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ATEX Stakeholder Report – December 2007

Dear ATEX Stakeholder,

It was case of some major changes occurring here at BERR over the summer! Not only did we see changes to: the name of the department (with a new logo); email addresses; and the office location, the BERR New Approach regulation website is now currently being reviewed. Therefore, rather than delay publishing my stakeholder report until the new website layout is launched, I've chosen to send it to you via email. It, and all future stakeholder reports, will be published on the new site. You may wish to note the slight change in email addresses – from name@dti.gsi.gov.uk to name@berr.gsi.gov.uk – and whilst the 'old' DTI address will work for a short time, I advise you to change your address books now to avoid lost emails in the future; the same advice is valid for the postal address and hard-copy post.

You will find my note of the recent meeting of the ATEX Working Group, held in Brussels on 22nd November 2007, forming Annex One of this report. There were several items of interest and I will deal with each in turn.

The first matter is one of great importance; the issuing of EC-Type examination certificates for goods that do not require nor are 'entitled' to them. Section 10.2 of the ATEX Guidance is quite clear on this matter ie Category 2 nonelectrical equipment and of Category 3, as mentioned in Article 8(1)(b)(ii) and 8(1)(c) of 94/9/EC must not be issued with EC-type examination certificates. Such practises create distortions in the market in terms of both economics and safety and have clear negative impacts on consumers. In effect, it was agreed at both the Working Group and Administrative Cooperation (ADCO) meetings that action to ensure that incorrectly issued certificates would be withdrawn. UK is strongly in support of this enforcement action, as the matter was brought to our attention by a UK-based stakeholder who was directly impacted upon by negative economic factors. Further, BERR's legal advice is such that these activities are a breach of The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996 (SI 1996/192). Therefore, BERR and HSE are now considering how such certificates can be withdrawn and, if required, 'voluntary' certificates issued to replace them. Should you require further information about this matter or are aware of such certificates, please don't hesitate to contact me.

There are also several changes to the ATEX guidelines, yet to be ratified by the next Standing Committee meeting in June 2008, which you should be aware of. These include: re-drafts of Section 10.3 (to clarify the responsibilities of both manufacturers and Notified Bodies when there has been a change in 'the state of the art' to standards related to the certification process); a new section on how test results are to be provided by Notified Bodies (in order to allow manufacturers to change Notified Bodies more easily, should they choose to do so); changes to Guideline 3.3 (to

cover remote monitoring of manufacturers in third countries); and new consideration papers covering the topics of 'transportable pressurised cabins for use hazardous areas' and a 'borderline list' whose aim is to provide some guidance and examples of goods that are considered to be in or out of scope of 94/9/EC. BERR pursued several of these matters on behalf of UK stakeholders and we are pleased to see the positive outcomes. BERR & HSE are continuing to work with Germany on the matter of gas detectors and I foresee that the matter will reach a conclusion in time for the June 2008 meeting.

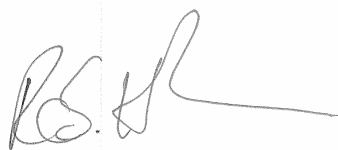
Along with discussions covering changes in 'the state of the art', other items of note involving standards include the recent announcement by the Commission that the lists of the new references of harmonised standards under 94/9/EC were published yesterday on the Official Journal of the European Union, C 300, 12.12.2007, p. 14-15, in the 22 official languages of the Union. These lists are also available on the ATEX website in EUROPA: <http://ec.europa.eu/enterprise/atex/stand.htm>. The new consolidated lists of harmonised standards will also be published as soon as possible.

You may also wish to note that the first safeguard notice of 94/9/EC (the formal notification system of unsafe goods, used by Member States and the Commission) has been issued by Sweden. We are not aware of any of the affected goods – cable glands – having been placed on the market in the UK. The first safeguard notice and the matter of miss-issuing of EC-Type examination certificates are clear indications that national authorities are now beginning to take market surveillance and, where necessary, enforcement action.

The next meetings of both Working Group and ADCO are due to take place in June 2008, with the ADCO kindly hosted by The Netherlands. Other future work of the ATEX team includes presenting a paper at the HazardEx conference in February 2008 and the team hopes that we meet some of you there.

I wish to conclude by thanking you all for your various inputs into the team's work over 2007 and wish you all a prosperous and peaceful 2008.

Regards

A handwritten signature in black ink, appearing to read 'R. Holyomes', with a long horizontal flourish extending to the right.

RICK HOLYOMES
Senior Policy Adviser

ATEX, Pressure Equipment and Simple Pressure Vessel Directives Team
Sustainable Development and Regulation Directorate

ATEX Directive – BERR Note of Working Group Meeting – 22nd November 2007

0. Welcome

The Chair welcomed attendees

1 & 2 Agenda and Minutes

Both the agenda and minutes of the last meeting were adopted without change.

3. Directive 94/9/EC: Interpretation questions:

- a. **Gas detectors with measuring devices (including content of ExNB/02/112/CS) - ATEX_WG/06/1/05 rev. 2; ATEX_WG/07/1/09 ; and ATEX_WG/07/2/11**

There was further discussion on this item following a previous 4-week paper consultation with both UK and GER were keen to reach a compromise on this matter. It was agreed that UK, GER and ExNBG would re-draft the proposed guidance for 4-week circulation prior to adoption by WG.

