission shall be assisted by the Committee on equipment and protective systems intended for use in potentially explosive atmospheres. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.*
2. *Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.*

3. *Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.*
4. *Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 5 thereof, shall apply.*
5. *The committee shall be consulted by the Commission on any matter for which consultation of sectoral experts is required by Regulation (EU) No 1025/2012 or by any other Union legislation.*

*The committee may furthermore examine any other matter concerning the application of this Directive raised either by its chair or by a representative of a Member State in accordance with its rules of procedure.*

## Article 40

### Penalties

Member States shall lay down rules on penalties applicable to infringements *by economic operators* of the provisions *of national law* adopted pursuant to this Directive and shall take all measures necessary to ensure that they are enforced. *Such rules may include criminal penalties for serious infringements.*

The penalties provided for shall be effective, proportionate and dissuasive.

█

## Article 41

### Transitional provisions

1. Member States shall not impede the making available on the market or the putting into service of products covered by Directive 94/9/EC which are in conformity with that Directive and which were placed on the market before ...\* █ .
2. Certificates █ issued under Directive 94/9/EC shall be valid under this Directive.

█

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\* OJ: Please insert date: day after two years after entry into force of this Directive.



Article 42  
Transposition

1. Member States shall adopt and publish by ...\* the laws, regulations and administrative provisions necessary to comply with Article 1, points 2 and 8 to 26 of Article 2, Article 3, Articles 5 to 41 and Annexes III to X. They shall forthwith communicate the text of those *measures to the Commission*.

They shall apply those *measures* from ...\*\*.

When Member States adopt those *measures*, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to the Directive repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

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\* OJ: Please insert date: two years after entry into force of this Directive.

\*\* OJ: Please insert date: day after two years after entry into force of this Directive.

## Article 43

### Repeal

Directive 94/9/EC, as amended by the Regulations listed in Annex XI, Part A, is repealed with effect from ...<sup>\*</sup>, without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law and the dates of application of the Directive ■ set out in Annex XI, Part B.

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex XII.

## Article 44

### Entry into force *and application*

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Points 1 and 3 to 7 of Article 2, Article 4 and Annexes I, II, XI and XII shall apply from ...<sup>\*</sup> ■ .

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\* OJ: Please insert date: day after two years after entry into force of this Directive.

Article 45  
Addressees

This Directive is addressed to the Member States.

Done at ...

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

## ANNEX I

### CRITERIA DETERMINING THE CLASSIFICATION OF EQUIPMENT-GROUPS INTO CATEGORIES

#### 1. EQUIPMENT-GROUP I

- (a) **Equipment** category M 1 comprises equipment designed and, where necessary, equipped with additional special means of protection to be capable of functioning in conformity with the operational parameters established by the manufacturer and ensuring a very high level of protection.

Equipment in this category is intended for use in underground parts of mines as well as those parts of surface installations of such mines endangered by firedamp and/or combustible dust.

Equipment in this category is required to remain functional, even in the event of rare incidents relating to equipment, with an explosive atmosphere present, and is characterized by means of protection such that:

- either, in the event of failure of one means of protection, at least an independent second means provides the requisite level of protection,
- or the requisite level of protection is assured in the event of two faults occurring independently of each other.

Equipment in this category must comply with the supplementary requirements referred to in *point 2.0.1 of Annex II* .

- (b) **Equipment** category M 2 comprises equipment designed to be capable of functioning in conformity with the operational parameters established by the manufacturer and ensuring a high level of protection.

Equipment in this category is intended for use in underground parts of mines as well as those parts of surface installations of such mines likely to be endangered by firedamp and/or combustible dust.

This equipment is intended to be de-energized in the event of an explosive atmosphere.

The means of protection relating to equipment in this category assure the requisite level of protection during normal operation and also in the case of more severe operating conditions, in particular those arising from rough handling and changing environmental conditions.

Equipment in this category must comply with the supplementary requirements referred to in *point 2.0.2 of Annex II* .

## 2. EQUIPMENT-GROUP II

- (a) **Equipment** category 1 comprises equipment designed to be capable of functioning in conformity with the operational parameters established by the manufacturer and ensuring a very high level of protection.

Equipment in this category is intended for use in areas in which explosive atmospheres caused by mixtures of air and gases, vapours or mists or by air/dust mixtures are present continuously, for long periods or frequently.

Equipment in this category must ensure the requisite level of protection, even in the event of rare incidents relating to equipment, and is characterized by means of protection such that:

- either, in the event of failure of one means of protection, at least an independent second means provides the requisite level of protection,
- or the requisite level of protection is assured in the event of two faults occurring independently of each other.

Equipment in this category must comply with the supplementary requirements referred to in *point 2.1 of Annex II* .

- (b) **Equipment** category 2 comprises equipment designed to be capable of functioning in conformity with the operational parameters established by the manufacturer and of ensuring a high level of protection.

Equipment in this category is intended for use in areas in which explosive atmospheres caused by gases, vapours, mists or air/dust mixtures are likely to occur occasionally.

The means of protection relating to equipment in this category ensure the requisite level of protection, even in the event of frequently occurring disturbances or equipment faults which normally have to be taken into account.

Equipment in this category must comply with the supplementary requirements referred to in *point 2.2 of Annex II* .

- (c) **Equipment** category 3 comprises equipment designed to be capable of functioning in conformity with the operating parameters established by the manufacturer and ensuring a normal level of protection.

Equipment in this category is intended for use in areas in which explosive atmospheres caused by gases, vapours, mists, or air/dust mixtures are unlikely to occur or, if they do occur, are likely to do so only infrequently and for a short period only.

Equipment in this category ensures the requisite level of protection during normal operation.

Equipment in this category must comply with the supplementary requirements referred to in *point 2.3 of Annex II* .

## ANNEX II

### ESSENTIAL HEALTH AND SAFETY REQUIREMENTS RELATING TO THE DESIGN AND CONSTRUCTION OF EQUIPMENT AND PROTECTIVE SYSTEMS INTENDED FOR USE IN POTENTIALLY EXPLOSIVE ATMOSPHERES

#### Preliminary observations

- A. Technological knowledge, which can change rapidly, must be taken into account as far as possible and be utilized immediately.
- B. For the devices referred to in point (b) of Article 1(1), the essential health and safety requirements shall apply only in so far as they are necessary for the safe and reliable functioning and operation of those devices with respect to the risks of explosion.

#### 1. COMMON REQUIREMENTS FOR EQUIPMENT AND PROTECTIVE SYSTEMS

##### 1.0. General requirements

##### 1.0.1. Principles of integrated explosion safety

Equipment and protective systems intended for use in potentially explosive atmospheres must be designed from the point of view of integrated explosion safety.

In this connection, the manufacturer must take measures:



- above all, if possible, to prevent the formation of explosive atmospheres which may be produced or released by equipment and by protective systems themselves,
- to prevent the ignition of explosive atmospheres, taking into account the nature of every electrical and non-electrical source of ignition,
- should an explosion nevertheless occur which could directly or indirectly endanger persons and, as the case may be, domestic animals or property, to halt it immediately and/or to limit the range of explosion flames and explosion pressures to a sufficient level of safety.

1.0.2. Equipment and protective systems must be designed and manufactured after due analysis of possible operating faults in order as far as possible to preclude dangerous situations.

