



STATUTORY INSTRUMENTS.

S.I. No. 322 of 2022



EUROPEAN UNION (EQUIPMENT AND PROTECTIVE SYSTEMS
INTENDED FOR USE IN POTENTIALLY EXPLOSIVE ATMOSPHERES)
(AMENDMENT) REGULATIONS 2022

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EUROPEAN UNION (EQUIPMENT AND PROTECTIVE SYSTEMS
INTENDED FOR USE IN POTENTIALLY EXPLOSIVE ATMOSPHERES)
(AMENDMENT) REGULATIONS 2022

I, LEO VARADKAR, Minister for Enterprise, Trade and Employment, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) (as amended by section 2 of the European Communities Act 2007 (No. 18 of 2007)) and for the purpose of giving full effect to Regulation (EU) 2019/1020 of the European Parliament and of the Council of 20 June 2019¹ and of giving further effect to Directive 2014/34/EU of the European Parliament and of the Council of 26 February 2014², hereby make the following regulations:

1. (1) These Regulations may be cited as the European Union (Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres) (Amendment) Regulations 2022.

(2) In these Regulations “Principal Regulations” means the European Union (Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres) Regulations 2017 (S.I. No. 230 of 2017).

(3) These Regulations and the Principal Regulations can be cited together as the European Union (Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres) Regulations 2017 and 2022.

(4) A word or expression which is used in these Regulations and which is also used in the Market Surveillance Regulation has, unless the context otherwise requires, the same meaning in these Regulations as it has in the Market Surveillance Regulation.

(5) References to Articles 15 to 29 of Regulation (EC) No. 765/2008 of 9 July 2008³ in the Principal Regulations shall be construed as references to the Market Surveillance Regulation and shall be read in accordance with the correlation table in Annex III to the Market Surveillance Regulation, the text of which is set out in Regulation 2(18) of these Regulations.

(6) Any reference to the entirety of Regulation (EC) No. 765/2008 in the Principal Regulations shall, to the extent that it refers or otherwise relates to Articles 15 to 29 of Regulation (EC) No. 765/2008, shall be construed as a reference to the Market Surveillance Regulation and shall be read in accordance with the correlation table in Annex III to the Market Surveillance Regulation, the text of which is set out in Regulation 2(18) of these Regulations.

¹ OJ No. L169, 25.6.2019, p. 1

² OJ No. L96, 29.3.2014, p. 309

³ OJ No. L 218, 13.8.2008, p. 30

2. (1) The “Arrangement of Regulations” of the Principal Regulations is amended by-

- (a) inserting after “10. Obligations of distributors.” the following-
 - “ 10A. Obligations of fulfilment service providers.”,
- (b) inserting after “12. Identification of economic operators.” the following-
 - “12A. Distance sales.
 - 12B. Obligation of cooperation.”,
- (c) inserting after “27. Procedure for dealing with products presenting a risk at national level.” the following-
 - “27A. Corrective actions that may be required of economic operators.”,
- (d) deleting “40. Service of notifications.”,
- (e) substituting for “47. Notice or direction to be in writing.” the following-
 - “47. Service of notices, directions etc..”, and
- (f) inserting after “SCHEDULE 11 TEXT OF ANNEX XII TO THE DIRECTIVE” the following-

“SCHEDULE 12

TEXT OF ANNEX III TO REGULATION (EU) NO. 2019/1020

Correlation Table”.

(2) The Principal Regulations are amended at Regulation 2(1) by inserting the following–

““corrective action” means any action taken by an economic operator to bring any non-compliance to an end where required by a market surveillance authority or on the economic operator's own initiative;

“end user” means any natural or legal person residing or established in a Member State, to whom a product has been made available either as a consumer outside of any trade, business, craft or profession or as a professional end user in the course of its industrial or professional activities;

“fulfilment service provider” means any natural or legal person offering, in the course of commercial activity, at least two of the following services: warehousing, packaging, addressing and dispatching, without having ownership of the products involved, excluding postal services as defined in point 1 of Article 2 of Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997⁴, parcel delivery services as defined in point

⁴ OJ No. L15 21.1.98, p. 14

2 of Article 2 of Regulation (EU) 2018/644 of the European Parliament and of the Council of 18 April 2018⁵, and any other postal services or freight transport services;

“information society service provider” means a provider of a service as defined in point (b) of Article 1(1) of Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015⁶;

