

REGULATORY IMPACT ANALYSIS (RIA)

European Union (Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres) Regulations, 2016

(S.I. No. ... of 2016)

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1. Foreword

The Health and Safety Authority, herein after referred to as ‘the Authority’, has prepared this Regulatory Impact Analysis (RIA) in line with the Revised RIA Guidelines, (Department of the Taoiseach, 2009).

This RIA considers the options and assesses the impacts of the requirement to transpose the Directive 2014 /34/EU relating to equipment and protective systems intended for use in potentially explosive atmospheres. Such equipment and systems shall be called ATEX products hereafter.

2. Policy context

This RIA assesses the legislative proposal to transpose Council Directive 2014/34/EU. The Directive sets out the essential health and safety requirements relating to the design and construction of equipment and protective systems intended for use in potentially explosive atmospheres, the required conformity assessment procedures for such ATEX products and administrative requirements for manufacturers, importers and distributors. The Directive also places duties on Member States to have proper market surveillance procedures consistent with EU Regulation 765/2008 on Accreditation and Market Surveillance. The deadline for Member States to comply with the Directive is 20th April 2016.

The Authority is already the agency with responsibility for enforcing Directive 94/9/EC which is repealed by Directive 2014/34/EU.

The Directive is one of a package of nine technical harmonisation Directives that are being harmonised and aligned with the New Legislative Framework (NLF) on product safety and market surveillance. The New Legislative Framework (NLF) is a common set of principles which aims to make legislation on the Single Market for Goods clearer, more consistent and more understandable. The market surveillance provisions contained within these Directives are very similar and the impact of transposing them will also be very similar across the relevant parts of industry. The Authority is currently conducting a parallel public consultation on another technical harmonisation directive¹

3. Objectives

The primary objective of the proposed legislation is to increase the level of protection for persons exposed to risks from explosive atmospheres by ensuring the provision of appropriate equipment.

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Lifts and their Safety Components 2014/33 EU

4. Options

The options for addressing the transposition of Directive 2014/34/EU are as follows:

Option 1 Do nothing

Option 1, do nothing, would leave Ireland in breach of the requirement for member states to transpose the Directive by 20th April 2016. The Commission could proceed to take legal action with potentially significant financial penalties arising for the state. It could further create a situation where workers in Ireland and others potentially at risk from explosive atmospheres are afforded a lower level of protection than those in other member states.

Option 2 Introduce new Regulations

Option 2; introduce new Regulations on the basis that Option1 is not viable. It is recommended to transpose Directive 2014/34/EU into Irish law by way of the proposed Regulations. The impact of this option is assessed in more detail in the following section.

5. Impact analysis

The impact of transposing the Directive through the proposed new Regulations is expected to be minimal for the majority of employers because this Directive deals with the making available on the market of ATEX products rather than their use. Also most companies do not use these products because they do not have potentially explosive atmospheres.

However there will be compliance costs for importers because they will have to indicate their contact details on products. There are also new record keeping requirements on both importers and distributors.

ATEX products are a niche product where specialist knowledge is required. To date there have been few product recalls in this business sector. Importers and distributors would be expected to have good technical knowledge about their products.

The intention of the Directive was to align the Directive with EU Regulation 765/2008 rather than introduce new technical requirements. Accordingly in the normal course of business the Directive should not lead to extra costs for ATEX product manufacturers but there will be some extra small administrative costs for importers and distributors.

In the case of faulty products there could be significant costs for all economic operators in the event of a product recall, withdrawal from the market or product destruction. Clearly these costs will depend on the nature and quantity of the product.

Benefits of introducing proposed Regulations

Health and safety benefits: The introduction of the proposed Regulations should further reduce the risk of defective ATEX products being made available on the market through having better traceability and market surveillance.

Business benefits: the reduced risk of fire and explosion related to explosive atmospheres; more level playing ground for economic operators in the supply chain.

Costs of introducing proposed Regulations

Compliance costs: Generic costs

A. Sectoral or activity specific costs;

Additional printing costs for importers as they make their contact details available on products.

B. Training costs

Employees in these affected sectors should already have a good knowledge of ATEX products so significant training costs are not expected.

Enforcement costs:

As the Authority is already a market surveillance authority for these products no exceptional costs are expected for normal surveillance activity.

However should the Authority come across an ATEX product which it prohibits and the economic operator becomes “unavailable” then it could be faced with the costs of product destruction. Because this is situation specific and the Authority has no experience in this area, it is impossible to put a cost on this.

6. Consultation

The proposed Regulations and a draft RIA will be made available on the Authority’s website for a period of 1 month in September/October 2015. Key stakeholders will also be consulted directly, including the following:

- Department of Jobs, Enterprise and Innovation
- Irish Business and Employers' Confederation (IBEC)
- Irish Congress of Trade Unions (ICTU)

The Legislation and Guidance Sub-Committee of the Board will initially consider the draft Regulations at a meeting on 01 October 2015 for submission to the Board meeting on 16 October 2015.

Arising from the consultation phase, a number of amendments may be made to the draft Regulations and these will be brought to the attention of the Legislation and Guidance Sub-Committee of the Board for consideration later in 2015. Subject to these amendments being approved, it is proposed the draft Regulations will be cleared to go to a later Board meeting in 2015. At this meeting the draft Regulations will be cleared for submission to the Department of Jobs, Enterprise and Innovation for consideration with a view to formal legal settlement.

The timely launch of this consultation process is intended to ensure that Ireland complies with the Directive by the deadline of 19th April 2016 and thereby avoiding the consequences of breaching EU laws

The Authority is actively involved in the Market Surveillance Forum established by the Department of Jobs Enterprise and innovation and is collaborating with the other Market Surveillance Authorities in ensuring a coordinated and consistent approach to transposing the requirements of the Directives into Irish law.

6. Enforcement and Compliance

The Authority, based on the hazard profile to date, will carry out market surveillance on ATEX products on a reactive basis for the next few years.

7. Review

In early 2018, the Authority will review the impact of the proposed Regulations through monitoring of enforcement statistics, requests for information, and reviewing progress with stakeholders in the sector.

References

See dedicated Commission website for ATEX under DG GROW.