Any misuse which can reasonably be anticipated must be taken into account.

1.0.3. Special checking and maintenance conditions


Equipment and protective systems subject to special checking and maintenance conditions must be designed and constructed with such conditions in mind.

#### 1.0.4. Surrounding area conditions

Equipment and protective systems must be so designed and constructed as to be capable of coping with actual or foreseeable surrounding area conditions.

#### 1.0.5. Marking

All equipment and protective systems must be marked legibly and indelibly with the following minimum particulars:

- name, *registered trade name or registered trade mark*, and address of the manufacturer,
- CE marking (see Annex II to Regulation (EC) No 765/2008),
- designation of series or type,
- *batch or* serial number, if any,
- year of construction,
- the specific marking of explosion protection  followed by the symbol of the equipment group and category,

- for equipment-group II, the letter 'G' (concerning explosive atmospheres caused by gases, vapours or mists),

and/or

- the letter 'D' (concerning explosive atmospheres caused by dust).

Furthermore, where necessary, they must also be marked with all information essential to their safe use.

#### 1.0.6. Instructions

- (a) All equipment and protective systems must be accompanied by instructions, including at least the following particulars:

- a recapitulation of the information with which the equipment or protective system is marked, except for the *batch or* serial number (see point 1.0.5), together with any appropriate additional information to facilitate maintenance (e.g. address of the ■ repairer, etc.);
- instructions for safe:
  - putting into service,
  - use,
  - assembling and dismantling,

- maintenance (servicing and emergency repair),
- installation,
- adjustment;
- where necessary, an indication of the danger areas in front of pressure-relief devices;
- where necessary, training instructions;
- details which allow a decision to be taken beyond any doubt as to whether an item of equipment in a specific category or a protective system can be used safely in the intended area under the expected operating conditions;
- electrical and pressure parameters, maximum surface temperatures and other limit values;
- where necessary, special conditions of use, including particulars of possible misuse which experience has shown might occur;
- where necessary, the essential characteristics of tools which may be fitted to the equipment or protective system.



- (b) The instructions must contain the drawings and diagrams necessary for the putting into service, maintenance, inspection, checking of correct operation and, where appropriate, repair of the equipment or protective system, together with all useful instructions, in particular with regard to safety.
- (c) Literature describing the equipment or protective system must not contradict the instructions with regard to safety aspects.

## 1.1. Selection of materials

- 1.1.1. The materials used for the construction of equipment and protective systems must not trigger off an explosion, taking into account foreseeable operational stresses.
- 1.1.2. Within the limits of the operating conditions laid down by the manufacturer, it must not be possible for a reaction to take place between the materials used and the constituents of the potentially explosive atmosphere which could impair explosion protection.
- 1.1.3. Materials must be so selected that predictable changes in their characteristics and their compatibility in combination with other materials will not lead to a reduction in the protection afforded; in particular, due account must be taken of the material's corrosion and wear resistance, electrical conductivity, mechanical strength, ageing resistance and the effects of temperature variations.

## 1.2. Design and construction

- 1.2.1. Equipment and protective systems must be designed and constructed with due regard to technological knowledge of explosion protection so that they can be safely operated throughout their foreseeable lifetime.
- 1.2.2. Components to be incorporated into or used as replacements in equipment and protective systems must be so designed and constructed that they function safely for their intended purpose of explosion protection when they are installed in accordance with the manufacturer's instructions.
- 1.2.3. Enclosed structures and prevention of leaks

Equipment which may release flammable gases or dusts must wherever possible employ enclosed structures only.

If equipment contains openings or non-tight joints, these must as far as possible be designed in such a way that releases of gases or dusts cannot give rise to explosive atmospheres outside the equipment.

Points where materials are introduced or drawn off must, as far as possible, be designed and equipped so as to limit releases of flammable materials during filling or draining.

#### 1.2.4. Dust deposits

Equipment and protective systems which are intended to be used in areas exposed to dust must be so designed that deposit dust on their surfaces is not ignited.

In general, dust deposits must be limited where possible. Equipment and protective systems must be easily cleanable.

The surface temperatures of equipment parts must be kept well below the glow temperature of the deposit dust.

The thickness of deposit dust must be taken into consideration and, if appropriate, means must be taken to limit the temperature in order to prevent a heat build up.

#### 1.2.5. Additional means of protection

Equipment and protective systems which may be exposed to certain types of external stresses must be equipped, where necessary, with additional means of protection.

Equipment must withstand relevant stresses, without adverse effect on explosion protection.

### 1.2.6. Safe opening

If equipment and protective systems are in a housing or a locked container forming part of the explosion protection itself, it must be possible to open such housing or container only with a special tool or by means of appropriate protection measures.

### 1.2.7. Protection against other hazards

Equipment and protective systems must be so designed and manufactured as to:

- (a) avoid physical injury or other harm which might be caused by direct or indirect contact;
- (b) assure that surface temperatures of accessible parts or radiation which would cause a danger, are not produced;
- (c) eliminate non-electrical dangers which are revealed by experience;
- (d) assure that foreseeable conditions of overload do not give rise to dangerous situations.

Where, for equipment and protective systems, the risks referred to in this point are wholly or partly covered by other Union *legislation*, this Directive shall not apply or shall cease to apply in the case of such equipment and protective systems and of such risks upon application of *that* specific *Union legislation*.



### 1.2.8. Overloading of equipment

Dangerous overloading of equipment must be prevented at the design stage by means of integrated measurement, regulation and control devices, such as over-current cut-off switches, temperature limiters, differential pressure switches, flowmeters, time-lag relays, overspeed monitors and/or similar types of monitoring devices.

### 1.2.9. Flameproof enclosure systems

If parts which can ignite an explosive atmosphere are placed in an enclosure, measures must be taken to ensure that the enclosure withstands the pressure developed during an internal explosion of an explosive mixture and prevents the transmission of the explosion to the explosive atmosphere surrounding the enclosure.

## 1.3. Potential ignition sources

### 1.3.1. Hazards arising from different ignition sources

Potential ignition sources such as sparks, flames, electric arcs, high surface temperatures, acoustic energy, optical radiation, electromagnetic waves and other ignition sources must not occur.

### 1.3.2. Hazards arising from static electricity

Electrostatic charges capable of resulting in dangerous discharges must be prevented by means of appropriate measures.

### 1.3.3. Hazards arising from stray electric and leakage currents

Stray electric and leakage currents in conductive equipment parts which could result in, for example, the occurrence of dangerous corrosion, overheating of surfaces or sparks capable of provoking an ignition must be prevented.

### 1.3.4. Hazards arising from overheating

Overheating caused by friction or impacts occurring, for example, between materials and parts in contact with each other while rotating or through the intrusion of foreign bodies must, as far as possible, be prevented at the design stage.

### 1.3.5. Hazards arising from pressure compensation operations

Equipment and protective systems must be so designed or fitted with integrated measuring, control and regulation devices that pressure compensations arising from them do not generate shock waves or compressions which may cause ignition.

#### 1.4. Hazards arising from external effects

1.4.1. Equipment and protective systems must be so designed and constructed as to be capable of performing their intended function in full safety, even in changing environmental conditions and in the presence of extraneous voltages, humidity, vibrations, contamination and other external effects, taking into account the limits of the operating conditions established by the manufacturer.