“Market Surveillance Regulation” means Regulation (EU) 2019/1020 of the European Parliament and of the Council of 20 June 2019;

“non-compliance” means any failure to comply with any requirement under the Directive, the Market Surveillance Regulation or under these Regulations;

“online interface” means any software, including a website, part of a website or an application, that is operated by or on behalf of an economic operator, and which serves to give end users access to the economic operator's products;

“product presenting a risk” means a product having the potential to affect adversely health and safety of persons in general, health and safety in the workplace, protection of consumers, the environment, public security and other public interests, protected by the Directive and the Market Surveillance Regulation, to a degree which goes beyond that considered reasonable and acceptable in relation to its intended purpose or under the normal or reasonably foreseeable conditions of use of the product concerned, including the duration of use and, where applicable, its putting into service, installation and maintenance requirements;

“product presenting a serious risk” means a product presenting a risk, for which, based on a risk assessment and taking into account the normal and foreseeable use of the product, the combination of the probability of occurrence of a hazard causing harm and the degree of severity of the harm is considered to require rapid intervention by the market surveillance authorities, including cases where the effects of the risk are not immediate;

“risk” means the combination of the probability of an occurrence of a hazard causing harm and the degree of severity of that harm;”.

(3) The Principal Regulations are amended by the substitution in Regulation 2(1) of-

(a) the following definition for the definition of “authorised representative”:

““authorised representative” means any natural or legal person established within a Member State who has received a written mandate from a manufacturer to act on its behalf in

⁵ OJ No. L112 2.5.2018, p. 19

⁶ OJ No. L241 17.9.2015, p. 1

relation to specified tasks with regard to the manufacturer's obligations under the Directive, the Market Surveillance Regulation or under the requirements of these Regulations;”,

- (b) the following definition for the definition of “economic operator”-

““economic operator” means the manufacturer, the authorised representative, the importer, the distributor, the fulfilment service provider or any other natural or legal person who is subject to obligations in relation to the manufacture of products, making them available on the market or putting them into service in accordance with the Directive and the Market Surveillance Regulation;”, and

- (c) the following definition for the definition of “market surveillance”-

““market surveillance” means the activities carried out and measures taken by market surveillance authority to ensure that a product complies with the requirements set out in the Directive and these Regulations and to ensure protection of the public interest covered by that legislation;”.

(4) The Principal Regulations are amended by inserting after Regulation 5(2) of the following-

- “(3) (a) A person shall not place a product on the market unless there is an economic operator of the type referred to in Article 4(2) of the Market Surveillance Regulation established in a Member State and who is responsible for the tasks as set out in Article 4(3) of the Market Surveillance Regulation.
- (b) The economic operator referred to in subparagraph (a) shall indicate its name, registered trade name or registered trademark, and contact details, including the postal address on the product or on its packaging, the parcel or an accompanying document.”.

(5) The Principal Regulations are amended by inserting after Regulation 8(3) the following-

“(4) In addition to the above, where an authorised representative has been designated by the manufacturer for the purposes of Article 4 of the Market Surveillance Regulation as referred to in Regulation 5(3)(a) herein, that authorised representative shall-

- (a) perform the tasks listed in Article 4(3) of the Market Surveillance Regulation,
- (b) provide a copy of the mandate to the market surveillance authority on request, in an official language of the State, and

- (c) have the appropriate means to be able to fulfil their tasks referred to in subparagraph (a).”.

(6) The Principal Regulations are amended by the insertion after Regulation 10 of the following-

“Obligations of fulfilment service providers

10A. A fulfilment service provider established in a Member State, where there is no other economic operator established in a Member State with respect to the products it handles shall—

- (a) when making products available on the market, act in accordance with the requirements of the Directive and these Regulations,
- (b) before making products available on the market, verify that the EU declaration of conformity and technical documentation have been drawn up,
- (c) for 10 years after the product has been placed on the market by the fulfilment service provider—
 - (i) keep a copy of the declaration of conformity at the disposal of the relevant market surveillance authority, and
 - (ii) ensure that the technical documentation can be made available to those authorities upon request,
- (d) further to a reasoned request from a market surveillance authority, provide that authority with all information and documentation necessary to demonstrate the conformity of the product in a language which can be easily understood by that authority,
- (e) when having reason to believe that the product in question presents a risk, inform the relevant market surveillance authority as designated by Regulation 3 of the Principal Regulations,
- (f) cooperate with the relevant market surveillance authority, at its request, making sure that the immediate, necessary, corrective action is taken to remedy any case of non-compliance with the requirements set out in the Directive, and
- (g) where the corrective action referred to in subparagraph (f) is not possible, mitigate the risks presented by that product, in either of the following circumstances-
 - (i) when required to do so by the relevant market surveillance authority, or
 - (ii) on its own initiative, where the fulfilment service provider considers or has reason to

believe that the product in question presents a risk.”.

