



Department of Trade and Industry

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DTI ATEX Stakeholder Report – July 2006

Welcome to the second of my ATEX Stakeholder reports. Since I last reported there has been a significant change in the way in which both the Commission and other Member States view 94/9/EC. The focus has very much shifted away from issues of implementation and interpretation to those activities covering market surveillance and ensuring consistent application of the Directive across the whole of the European Union. I am very keen that the UK is seen as a leader in market surveillance and will be providing resource for such activities, but offer my reassurance that a 'light touch' approach will be implemented wherever possible. However, I understand that there will still be areas that require further clarification and look to you all to give me a clear idea where demand may lie.

To begin, you will see attached to this letter my formal report of the ATEX Standing Committee meeting that took place in Brussels on 28th June 2006. This meeting took place one week after the Administrative Cooperation (ADCO) group's meeting hosted by the Danish government in Esbjerg, Denmark.

There were a number of points discussed at the Standing Committee that I wish to draw your attention to and I start by noting that now that the back-log of ExNBG sheets has been approved, there is now a push to include relevant sheets within the main body of the 2nd Edition of the ATEX Guidance (<http://ec.europa.eu/enterprise/atex/guide/index.htm>). This move goes hand-in-hand with the provision of subject-specific guidance (<http://ec.europa.eu/enterprise/atex/standcomm.htm>). I am keen to ensure that all UK stakeholders have access to clear, consistent and concise guidance and so welcome any suggestions for additional guidance or further clarity. I would strongly suggest that you make a note of the URLs above and check back on a regular basis.

The Commission was keen to clarify the situation concerning goods manufactured for 'own use'. In short, the current legal interpretation was such that goods are clearly within the scope of the Directive. If you produce such goods, please ensure that they are put through the relevant conformity assurance procedures in the same way as any other ATEX goods: more about this matter later in this report.

There has been a large amount of work carried out within the field of standards since I last reported. The CEN consultant informed the Standing Committee that he was able to recommend 31 new standards related to ATEX 94/9 to the Commission. With this in mind, the Commission clarified that until a standard - either a new or a replacement - was published in the Official Journal, there could be no presumption of conformity and that this was true for any Directive.

Finally, there is one other matter that I wish to draw your attention; that being the status of custom-made components for items placed on the market prior to 1st July 2003. The Commission has made it quite clear that such items are still subject to the requirements of 94/9/EC. I am keen to hear from you if you consider such a requirement as unnecessary or would cause you problems.

Whilst it is not normal for me to report on activities within the Administrative Cooperation (ADCO) group, I think that it is timely for me to link such activities with the shift in focus noted above. There was a clear mood at the ATEX ADCO that market surveillance was now seen as the top priority for stakeholders, with several areas being put forward as being of particular concern. Agreed activities include goods that fall outside of the scope of 94/9/EC being issued with an ATEX certificate and goods that have been manufactured for 'own use' but have not been submitted for conformity assessment procedures. It is my intention to focus on these areas for future market surveillance in the UK and hence I may be in touch with a number of you in the near future seeking information and look forward to your cooperation.

Fork-lift trucks have been the focus of much discussion so far this year; featuring as a topic for subject-specific guidance and as a case-study for the treatment of assemblies. Such discussions have proved to be timely as a recent case that was brought to my attention, where the accumulation and subsequent discharge of static electricity within the hydraulic system was observed – albeit in a fork-lift truck operating under fault conditions. It was found that this has a direct impact on harmonised standard EN1755:2000. I am currently working closely with the affected stakeholder and would welcome any comments or experiences that you may wish to share.

Finally, I am very much aware that the issue of how to treat assemblies under 94/9/EC is the subject of much debate. I am working towards a common understanding with the UK Notified Bodies on this matter and hope to persuade the other Member States to adopt UK's interpretation. To this end, I recently investigated a complaint made against a UK manufacturer and Notified Body. I am pleased to report that the complaint was groundless, thank all those involved for their cooperation but ask that you are aware of the latest guidance on such matters to ensure that any future incidents can have such a positive outcome.

Continuation 3

The next Standing Committee meeting is due to take place on 30th November 2006 and I hope that your comments and views can be included within UK's input to that meeting – thus I ask for your comments on the matters in this report and any others to be passed to me. The ADCO meeting is due to take place the day before where I will seek to ensure that market surveillance carried out is in the best interest of UK industry.

I hope that I've clearly laid out my activities since I last wrote and have given a positive indication on specific areas that I will be working on with you in the near future. I am especially keen to ensure stakeholder engagement and welcome your valuable input. However, if there are any new matters that you wish to bring to my attention or should you have any queries arising out of the matters in this report, please don't hesitate to contact me. I hope to be meeting a number of you in the near future and I look forward to those occasions.