1.4.2. Equipment parts used must be appropriate to the intended mechanical and thermal stresses and capable of withstanding attack by existing or foreseeable aggressive substances.

#### 1.5. Requirements in respect of safety-related devices

1.5.1. Safety devices must function independently of any measurement and/or control devices required for operation.

As far as possible, failure of a safety device must be detected sufficiently rapidly by appropriate technical means to ensure that there is only very little likelihood that dangerous situations will occur.

The fail-safe principle is to be applied in general.

Safety-related switching must in general directly actuate the relevant control devices without intermediate software command.

1.5.2. In the event of a safety device failure, equipment and/or protective systems shall, wherever possible, be secured.

1.5.3. Emergency stop controls of safety devices must, as far as possible, be fitted with restart lockouts. A new start command may take effect on normal operation only after the restart lockouts have been intentionally reset.

1.5.4. Control and display units

Where control and display units are used, they must be designed in accordance with ergonomic principles in order to achieve the highest possible level of operating safety with regard to the risk of explosion.

1.5.5. Requirements in respect of devices with a measuring function for explosion protection

In so far as they relate to equipment used in explosive atmospheres, devices with a measuring function must be designed and constructed so that they can cope with foreseeable operating requirements and special conditions of use.

1.5.6. Where necessary, it must be possible to check the reading accuracy and serviceability of devices with a measuring function.

1.5.7. The design of devices with a measuring function must incorporate a safety factor which ensures that the alarm threshold lies far enough outside the explosion and/or ignition limits of the atmospheres to be registered, taking into account, in particular, the operating conditions of the installation and possible aberrations in the measuring system.

1.5.8. Risks arising from software

In the design of software-controlled equipment, protective systems and safety devices, special account must be taken of the risks arising from faults in the programme.

1.6. Integration of safety requirements relating to the system

1.6.1. Manual override must be possible in order to shut down the equipment and protective systems incorporated within automatic processes which deviate from the intended operating conditions, provided that this does not compromise safety.

1.6.2. When the emergency shutdown system is actuated, accumulated energy must be dispersed as quickly and as safely as possible or isolated so that it no longer constitutes a hazard.

This does not apply to electrochemically-stored energy.

### 1.6.3. Hazards arising from power failure

Where equipment and protective systems can give rise to a spread of additional risks in the event of a power failure, it must be possible to maintain them in a safe state of operation independently of the rest of the installation.

### 1.6.4. Hazards arising from connections

Equipment and protective systems must be fitted with suitable cable and conduit entries.

When equipment and protective systems are intended for use in combination with other equipment and protective systems, the interface must be safe.

### 1.6.5. Placing of warning devices as parts of equipment

Where equipment or protective systems are fitted with detection or alarm devices for monitoring the occurrence of explosive atmospheres, the necessary instructions must be provided to enable them to be provided at the appropriate places.

## 2. SUPPLEMENTARY REQUIREMENTS IN RESPECT OF EQUIPMENT

### 2.0. Requirements applicable to equipment in ▮ equipment-group I

#### 2.0.1. Requirements applicable to equipment ▮ category M 1 of equipment-group I

2.0.1.1. Equipment must be so designed and constructed that sources of ignition do not become active, even in the event of rare incidents relating to equipment.

Equipment must be equipped with means of protection such that:

- either, in the event of failure of one means of protection, at least an independent second means provides the requisite level of protection,
- or, the requisite level of protection is ensured in the event of two faults occurring independently of each other.

Where necessary, equipment must be equipped with additional special means of protection.

It must remain functional with an explosive atmosphere present.

2.0.1.2. Where necessary, equipment must be so constructed that no dust can penetrate it.

2.0.1.3. The surface temperatures of equipment parts must be kept clearly below the ignition temperature of the foreseeable air/dust mixtures in order to prevent the ignition of suspended dust.

2.0.1.4. Equipment must be so designed that the opening of equipment parts which may be sources of ignition is possible only under non-active or intrinsically safe conditions. Where it is not possible to render equipment non-active, the manufacturer must affix a warning label to the opening part of the equipment.

If necessary, equipment must be fitted with appropriate additional interlocking systems.

2.0.2. Requirements applicable to equipment category M 2 of equipment-group I

2.0.2.1. Equipment must be equipped with means of protection ensuring that sources of ignition do not become active during normal operation, even under more severe operating conditions, in particular those arising from rough handling and changing environmental conditions.

The equipment is intended to be de-energized in the event of an explosive atmosphere.

2.0.2.2. Equipment must be so designed that the opening of equipment parts which may be sources of ignition is possible only under non-active conditions or via appropriate interlocking systems. Where it is not possible to render equipment non-active, the manufacturer must affix a warning label to the opening part of the equipment.

2.0.2.3. The requirements regarding explosion hazards arising from dust applicable to *equipment* category M 1 must be applied.



2.1. Requirements applicable to equipment category 1 of equipment-group II

2.1.1. Explosive atmospheres caused by gases, vapours or mists

2.1.1.1. Equipment must be so designed and constructed that sources of ignition do not become active, even in event of rare incidents relating to equipment.

It must be equipped with means of protection such that:

- either, in the event of failure of one means of protection, at least an independent second means provides the requisite level of protection,
- or, the requisite level of protection is ensured in the event of two faults occurring independently of each other.

2.1.1.2. For equipment with surfaces which may heat up, measures must be taken to ensure that the stated maximum surface temperatures are not exceeded even in the most unfavourable circumstances.

Temperature rises caused by heat build-ups and chemical reactions must also be taken into account.

2.1.1.3. Equipment must be so designed that the opening of equipment parts which might be sources of ignition is possible only under non-active or intrinsically safe conditions. Where it is not possible to render equipment non-active, the manufacturer must affix a warning label to the opening part of the equipment.

If necessary, equipment must be fitted with appropriate additional interlocking systems.

2.1.2. Explosive atmospheres caused by air/dust mixtures

2.1.2.1. Equipment must be so designed and constructed that ignition of air/dust mixtures does not occur even in the event of rare incidents relating to equipment.

It must be equipped with means of protection such that

- either, in the event of failure of one means of protection, at least an independent second means provides the requisite level of protection,
- or, the requisite level of protection is ensured in the event of two faults occurring independently of each other.

2.1.2.2. Where necessary, equipment must be so designed that dust can enter or escape from the equipment only at specifically designated points.

This requirement must also be met by cable entries and connecting pieces.

- 2.1.2.3. The surface temperatures of equipment parts must be kept well below the ignition temperature of the foreseeable air/dust mixtures in order to prevent the ignition of suspended dust.
- 2.1.2.4. With regard to the safe opening of equipment parts, requirement 2.1.1.3 applies.
- 2.2. Requirements *applicable to equipment* category 2 of equipment-group II
- 2.2.1. Explosive atmospheres caused by gases, vapours or mists
- 2.2.1.1. Equipment must be so designed and constructed as to prevent ignition sources arising, even in the event of frequently occurring disturbances or equipment operating faults, which normally have to be taken into account.
- 2.2.1.2. Equipment parts must be so designed and constructed that their stated surface temperatures are not exceeded, even in the case of risks arising from abnormal situations anticipated by the manufacturer.
- 2.2.1.3. Equipment must be so designed that the opening of equipment parts which might be sources of ignition is possible only under non-active conditions or via appropriate interlocking systems. Where it is not possible to render equipment non-active, the manufacturer must affix a warning label to the opening part of the equipment.