(7) The Principal Regulations are amended by inserting after Regulation 12 the following-

“Distance sales

- 12A. (a) Products offered for sale online or through other means of distance sales shall be deemed to be made available on the market if the offer is targeted at end users in a Member State.
- (b) An offer for sale shall be considered to be targeted at end users in a Member State if the relevant economic operator directs, by any means, its activities to a Member State.

Obligation of cooperation

- 12B. (a) Economic operators shall cooperate with the market surveillance authority in accordance with Article 7(1) of the Market Surveillance Regulation.
- (b) Information society service providers shall cooperate with the market surveillance authority in accordance with Article 7(2) of the Market Surveillance Regulation.”.

(8) The Principal Regulations are amended by inserting after Regulation 27 the following-

“Corrective actions that may be required of economic operators

27A. (1) Further to Regulation 27(3)(a) above, the market surveillance authority may require the economic operator to take corrective action, which may include, *inter alia*,

- (a) bringing product into compliance, including by rectifying formal non-compliance as set out in Regulation 30 or by ensuring that the product no longer presents a risk,
- (b) preventing the product from being made available on the market,
- (c) withdrawing or recalling the product immediately and alerting the public to the risk presented,
- (d) destroying the product or otherwise rendering it inoperable,
- (e) affixing to the product suitable, clearly worded, easily comprehensible warnings in an official language of the State of the risks that it might present,
- (f) setting prior conditions for making the product concerned available on the market, and

- (g) alerting end users at risk immediately and in an appropriate form, including by publication of special warnings in the language which can be easily understood by the market surveillance authority.

(2) The corrective actions referred to in subparagraphs (1)(e), (f) and (g) only apply in cases where the product is liable to present a risk only in certain conditions or only to certain end users.”.

(9) The Principal Regulations are amended in Regulation 31-

- (a) by inserting “and the Market Surveillance Regulation” after “the Directive” in paragraph (1), and
- (b) by inserting “the Market Surveillance Regulation” before “the Directive” in paragraph (2).

(10) The Principal Regulations are amended in Regulation 32-

- (a) the inserting in paragraph (1) “the Market Surveillance Regulation, the Directive and ” before “these Regulations”,
- (b) by substituting for subparagraph (1)(a)(i) the following:
 - “(i) any premises, land or means of transport that the economic operator in question uses for purposes related to the economic operator’s trade, business, craft or profession, in order to identify non-compliance and to obtain evidence, or”,
- (c) by substituting for subparagraph (1)(r) the following:
 - “(r) cause any product found at any place to be subjected, at the place it is found or any other location, to any testing, examination or analysis (but not so as to damage or destroy it unless this is necessary for the purposes of the Directive or these Regulations) and where an inspector proposes to exercise the power conferred by this subparagraph and if so requested by the person in charge, cause anything that is to be done by virtue of this subparagraph to be done in the presence of the person in charge save that the person in charge is responsible for his or her own costs in attending at the exercise of any power under this subparagraph and cannot unreasonably delay the inspector in the exercise of those powers;”, and
- (d) by inserting after subparagraph (1)(u) the following:
 - “(v) require an economic operator to provide relevant documents, technical specifications, data or information on compliance and technical aspects of the product, including access to embedded software in so far as such access is necessary for the purpose of assessing the product’s compliance with these Regulations and the Directive, in any form or format

and irrespective of the medium of storage or the place where such documents, technical specifications, data or information are stored;

