
STATUTORY INSTRUMENTS

2016 No. 1107

**The Equipment and Protective Systems Intended for Use
in Potentially Explosive Atmospheres Regulations 2016**

PART 5

Market surveillance and enforcement

Enforcement action in respect of formal non-compliance

59.—(1) Where the market surveillance authority makes one of the following findings relating to a product, it must require a relevant economic operator to remedy the non-compliance concerned within a specified period—

- (a) the CE marking—
 - (i) where required, has not been affixed;
 - (ii) has been affixed otherwise than in accordance with regulations 36 (prohibition on improper use of CE marking) and 41 (CE marking);
- (b) where a notified body is involved in the production control phase for the product, the identification number of the notified body—
 - (i) has not been affixed;
 - (ii) has been affixed otherwise than in accordance with regulation 41;
- (c) the EU declaration of conformity or the attestation of conformity as appropriate—
 - (i) does not accompany the product;
 - (ii) has been drawn up otherwise than in accordance with regulations 7 (EU declaration of conformity and CE marking) and 40 (EU declaration of conformity);
- (d) the technical documentation is either not available or not complete;
- (e) the following product information has not been affixed or has been affixed otherwise than in accordance with paragraph 5 of Schedule 1—
 - (i) specific marking of explosion protection in accordance with paragraph 5(1)(f) of Schedule 1;
 - (ii) the symbols of the equipment-group and category in accordance with paragraph 5(1)(g) of Schedule 1;
 - (iii) where applicable, the other markings and information required by paragraph 5(1) of Schedule 1;
- (f) the following information that is required to be included in the labelling of the product is absent, false or incomplete—
 - (i) the information specified in regulation 13 (information identifying manufacturer)
 - (ii) the information specified in regulation 21 (information identifying importer);

- (g) any other administrative requirement imposed on the manufacturer or importer under Part 2 has not been fulfilled.
- (2) The market surveillance authority must not take any enforcement action against the relevant economic operator under these Regulations in respect of the non-compliance concerned until the period referred to in paragraph (1) has elapsed.
- (3) Where the non-compliance referred to in paragraph (1) persists, the market surveillance authority must take appropriate measures to—
 - (a) restrict or prohibit the product being made available on the market,
 - (b) ensure that the product is withdrawn, or
 - (c) ensure that the product is recalled.
- (4) This regulation does not apply where a product presents a risk.