2.2.2. Explosive atmospheres caused by air/dust mixtures

2.2.2.1. Equipment must be designed and constructed so that ignition of air/dust mixtures is prevented, even in the event of frequently occurring disturbances or equipment operating faults which normally have to be taken into account.

2.2.2.2. With regard to surface temperatures, requirement 2.1.2.3 applies.

2.2.2.3. With regard to protection against dust, requirement 2.1.2.2 applies.

2.2.2.4. With regard to the safe opening of equipment parts, requirement 2.2.1.3 applies.

2.3. Requirements applicable to equipment category 3 of equipment-group II

2.3.1. Explosive atmospheres caused by gases, vapours or mists

2.3.1.1. Equipment must be so designed and constructed as to prevent foreseeable ignition sources which can occur during normal operation.

2.3.1.2. Surface temperatures must not exceed the stated maximum surface temperatures under intended operating conditions. Higher temperatures in exceptional circumstances may be allowed only if the manufacturer adopts special additional protective measures.

### 2.3.2. Explosive atmospheres caused by air/dust mixtures

2.3.2.1. Equipment must be so designed and constructed that air/dust mixtures cannot be ignited by foreseeable ignition sources likely to exist during normal operation.

2.3.2.2. With regard to surface temperatures, requirement 2.1.2.3 applies.

2.3.2.3. Equipment, including cable entries and connecting pieces, must be so constructed that, taking into account the size of its particles, dust can neither develop explosive mixtures with air nor form dangerous accumulations inside the equipment.

## 3. SUPPLEMENTARY REQUIREMENTS IN RESPECT OF PROTECTIVE SYSTEMS

### 3.0. General requirements

3.0.1. Protective systems must be dimensioned in such a way as to reduce the effects of an explosion to a sufficient level of safety.

3.0.2. Protective systems must be designed and capable of being positioned in such a way that explosions are prevented from spreading through dangerous chain reactions or flashover and incipient explosions do not become detonations.

3.0.3. In the event of a power failure, protective systems must retain their capacity to function for a period sufficient to avoid a dangerous situation.

3.0.4. Protective systems must not fail due to outside interference.

3.1. Planning and design

3.1.1. Characteristics of materials

With regard to the characteristics of materials, the maximum pressure and temperature to be taken into consideration at the planning stage are the expected pressure during an explosion occurring under extreme operating conditions and the anticipated heating effect of the flame.

3.1.2. Protective systems designed to resist or contain explosions must be capable of withstanding the shock wave produced without losing system integrity.

3.1.3. Accessories connected to protective systems must be capable of withstanding the expected maximum explosion pressure without losing their capacity to function.

3.1.4. The reactions caused by pressure in peripheral equipment and connected pipe-work must be taken into consideration in the planning and design of protective systems.

### 3.1.5. Pressure-relief systems

If it is likely that stresses on protective systems will exceed their structural strength, provision must be made in the design for suitable pressure-relief devices which do not endanger persons in the vicinity.

### 3.1.6. Explosion suppression systems

Explosion suppression systems must be so planned and designed that they react to an incipient explosion at the earliest possible stage in the event of an incident and counteract it to best effect, with due regard to the maximum rate of pressure increase and the maximum explosion pressure.

### 3.1.7. Explosion decoupling systems

Decoupling systems intended to disconnect specific equipment as swiftly as possible in the event of incipient explosions by means of appropriate devices must be planned and designed so as to remain proof against the transmission of internal ignition and to retain their mechanical strength under operating conditions.

### 3.1.8. Protective systems must be capable of being integrated into a circuit with a suitable alarm threshold so that, if necessary, there is cessation of product feed and output and shutdown of equipment parts which can no longer function safely.

## ANNEX III

### MODULE *B*: EU-TYPE EXAMINATION

1. EU-type examination is the part of a conformity assessment procedure in which a notified body examines the technical design of a product and verifies and attests that the technical design of the product meets the requirements of this Directive that apply to it.
2. EU-type examination shall be carried out with the examination of a specimen, representative of the production envisaged, of the complete product (production type).
3. The manufacturer shall lodge an application for EU-type examination with a single notified body of his choice.

The application shall include:

- (a) the name and address of the manufacturer and, if the application is lodged by the authorised representative, his name and address as well,
- (b) a written declaration that the same application has not been lodged with any other notified body,



- (c) the technical documentation. The technical documentation shall make it possible to assess the product's conformity with the applicable requirements of this Directive and shall include an adequate analysis and assessment of the risk(s). The technical documentation shall specify the applicable requirements and cover, as far as relevant for the assessment, the design, manufacture and operation of the product. The technical documentation shall contain at least the following elements:
- (i) a general description of the product,
  - (ii) conceptual design and manufacturing drawings and schemes of components, sub-assemblies, circuits, etc.,
  - (iii) descriptions and explanations necessary for the understanding of those drawings and schemes and the operation of the product,

- (iv) a list of the harmonised standards *applied in full or in part* the references of which have been published in the *Official Journal of the European Union* and, *where those harmonised standards have not been applied*, descriptions of the solutions adopted to meet the essential health and safety requirements of this Directive, *including a list of other relevant technical specifications applied*. In the event of partly applied harmonised standards, the technical documentation shall specify the parts which have been applied,
  - (v) results of design calculations made, examinations carried out, etc., and
  - (vi) test reports,
- (d) the specimens representative of the production envisaged. The notified body may request further specimens if needed for carrying out the test programme.

■

4. The notified body shall:

- 4.1. ***examine the technical documentation***, verify that the specimen(s) have been manufactured in conformity with the technical documentation, and identify the elements which have been designed in accordance with the applicable provisions of the relevant harmonised standards ■ , as well as the elements which have been designed ***in accordance with other relevant technical specifications***;
- 4.2. carry out appropriate examinations and tests, or have them carried out, to check whether, where the manufacturer has chosen to apply the solutions in the relevant harmonised standards ■ , these have been applied correctly;
- 4.3. carry out appropriate examinations and tests, or have them carried out, to check whether, where the solutions in the relevant harmonised standards ■ have not been applied, the solutions adopted by the manufacturer ***applying other relevant technical specifications*** meet the corresponding essential health and safety requirements of this Directive;
- 4.4. agree with the manufacturer on a location where the examinations and tests will be carried out.

5. The notified body shall draw up an evaluation report that records the activities undertaken in accordance with point 4 and their outcomes. Without prejudice to its obligations vis-à-vis the notifying authorities, the notified body shall release the content of that report, in full or in part, only with the agreement of the manufacturer.
6. Where the type meets the requirements of this Directive that apply to the product concerned, the notified body shall issue an EU-type examination certificate to the manufacturer. *That* certificate shall contain the name and address of the manufacturer, the conclusions of the examination, the conditions (if any) for its validity and the necessary data for identification of the approved type. The *EU-type examination* certificate may have one or more annexes attached.

The *EU-type examination* certificate and its annexes shall contain all relevant information to allow the conformity of manufactured products with the examined type to be evaluated and to allow for in-service control.