- (w) take or obtain copies of documents, technical specifications, data or information referred to in subparagraph (v);
- (x) require an economic operator to provide any information that in the opinion of the inspector is relevant for compliance;
- (y) require an economic operator to provide relevant information on the supply chain, on the details of the distribution network, on quantities of products on the market and on other models of products that have the same technical characteristics as the products in question, where relevant for compliance with the applicable requirements of these Regulations or the Directive;
- (z) require an economic operator to provide relevant information required for the purpose of ascertaining the ownership of a website, where the information in question is related to the subject matter of investigation;
- (aa) acquire product samples, including under a cover identity, to inspect those samples and to reverse engineer them in order to identify non-compliance and to obtain evidence;
- (ab) where no other effective means are available to eliminate a serious risk-
 - (i) require the removal of content referring to the related product from an online interface or to require the explicit display of a warning to end users when they access an online interface; or
 - (ii) where a request according to clause (i) has not been complied with, require information society service providers to restrict access to the online interface, including by requesting a relevant third party to implement such measures.”.

(11) The Principal Regulations are amended in Regulation 34 by-

- (a) substituting for paragraph (1) the following-

“(1) An inspector who is of the opinion that-

- (a) an economic operator is contravening or has contravened any of the provisions of the Directive, the Market Surveillance Regulation or these Regulations, or

- (b) an information society service provider has failed to comply with a request under Regulation 12B(b) or 32(1)(ab),

may serve a contravention notice on the economic operator or information society service provider.”,

- (b) deleting “and” after subparagraph (2)(g),
- (c) deleting the full stop after subparagraph (2)(h) and inserting the following after subparagraph (2)(h)-
- “, and
- (i) be communicated to the relevant economic operator or information society service provider without delay.”, and
- (d) inserting after paragraph (8) the following-

“(9) Subject to paragraph (10), the person on whom it is intended that a contravention notice will be served shall have the opportunity to make representations to the market surveillance authority within 10 working days of first being advised of the market surveillance authority’s intention to serve a contravention notice.

(10) Where an opportunity to make representations referred to in paragraph (9) is not possible because of the urgency of the measure directed in the contravention notice, based on health or safety requirements or other grounds relating to the public interests covered by the Directive, the market surveillance authority shall give the person on whom the contravention notice is served the opportunity to be heard as soon as possible thereafter and the decision to issue the contravention notice shall be reviewed promptly.”.

(12) The Principal Regulations are amended in Regulation 36 by-

- (a) by deleting “and” after subparagraph (2)(g),
- (b) by deleting the full stop after subparagraph (2)(h) and inserting the following after subparagraph (2)(h)-
- “, and
- (i) be communicated to the relevant economic operator without delay.”, and
- (c) deleting paragraph (8) and substituting it with the following-

“(8) A market surveillance authority shall give the recipient of a prohibition notice the opportunity to be heard as soon as possible after the service of the notice on that person and the decision to serve the notice shall be reviewed promptly thereafter.

(9) A person shall comply with a prohibition notice under this Regulation.”.

(13) The Principal Regulations are amended at Regulation 39 by-

- (a) inserting in paragraph (1) “the Market Surveillance Regulation,” before “the Directive”, and
- (b) inserting after paragraph (7) the following-

“(8) Subject to paragraph (9), a person on whom it is intended that an information notice shall be served shall have the opportunity to make representations to a market surveillance authority within 10 working days of first being advised of the market surveillance authority’s intention to serve an information notice.

(9) Where an opportunity to make representations referred to in paragraph (8) is not possible because of the urgency of the serving of the information notice, as justified by health or safety requirements or other grounds relating to public interests, the market surveillance authority shall give the person on whom an information notice is served the opportunity to be heard as soon as possible after the service of the notice and the decision to serve an information notice shall be reviewed promptly thereafter.”.

(14) The Principal Regulations are amended by the deletion of Regulation 40.

(15) The Principal Regulations are amended in Regulation 42 as follows-

- (a) in paragraph (1) by substituting “Regulation 5, 7, 8(3), 8(4), 9, 10, 10A, 12, 12B, 27(2), 27(5) or 29(2)” for “Regulation 5, 7, 8(3), 9, 10, 12, 27(2), 27(5) or 29(2)”,
- (b) in paragraph (6) by the substitution of “Regulation 47(1)(e)” for “Regulation 40(1)(e)”, and
- (c) by substituting for paragraph (11) the following:

“(11) A person who, in purported compliance with a requirement in an information notice furnishes information to a market surveillance authority that he or she knows or ought reasonably to know to be false or misleading in a material respect, commits an offence.”.