- b. **Provision of test results with EC-Type Examination Certificates - ATEX_WG/07/1/05; and ATEX_WG/07/2/03**

CION reported that it had carried out internal consultation both sectorally and horizontally and agreed that there was a need for a clear statement in the ATEX guidance on this matter. It was agreed that CION and UK would collaborate on drafting a 4-week circulation paper, with the aim of including text in the ATEX Guidelines. This proposal was supported by GER, who also stated that all GER Notified Bodies provide test results to their customers.

- c. **Activities of HSE with regard to pressurised rooms/modules for use in hazardous areas - ATEX_WG/07/2/04**

UK introduced this paper and a short discussion took place. GER agreed with UK's view on this matter and this was supported by CION. The CEN consultant made the observation that EN 50381 would not be harmonised and carry a presumption on conformity if the goods were out-of-scope with 94/9/EC. It was agreed that the paper, with one minor amendment, would become a WG Consideration Paper following the next Standing Committee meeting.

- d. **Application of ATEX Guidelines 3.3 - ATEX_WG/07/2/14 & Oral Reports from ITA & ORGALIME**

CION introduced the item with a statement that if Notified Bodies and manufacturers found Module D too expensive to operate when dealing with remote locations, they should choose another; both ORG and ITA agreed with this view. At the request of CION, ExNBG agreed to raise this matter at their next meeting, in order to ensure consistent application of the conformity assessment modules. CION further stated that this matter raised an opportunity for a review of the standards covering this situation and that they would propose a new draft of Guidelines 3.3, for 4-week circulation and comment.

e. Borderline list for ATEX products - ATEX_WG/07/2/05

SWE introduced the paper by outlining that the contents of the table were to act as a supplement to existing Guidance for all stakeholders. Both GER and UK raised some concerns over the content of the paper and it was agreed that UK would collaborate with SWE to ensure that there was sufficient explanation accompanying the table to ensure that users were aware that the table was not a replacement for correct risk assessment and conformity assessment procedures. CION indicated that the paper would become a Consideration Paper for the next Standing Committee to ratify.

f. Notified Bodies Issuing EC-Type Examination certificates for Category 3 Goods (ATEX Guidelines 10.2) - ATEX_WG/07/2/06

UK introduced this matter and was supported by CION. CION sought ExNBG's agreement to discuss this matter at their next meeting.

4. Progress on standardisation

a. ATEX Harmonized Standards – Europa Lists

CION stated that delays were caused in providing the list in the 22 official languages of the EU, with no progress on this matter since end-2006.

b. Report of CEN TC305 - ATEX_WG/07/2/09

Working Group's attention was drawn to the listing contained in the paper.

c. Report of CEN TC31 – Oral Report

It was reported that, for the first time, TC31 and TC305 had taken part in a joint-meeting that allowed electrical and non-electrical matters to be jointly considered. It was noted that issues relating to 'state of the art' had been discussed, along with matters relating to IECEX.

d. Report by the ATEX CEN/CENELEC Consultant – Oral report

It was reported, amongst other items, that there had been very little progress with regard to the review of EN1755:2000; in effect, the group of experts had now been agreed and a convenor elected. UK indicated that it would continue to monitor the situation and take action in summer 2008 if there was no progress on this matter.

e. Revision of Harmonised Standards - Proposed re-draft ATEX Guidelines 10.3 - ATEX_WG/06/2/13; ATEX_WG/07/1/06; ATEX_WG/07/1/10; ATEX_WG/07/2/08; and ATEX_WG/07/2/12

Following an introduction from the UK, CION indicated that they would produce a final proposed draft for the next Standing Committee meeting in June 2008.

f. Substantial Modifications Due to Change In Standards Series EN 50014 and Series EN 60079 - ATEX_WG/07/2/10

FRA introduced this paper as a natural extension to the matter above, as it contained a list of standards that had recently changed and could be impacted upon by this matter. It was agreed that the list of standards would be considered at the next ExNBG meeting, with CEN following up this activity with decisions on whether there had been a change in the 'state of the art' for each standard.

g. Update on a proposal on “International legal requirements for explosion protection” submitted to UNECE – Oral Reports from CION & GER

GER reported in the last meeting of the working party of UNECE on this matter and noted that whilst there was no US or South American countries represented, there was scope that New Approach principles could be incorporated into the UNECE model. CION stated that they looked forward to seeing the ‘comparison between ATEX and IECEx’ document GER agreed to provide and stated that this could be used as a ‘road-map’ for future work in this area.

5. Report on the First ATEX Safeguard Clause – Oral Report

CION stated that SWE’s actions had been justified when triggering the first ATEX safeguard clause and that the formal CION opinion would be published on CIRCA in the near future.

6. Oral Report from Chair of ADCO

The Chair of ADCO provided an oral report that included ADCO’s commitment with regard to market surveillance and enforcement of incorrectly EC-Type Examination certificates.

7. Co-operation between Notified Bodies

a. Draft Consideration Paper on “ExNBG Clarification Sheets: Status and use” - ATEX_WG/07/1/07 rev. 1; and ATEX_WG/07/2/13

Following a short discussion, it was agreed to incorporate UK’s and GER’s suggested amendments and this paper would be published on the ATEX website.

8. Revision of the New Approach: An Update

CION provided an oral update on progress and it was noted by WG that this issue was fast-moving and any sectoral input was welcomed by CION.

9. AOB

There was no AOB

10. Date of Next Meeting

June 2008 (date to be confirmed) and will incorporate a Standing Committee meeting.

Rick Holyomes

BERR

December 2007