Where the type does not satisfy the applicable requirements of this Directive, the notified body shall refuse to issue an EU-type examination certificate and shall inform the applicant accordingly, giving detailed reasons for its refusal.

7. The notified body shall keep itself apprised of any changes in the generally acknowledged state of the art which indicate that the approved type may no longer comply with the applicable requirements of this Directive, and shall determine whether such changes require further investigation. If so, the notified body shall inform the manufacturer accordingly.

The manufacturer shall inform the notified body that holds the technical documentation relating to the EU-type examination certificate of all modifications to the approved type that may affect the conformity of the product with the essential health and safety requirements of this Directive or the conditions for validity of *that* certificate. Such modifications shall require additional approval in the form of an addition to the original EU-type examination certificate.

8. Each notified body shall inform its notifying authority concerning the EU-type examination certificates and/or any additions thereto which it has issued or withdrawn, and shall, periodically or upon request, make available to its notifying authority the list of *such* certificates and/or any additions thereto refused, suspended or otherwise restricted.

Each notified body shall inform the other notified bodies concerning the EU-type examination certificates and/or any additions thereto which it has refused, withdrawn, suspended or otherwise restricted, and, upon request, concerning such certificates and/or additions thereto which it has issued.

The Commission, the Member States and the other notified bodies may, on request, obtain a copy of the EU-type examination certificates and/or additions thereto. On request, the Commission and the Member States may obtain a copy of the technical documentation and the results of the examinations carried out by the notified body. The notified body shall keep a copy of the EU-type examination certificate, its annexes and additions, as well as the technical file including the documentation submitted by the manufacturer, until the expiry of the validity of *that* certificate.

9. The manufacturer shall keep a copy of the EU-type examination certificate, its annexes and additions together with the technical documentation at the disposal of the national authorities for 10 years after the product has been placed on the market.
10. The manufacturer's authorised representative may lodge the application referred to in point 3 and fulfil the obligations set out in points 7 and 9, provided that they are specified in the mandate.

## ANNEX IV

### MODULE *D*: CONFORMITY TO TYPE BASED ON QUALITY ASSURANCE OF THE PRODUCTION PROCESS

1. Conformity to type based on quality assurance of the production process is the part of a conformity assessment procedure whereby the manufacturer fulfils the obligations laid down in points 2 and 5, and ensures and declares on his sole responsibility that the products concerned are in conformity with the type described in the EU-type examination certificate and satisfy the requirements of this Directive that apply to them.
  
2. **Manufacturing**  
  
The manufacturer shall operate an approved quality system for production, final product inspection and testing of the products concerned as specified in point 3, and shall be subject to surveillance as specified in point 4.
  
3. **Quality system**
  - 3.1. The manufacturer shall lodge an application for assessment of his quality system with the notified body of his choice, for the products concerned.

The application shall include:

- (a) the name and address of the manufacturer and, if the application is lodged by the authorised representative, his name and address as well,
- (b) a written declaration that the same application has not been lodged with any other notified body,
- (c) all relevant information for the product category envisaged,
- (d) the documentation concerning the quality system,
- (e) the technical documentation of the approved type and a copy of the EU-type examination certificate.

3.2. The quality system shall ensure that the products are in conformity with the type described in the EU-type examination certificate and comply with the requirements of this Directive that apply to them.



All the elements, requirements and provisions adopted by the manufacturer shall be documented in a systematic and orderly manner in the form of written policies, procedures and instructions. The quality system documentation shall permit a consistent interpretation of the quality programmes, plans, manuals and records.

It shall, in particular, contain an adequate description of:

- (a) the quality objectives and the organisational structure, responsibilities and powers of the management with regard to product quality,
- (b) the corresponding manufacturing, quality control and quality assurance techniques, processes and systematic actions that will be used,
- (c) the examinations and tests that will be carried out before, during and after manufacture, and the frequency with which they will be carried out,
- (d) the quality records, such as inspection reports and test data, calibration data, qualification reports on the personnel concerned, etc., and
- (e) the means of monitoring the achievement of the required product quality and the effective operation of the quality system.

3.3. The notified body shall assess the quality system to determine whether it satisfies the requirements referred to in point 3.2.

It shall presume conformity with those requirements in respect of the elements of the quality system that comply with the corresponding specifications of the relevant harmonised standard .

In addition to experience in quality management systems, the auditing team shall have at least one member with experience of evaluation in the relevant product field and product technology concerned, and knowledge of the applicable requirements of this Directive. The audit shall include an assessment visit to the manufacturer's premises. The auditing team shall review the technical documentation referred to in point 3.1(e) to verify the manufacturer's ability to identify the relevant requirements of this Directive and to carry out the necessary examinations with a view to ensuring compliance of the product with those requirements.

The decision shall be notified to the manufacturer. The notification shall contain the conclusions of the audit and the reasoned assessment decision.

- 3.4. The manufacturer shall undertake to fulfil the obligations arising out of the quality system as approved and to maintain it so that it remains adequate and efficient.
- 3.5. The manufacturer shall keep the notified body that has approved the quality system informed of any intended change to the quality system.

The notified body shall evaluate any proposed changes and decide whether the modified quality system will continue to satisfy the requirements referred to in point 3.2 or whether a reassessment is necessary.

It shall notify the manufacturer of its decision. The notification shall contain the conclusions of the examination and the reasoned assessment decision.

#### 4. Surveillance under the responsibility of the notified body

- 4.1. The purpose of surveillance is to make sure that the manufacturer duly fulfils the obligations arising out of the approved quality system.

- 4.2. The manufacturer shall, for assessment purposes, allow the notified body access to the manufacture, inspection, testing and storage sites and shall provide it with all necessary information, in particular:
- (a) the quality system documentation,
  - (b) the quality records, such as inspection reports and test data, calibration data, qualification reports on the personnel concerned, etc.
- 4.3. The notified body shall carry out periodic audits to make sure that the manufacturer maintains and applies the quality system and shall provide the manufacturer with an audit report.
- 4.4. In addition, the notified body may pay unexpected visits to the manufacturer. During such visits the notified body may, if necessary, carry out product tests, or have them carried out, in order to verify that the quality system is functioning correctly. The notified body shall provide the manufacturer with a visit report and, if tests have been carried out, with a test report.

5. ***CE marking, EU declaration of conformity and attestation of conformity***

5.1. The manufacturer shall affix the ***CE marking*** and, under the responsibility of the notified body referred to in point 3.1, the latter's identification number to each individual product ***other than a component*** that is in conformity with the type described in the EU-type examination certificate and satisfies the applicable requirements **■** of this Directive.

5.2. The manufacturer shall draw up a written ***EU*** declaration of conformity for each product model, ***other than a component*** and keep it at the disposal of the national authorities for 10 years after the product ***other than a component*** has been placed on the market. The ***EU*** declaration of conformity shall identify such product model for which it has been drawn up.

A copy of the ***EU*** declaration of conformity shall ***accompany every product, other than a component***.

5.3. ***The manufacturer shall draw up a written attestation of conformity for each component model and keep it at the disposal of the national authorities for 10 years after the component has been placed on the market. The attestation of conformity shall identify the component model for which it has been drawn up. A copy of the attestation of conformity shall accompany every component.***

6. The manufacturer shall, for a period ending ■ 10 years after the product has been placed on the market, keep at the disposal of the national authorities:

(a) the documentation referred to in point 3.1,

(b) *the information relating to* the change referred to in point 3.5, as approved,

(c) the decisions and reports of the notified body referred to in points 3.5, 4.3 and 4.4.