Regards

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Report on ATEX Standing Committee – 28th June 2006

Approval of the draft Agenda (ATEX/06/1/01 rev.1) & Draft Minutes of the meeting of 1st December 2005 (ATEX/06/1/02) – the agenda and minutes were approved with no alterations – there were three other items dealt with under Any Other Business.

Directive 94/9/EC: Interpretation Questions

- **More precise guidance for conformity assessment procedures for assemblies such as ATEX “Fork Lift Trucks” (ATEX/06/1/03)** – a short discussion resulted in the agreement that a new version would be posted to CIRCA for a 4-week comment period. There was a request that all guidance covering fork-lift trucks was amalgamated into one paper.
- **Proposals for Inclusion of the Content of Several ExNBG sheets into the ATEX Guidelines (ATEX/06/1/04)** – discussion on potential new or updated entries into the 2nd Edition of ATEX Guidance were:
 - 4.1.1 – What Is a ‘Potentially Explosive Atmosphere’;
 - 9.3 – Subcontracting;
 - 9.5 – Notified Body Knowledge of Faulty Equipment;
 - 10.1.5 – Acceptance of Manufacturer’s Test Results; and
 - 11.7 – Name and Address of Person Placing on Market.

All were subject to further drafting before potential agreement at the next meeting.

- **Gas Detectors with Measuring Devices Based on ExNB/02/112/CS (ATEX/06/1/05) & Flameproof Enclosures Based on ExNB/00/035/CS (ATEX/06/1/06)** – this proposed guidance was referred to back to the ExNBG to be reworded for later consideration.
- **Coherence of the Consideration paper on “Petrol Pumps” with The Revised ATEX Guidelines** – It was agreed that a draft paper would be considered at the next meeting for inclusion into the current guidance.
- **Follow-up on “manufacturing for own use” (ATEX/06/1/08)** – the Commission clarified the current legal interpretation ie that goods manufactured for own use were subject to all the requirements of 94/9, including conformity assessment procedures. One Member State expressed some concern that it would not be possible to carry out market surveillance on such items and requested guidance from other Member States.

Progress on standardisation

- **ATEX Harmonized Standards Lists on EUROPA** – COM informed the meeting that the list of standards on CIRCA had been recently updated.
- **Report of the ATEX CEN/CENELEC Consultant** – the consultant gave an oral report. The main points were: global standardisation was increasing the amount of work in this field; the main concern was to avoid conflict between the ISO and IEC systems; and of the 47 ATEX-

related standards referred to the consultant, he was able to approve 31 (of the 16 that failed, it was because they dealt with installation and/or use of goods or were based on national requirements).

- **Standardisation work in CEN TC 305 (ATEX/06/1/09) & Standardisation work in CENELEC TC 31 (ATEX/06/1/10)** – these papers were noted. The view was offered that the majority of problems were caused by conflicts between current legislation in North America (US and Canada) and IEC standards.
- **Possible mandate on Pumps of Natural Gas filling stations - update of prEN 13638 (ATEX/06/1/12)** - it was reported that CEN TC326 was dealing with this issue.
- **Information on a proposal on “International legal requirements for explosion protection” submitted to UNECE (ATEX/06/1/11)** – it was explained that this proposal was aimed at removing trade barriers, especially those encountered in the US.

Co-operation between Notified Bodies

- **Oral report by ExNBG Chairman & ExNBG sheets to be noted** – a brief oral report was given and the sheets were noted.

Oral Report by Chair ATEX ADCO – the current ADCO Chair (Denmark) gave an oral report of the recent ADCO meeting.

Interface to ATEX 137 Directive - Report by the Ad-hoc working group on workplace issues (ATEX/06/1/07) – the discussion on this paper was cut short after concerns were raised about the legal inconsistencies that would occur if the paper was approved ie the Commission was being requested to sanction guidance that would contradict both the requirements of Directive 94/9/EC and current Community law. It was agreed that the first two-thirds of the paper would be re-drafted to produce guidance as there was a clear need in industry. The final part was referred back to ADCO for discussion on how individual Member States would deal with non-ATEX compliant components being placed into pre-ATEX equipment.

Any other business – the Commission agreed to clarify the situation on papers covering Bucket Elevators and Water Trough Barriers for possible inclusion at the next meeting; in response to an earlier question from ExNBG, the Commission stated that until a new standard was listed in the OJ there should be no presumption of conformity with any Directive; and CENELEC also repeated its formal offer to be the body that determines when there has been a significant change in ‘the state of the art’.

Next meeting dates – the meeting was informed that the next ATEX Working Group would take place in Brussels on 30th November 2006 following the ATEX ADCO on 29th November 2006.