7. Each notified body shall inform its notifying authority of quality system approvals issued or withdrawn, and shall, periodically or upon request, make available to its notifying authority the list of quality system approvals refused, suspended or otherwise restricted.

Each notified body shall inform the other notified bodies of quality system approvals which it has refused, suspended, withdrawn or otherwise restricted, and, upon request, of quality system approvals which it has issued.

8. Authorised representative

The manufacturer's obligations set out in points 3.1, 3.5, 5 and 6 may be fulfilled by his authorised representative, on his behalf and under his responsibility, provided that they are specified in the mandate.

## ANNEX V

### MODULE *F*: CONFORMITY TO TYPE BASED ON PRODUCT VERIFICATION

1. Conformity to type based on product verification is the part of a conformity assessment procedure whereby the manufacturer fulfils the obligations laid down in points 2 ■ and 5 and ensures and declares on his sole responsibility that the products concerned, which have been subject to the provisions of point 3, are in conformity with the type described in the EU-type examination certificate and satisfy the requirements of this Directive that apply to them.

#### 2. Manufacturing

The manufacturer shall take all measures necessary so that the manufacturing process and its monitoring ensure conformity of the manufactured products with the approved type described in the EU-type examination certificate and with the requirements of this Directive that apply to them.

### 3. Verification

A notified body chosen by the manufacturer shall carry out appropriate examinations and tests in order to check the conformity of the products with the approved type described in the EU-type examination certificate and with the appropriate requirements of this Directive.

The examinations and tests to check the conformity of the products with the appropriate requirements shall be carried out by examination and testing of every product as specified in point 4.

### 4. Verification of conformity by examination and testing of every product

4.1. All products shall be individually examined and appropriate tests set out in the relevant harmonised standard(s) *and/or* equivalent tests *set out in other relevant technical specifications*, shall be carried out in order to verify conformity with the approved type described in the EU-type examination certificate and with the appropriate requirements of this Directive.

In the absence of such a harmonised standard, the notified body concerned shall decide on the appropriate tests to be carried out.



- 4.2. The notified body shall issue a certificate of conformity in respect of the examinations and tests carried out, and shall affix its identification number to each approved product or have it affixed under its responsibility.

The manufacturer shall keep the certificates of conformity available for inspection by the national authorities for 10 years after the product has been placed on the market.

5. ***CE marking, EU declaration of conformity and attestation of conformity***

- 5.1. The manufacturer shall affix the ***CE marking*** and, under the responsibility of the notified body referred to in point 3, the latter's identification number to each individual product ***other than a component*** that is in conformity with the approved type described in the EU-type examination certificate and satisfies the applicable requirements of this Directive.
- 5.2. The manufacturer shall draw up a written ***EU*** declaration of conformity for each product model ***other than a component*** and keep it at the disposal of the national authorities, for 10 years after the product, ***other than a component***, has been placed on the market. The ***EU*** declaration of conformity shall identify such product model for which it has been drawn up.

A copy of the *EU* declaration of conformity shall *accompany every product other than a component*.

If the notified body referred to in point 3 agrees and under its responsibility, the manufacturer may also affix the notified body's identification number to the products *other than components*.

5.3. *The manufacturer shall draw up a written attestation of conformity for each component model and keep it at the disposal of the national authorities for 10 years after the component has been placed on the market. The attestation of conformity shall identify the component model for which it has been drawn up. A copy of the attestation of conformity shall accompany every component.*

6. If the notified body agrees and under its responsibility, the manufacturer may affix the notified body's identification number to the products during the manufacturing process.

7. Authorised representative

The manufacturer's obligations may be fulfilled by his authorised representative, on his behalf and under his responsibility, provided that they are specified in the mandate. An authorised representative may not fulfil the manufacturer's obligations set out in point 2.

## ANNEX VI

### MODULE *CI*: CONFORMITY TO TYPE BASED ON INTERNAL PRODUCTION CONTROL PLUS SUPERVISED PRODUCT TESTING

1. Conformity to type based on internal production control plus supervised product testing is the part of a conformity assessment procedure whereby the manufacturer fulfils the obligations laid down in points 2, 3 and 4, and ensures and declares on his sole responsibility that the products concerned are in conformity with the type described in the EU-type examination certificate and satisfy the requirements of this Directive that apply to them.

2. Manufacturing

The manufacturer shall take all measures necessary so that the manufacturing process and its monitoring ensure conformity of the manufactured products with the type described in the EU-type examination certificate and with the requirements of this Directive that apply to them.

3. Product checks

For each individual product manufactured one or more tests on one or more specific aspects of the product shall be carried out by the manufacturer or on his behalf, in order to verify conformity with the type described in the EU-type examination certificate and with the corresponding requirements of this Directive. The tests shall be carried out under the responsibility of a notified body, chosen by the manufacturer.

The manufacturer shall, under the responsibility of the notified body, affix the notified body's identification number during the manufacturing process.

4. ***CE marking, EU declaration of conformity and attestation of conformity***

- 4.1. The manufacturer shall affix the ***CE marking*** to each individual product ***other than a component*** that is in conformity with the type described in the EU-type examination certificate and satisfies the applicable requirements of this Directive.

4.2. The manufacturer shall draw up a written **EU** declaration of conformity for a product model ***other than a component*** and keep it at the disposal of the national authorities for 10 years after the product, ***other than a component*** has been placed on the market. The **EU** declaration of conformity shall identify such product model for which it has been drawn up.

A copy of the **EU declaration** of conformity shall ***accompany every product, other than a component.***

4.3. ***The manufacturer shall draw up a written attestation of conformity for each component model and keep it at the disposal of the national authorities for 10 years after the component has been placed on the market. The attestation of conformity shall identify the component model for which it has been drawn up. A copy of the attestation of conformity shall accompany every component.***

5. Authorised representative

The manufacturer's obligations set out in point 4 may be fulfilled by his authorised representative, on his behalf and under his responsibility, provided that they are specified in the mandate.

## ANNEX VII

### MODULE *E*: CONFORMITY TO TYPE BASED ON PRODUCT QUALITY ASSURANCE

1. Conformity to type based on product quality assurance is that part of a conformity assessment procedure whereby the manufacturer fulfils the obligations laid down in points 2 and 5, and ensures and declares on his sole responsibility that the products concerned are in conformity with the type described in the EU-type examination certificate and satisfy the requirements of this Directive that apply to them.

#### 2. Manufacturing

The manufacturer shall operate an approved quality system for final product inspection and testing of the products concerned as specified in point 3 and shall be subject to surveillance as specified in point 4.

#### 3. Quality system

3.1. The manufacturer shall lodge an application for assessment of his quality system with the notified body of his choice, for the products concerned.

The application shall include:

- (a) the name and address of the manufacturer and, if the application is lodged by the authorised representative, his name and address as well,
- (b) a written declaration that the same application has not been lodged with any other notified body,
- (c) all relevant information for the product category envisaged,
- (d) the documentation concerning the quality system, and
- (e) the technical documentation of the approved type and a copy of the EU-type examination certificate.

3.2. The quality system shall ensure compliance of the products with the type described in the EU-type examination certificate and with the applicable requirements of this Directive.

All the elements, requirements and provisions adopted by the manufacturer shall be documented in a systematic and orderly manner in the form of written policies, procedures and instructions. The quality system documentation shall permit a consistent interpretation of the quality programmes, plans, manuals and records.

It shall, in particular, contain an adequate description of:

- (a) the quality objectives and the organisational structure, responsibilities and powers of the management with regard to product quality,
- (b) the examinations and tests that will be carried out after manufacture,
- (c) the quality records, such as inspection reports and test data, calibration data, qualification reports on the personnel concerned, etc.,
- (d) the means of monitoring the effective operation of the quality system.

3.3. The notified body shall assess the quality system to determine whether it satisfies the requirements referred to in point 3.2.

It shall presume conformity with those requirements in respect of the elements of the quality system that comply with the corresponding specifications of **■** the relevant harmonised standard **■** .



In addition to experience in quality management systems, the auditing team shall have at least one member with experience of evaluation in the relevant product field and product technology concerned, and knowledge of the applicable requirements of this Directive. The audit shall include an assessment visit to the manufacturer's premises. The auditing team shall review the technical documentation referred to in point 3.1(e) in order to verify the manufacturer's ability to identify the relevant requirements of this Directive and to carry out the necessary examinations with a view to ensuring compliance of the product with those requirements.

The decision shall be notified to the manufacturer. The notification shall contain the conclusions of the audit and the reasoned assessment decision.

- 3.4. The manufacturer shall undertake to fulfil the obligations arising out of the quality system as approved and to maintain it so that it remains adequate and efficient.
- 3.5. The manufacturer shall keep the notified body that has approved the quality system informed of any intended change to the quality system.

The notified body shall evaluate any proposed changes and decide whether the modified quality system will continue to satisfy the requirements referred to in point 3.2 or whether a reassessment is necessary.

It shall notify the manufacturer of its decision. The notification shall contain the conclusions of the examination and the reasoned assessment decision.

4. Surveillance under the responsibility of the notified body

4.1. The purpose of surveillance is to make sure that the manufacturer duly fulfils the obligations arising out of the approved quality system.

4.2. The manufacturer shall, for assessment purposes, allow the notified body access to the manufacture, inspection, testing and storage sites and shall provide it with all necessary information, in particular:

- (a) the quality system documentation,
- (b) the quality records, such as inspection reports and test data, calibration data, qualification reports on the personnel concerned, etc.

- 4.3. The notified body shall carry out periodic audits to make sure that the manufacturer maintains and applies the quality system and shall provide the manufacturer with an audit report.
- 4.4. In addition, the notified body may pay unexpected visits to the manufacturer. During such visits the notified body may, if necessary, carry out product tests, or have them carried out, in order to verify that the quality system is functioning correctly. The notified body shall provide the manufacturer with a visit report and, if tests have been carried out, with a test report.

5. ***CE marking, EU declaration of conformity and attestation of conformity***

- 5.1. The manufacturer shall affix the ***CE marking*** and, under the responsibility of the notified body referred to in point 3.1, the latter's identification number to each individual product ***other than a component*** that is in conformity with the type described in the EU-type examination certificate and satisfies the applicable requirements of this Directive.

5.2. The manufacturer shall draw up a written *EU* declaration of conformity for each product model, *other than a component* and keep it at the disposal of the national authorities for 10 years after the product *other than a component* has been placed on the market. The *EU* declaration of conformity shall identify such product model for which it has been drawn up.

A copy of the *EU* declaration of conformity shall *accompany every product other than a component*.

5.3. The manufacturer shall draw up a written attestation of conformity for each component model and keep it at the disposal of the national authorities for 10 years after the component has been placed on the market. The attestation of conformity shall identify the component model for which it has been drawn up. A copy of the attestation of conformity shall accompany every component.

6. The manufacturer shall, for a period ending ■ 10 years after the product has been placed on the market, keep at the disposal of the national authorities:

- (a) the documentation referred to in point 3.1,
- (b) *the information relating to* the change referred to in point 3.5, as approved,
- (c) the decisions and reports of the notified body referred to in points 3.5, 4.3 and 4.4.

7. Each notified body shall inform its notifying authority of quality system approvals issued or withdrawn, and shall, periodically or upon request, make available to its notifying authority the list of quality system approvals refused, suspended or otherwise restricted.

Each notified body shall inform the other notified bodies of quality system approvals which it has refused, suspended or withdrawn, and, upon request, of quality system approvals which it has issued.

8. Authorised representative

The manufacturer's obligations set out in points 3.1, 3.5, 5 and 6 may be fulfilled by his authorised representative, on his behalf and under his responsibility, provided that they are specified in the mandate.

## ANNEX VIII

### MODULE A: INTERNAL PRODUCTION CONTROL

1. Internal production control is the conformity assessment procedure whereby the manufacturer fulfils the obligations laid down in points 2, 3 and 4, and ensures and declares on his sole responsibility that the products concerned satisfy the requirements of this Directive that apply to them.

2. Technical documentation

The manufacturer shall establish the technical documentation. The documentation shall make it possible to assess the product's conformity to the relevant requirements, and shall include an adequate analysis and assessment of the risk(s).

The technical documentation shall specify the applicable requirements and cover, as far as relevant for the assessment, the design, manufacture and operation of the product. The technical documentation shall contain at least the following elements:

- (a) a general description of the product,
- (b) conceptual design and manufacturing drawings and schemes of components, sub-assemblies, circuits, etc.

- (c) descriptions and explanations necessary for the understanding of those drawings and schemes and the operation of the product,
- (d) a list of the harmonised standards ***applied in full or in part*** the references of which have been published in the *Official Journal of the European Union* ■ and, ***where those harmonised standards have not been applied***, descriptions of the solutions adopted to meet the essential health and safety requirements of this Directive, ***including a list of other relevant technical specifications applied***. In the event of partly applied harmonised standards, the technical documentation shall specify the parts which have been applied,
- (e) results of design calculations made, examinations carried out, etc., and
- (f) test reports.

### 3. Manufacturing

The manufacturer shall take all measures necessary so that the manufacturing process and its monitoring ensure compliance of the manufactured products with the technical documentation referred to in point 2 and with the requirements of this Directive that apply to them.

### 4. ***CE marking, EU declaration of conformity and attestation of conformity***

4.1. The manufacturer shall affix the ***CE marking*** to each individual product ***other than a component*** that satisfies the applicable requirements of this Directive.

4.2. The manufacturer shall draw up a written ***EU declaration of conformity*** for a product model ***other than a component*** and keep it together with the technical documentation at the disposal of the national authorities for 10 years after the product, ***other than a component***, has been placed on the market. The ***EU declaration of conformity*** shall identify such product model for which it has been drawn up.



A copy of the *EU* declaration of conformity shall *accompany every product other than a component*.

**4.3. *The manufacturer shall draw up a written attestation of conformity for each component model and keep it together with the technical documentation at the disposal of the national authorities for 10 years after the component has been placed on the market. The attestation of conformity shall identify the component for which it has been drawn up. A copy of the attestation of conformity shall accompany every component.***

5. Authorised representative

The manufacturer's obligations set out in point 4 may be fulfilled by his authorised representative, on his behalf and under his responsibility, provided that they are specified in the mandate.

## ANNEX IX

### MODULE G: CONFORMITY BASED ON UNIT VERIFICATION

1. Conformity based on unit verification is the conformity assessment procedure whereby the manufacturer fulfils the obligations laid down in points 2, 3 and 5, and ensures and declares on his sole responsibility that the product concerned, which has been subject to the provisions of point 4, is in conformity with the requirements of this Directive that apply to it.
2. Technical documentation
  - 2.1. The manufacturer shall establish the technical documentation and make it available to the notified body referred to in point 4. The documentation shall make it possible to assess the product's conformity with the relevant requirements, and shall include an adequate analysis and assessment of the risk(s). The technical documentation shall specify the applicable requirements and cover, as far as relevant for the assessment, the design, manufacture and operation of the product. The technical documentation shall contain at least the following elements:

- (a) a general description of the product,
- (b) conceptual design and manufacturing drawings and schemes of components, sub-assemblies, circuits, etc.,
- (c) descriptions and explanations necessary for the understanding of those drawings and schemes and the operation of the product,
- (d) a list of the harmonised standards ***applied in full or in part*** the references of which have been published in the *Official Journal of the European Union* ■ and, ***where those harmonised standards have not been applied***, descriptions of the solutions adopted to meet the essential health and safety requirements of this Directive, ***including a list of other relevant technical specifications applied***. In the event of partly applied harmonised standards, the technical documentation shall specify the parts which have been applied,
- (e) results of design calculations made, examinations carried out, etc., and
- (f) test reports.

2.2. The manufacturer shall keep the technical documentation at the disposal of the relevant national authorities for 10 years after the product has been placed on the market.

3. Manufacturing

The manufacturer shall take all measures necessary so that the manufacturing process and its monitoring ensure conformity of the manufactured product with the applicable requirements of this Directive.

4. Verification

A notified body chosen by the manufacturer shall carry out appropriate examinations and tests, set out in the relevant harmonised standards *and/or* equivalent tests *set out in other relevant technical specifications*, to check the conformity of the product with the applicable requirements of this Directive, or have them carried out. In the absence of such a harmonised standard the notified body concerned shall decide on the appropriate tests to be carried out.

The notified body shall issue a certificate of conformity in respect of the examinations and tests carried out and shall affix its identification number to the approved product, or have it affixed under its responsibility.

The manufacturer shall keep the certificates of conformity at the disposal of the national authorities for 10 years after the product has been placed on the market.

5. ***CE marking, EU declaration of conformity and attestation of conformity***

5.1. The manufacturer shall affix the ***CE marking*** and, under the responsibility of the notified body referred to in point 4, the latter's identification number to each product ***other than a component*** that satisfies the applicable requirements of this Directive.

5.2. The manufacturer shall draw up a written ***EU*** declaration of conformity and keep it at the disposal of the national authorities for 10 years after the product, ***other than a component*** has been placed on the market. The ***EU*** declaration of conformity shall identify such product for which it has been drawn up.

A copy of the *EU* declaration of conformity shall *accompany every product, other than a component*.

**5.3. *The manufacturer shall draw up a written attestation of conformity and keep it at the disposal of the national authorities for 10 years after the component has been placed on the market. The attestation of conformity shall identify the component for which it has been drawn up. A copy of the attestation of conformity shall accompany every component.***

6. Authorised representative

The manufacturer's obligations set out in points 2.2 and 5 may be fulfilled by his authorised representative, on his behalf and under his responsibility, provided that they are specified in the mandate.

ANNEX X

*EU DECLARATION OF CONFORMITY (No XXXX)<sup>1</sup>*

1. *Product model/product (product, type, batch or serial number):*
2. *Name and address of the manufacturer and, where applicable, his authorised representative:*
3. *This declaration of conformity is issued under the sole responsibility of the manufacturer.*
4. *Object of the declaration (identification of product allowing traceability; it may, where necessary for the identification of the product, include an image):*
5. *The object of the declaration described above is in conformity with the relevant Union harmonisation legislation:*
6. *References to the relevant harmonised standards used or references to the other technical specifications in relation to which conformity is declared:*
7. *Where applicable, the notified body ... (name, number) performed ... (description of intervention) and issued the certificate:*
8. *Additional information:*

*Signed for and on behalf of:*

*(place and date of issue):*

*(name, function) (signature):*

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<sup>1</sup> *It is optional for the manufacturer to assign a number to the declaration of conformity.*

## ANNEX XI

### Part A

Repealed Directive with list of the successive amendments thereto  
(referred to in Article 43)

Directive 94/9/EC of the European Parliament and  
of the Council

(OJ L 100, 19.4.1994, p. 1)

Regulation (EC) No 1882/2003 of the European  
Parliament and of the Council

(OJ L 284, 31.10.2003, p. 1)

Only point 8 of Annex I

***Regulation (EU) No 1025/2012 of the European  
Parliament and of the Council***

***(OJ L 316, 14.11.2012, p. 12)***

***Only point (c) of Article 26(1)***



Part B

Time-limits for transposition into national law and dates of application  
(referred to in Article 43)

Directive	Time-limit for transposition	Date of application
94/9/EC	1 September 1995	1 March 1996

## ANNEX XII

## CORRELATION TABLE

Directive 94/9/EC	This Directive
Article 1(1)	Article 1(1)(a)
Article 1(2)	Article 1(1)(b)
–	Article 1(1)(c)
Article 1(3)	Article 2(1) to (9)
–	Article 2(10) to (26)
Article 1(4)	Article 1(2)
Article 2	Article 3
Article 3	Article 4
Article 4	Article 5
Article 5(1), first subparagraph	–

Article 5(1), second subparagraph	Article 12(2)
Article 5(2)	Article 12(1)
Article 5(3)	–
–	Articles 6 to 11
–	
Article 6(1) and (2)	–
Article 6(3)	Article 39(1) to (4)
–	Article 39(5), first subparagraph
Article 6(4)	Article 39(5), second subparagraph
Article 7	–
Article 8(1) to (6)	Article 13(1) to (6)
Article 8(7)	–
–	Articles 14 and 15
Article 9	–
Article 10(1)	–
Article 10(2)	Article 16(1)
Article 10(3)	–
–	Article 16(2) to (6)
–	Articles 17 to 33
Article 11	–
–	Articles 34 to 38

Articles 12 and 13	–
–	Article 40
–	Article 41(1)
Article 14(1)	–
Article 14(2)	Article 41(2)
Article 14(3)	–

Article 15(1)	Article 42(1)
Article 15(2)	–
–	Article 42(2)
–	Articles 43 and 44
Article 16	Article 45
Annexes I to IX	Annexes I to IX
Annex X	–
Annex XI	–
–	Annex X
–	Annex XI
–	Annex XII

## ANNEX TO THE LEGISLATIVE RESOLUTION

### STATEMENT OF THE EUROPEAN PARLIAMENT

The European Parliament considers that only when and insofar as implementing acts in the sense of Regulation (EU) No 182/2011 are discussed in meetings of committees, can the latter be considered as "comitology committees" within the meaning of Annex I to the Framework Agreement on the relations between the European Parliament and the European Commission. Meetings of committees thus fall within the scope of point 15 of the Framework Agreement when and insofar as other issues are discussed.