(16) The Principal Regulations are amended by the insertion after Regulation 43(2) of-

“(3) Where a person is convicted of an offence under Regulation 42, the court by or before which he or she is convicted may order any product in respect of which the offence was committed to be forfeited and either destroyed or otherwise disposed of in such manner as the court may determine.

(4) Where an order is made under paragraph (3), the court may, on application to it by or on behalf of the market surveillance authority, order the person convicted of the offence to pay for all or part of the destruction or disposal of such relevant thing, subject to such conditions, if any, as may be specified in the order.”.

(17) The Principal Regulations are amended by the substitution of the following for Regulation 47-

“Service of notices, directions etc.

47. (1) Subject to paragraphs (2) and (3), a direction, notice or other measure under Regulation 34, 36, or 39 shall be in writing, addressed to the person being served by name and may be served on the person by doing any of the following-

- (a) delivering it to the person;
- (b) leaving it at the address at which the person carries on business or ordinarily resides or, in the case in which an address for service has been furnished, at that address;
- (c) sending it by post in a prepaid registered letter to the address at which the person carries on business or ordinarily resides or, in a case in which an address for service has been furnished, to that address;
- (d) where there is a facility for receiving the text of the notice by electronic means at the address at which the person carries on business or ordinarily resides, transmitting the text of the notice by such means to such address, provided that the notice is also delivered in any of the other ways referred to in this paragraph;
- (e) if the address at which the person ordinarily resides cannot be ascertained by reasonable enquiry and the notice being served relates to a premises, by delivering it to the premises or by affixing it in a conspicuous position on or near the premises; or
- (f) if all of the methods set out at subparagraphs (a) to (e) are either not possible in the circumstances or have proved insufficient to effect service of the notice or document on the relevant person, by electronic means only.

(2) Where a direction, notice or other measure under Regulation 34, 36 or 39 is to be served on a person who is the owner or occupier of land or property and the name of the person cannot be ascertained by reasonable inquiry, it may be addressed to the person by using the words “the owner” or, as the case may require, “the occupier”.

(3) For the purposes of these Regulations, a company within the meaning of the Companies Acts 2014 shall be deemed to be ordinarily resident at its registered office, and every other body corporate and

every unincorporated body shall be deemed to be ordinarily resident at its principal office or place of business.”.

(18) The Principal Regulations are amended by the insertion after Schedule 11 of the following-

“SCHEDULE 12

TEXT OF ANNEX III TO REGULATION (EU) No. 2019/1020

CORRELATION TABLE

Regulation (EC) No. 765/2008	Regulation (EU) No. 2019/1020
Article 1(2)	Article 1(1)
Article 1(3)	Article 1(3)
Article 2, point 1	Article 3, point 1
Article 2, point 2	Article 3, point 2
Article 2, point 14	Article 3, point 22
Article 2, point 15	Article 3, point 23
Article 2, point 17	Article 3, point 3
Article 2, point 18	Article 3, point 4
Article 2, point 19	Article 3, point 25
Article 15(1) and (2)	Article 2(1)
Article 15(3)	Article 2(3)
Article 15(4)	—
Article 15(5)	Article 2(2)
Article 16(1)	Article 10(1)
Article 16(2)	Article 16(5)
Article 16(3)	—
Article 16(4)	—
Article 17(1)	Article 10(2)
Article 17(2)	Article 34(1), last sentence and Article 34(3), point (a)

Article 18(1)	Article 10(6)
Article 18(2), point (a)	Article 11(7), point (a)
Article 18(2), point (b)	—
Article 18(2), point (c)	Article 11(7), point (b)
Article 18(2), point (d)	—
Article 18(3)	Articles 10(5) and 14(1)
Article 18(4)	Article 14(2)
Article 18(5)	Article 13
Article 18(6)	Article 31(2), point (o)
Article 19(1), first subparagraph	Article 11(3)
Article 19(1), second subparagraph	Article 14(4), points (a), (b), (e) and (j)
Article 19(1), third subparagraph	Article 11(5)
Article 19(2)	Article 16(3), point (g)
Article 19(3)	Article 18(2)
Article 19(4)	Article 11(2)
Article 19(5)	Article 17
Article 20(1)	Article 19(1)
Article 20(2)	Article 19(2)
Article 21(1)	Article 18(1)
Article 21(2)	Article 18(2)
Article 21(3)	Article 18(3)
Article 21(4)	—

Article 22(1)	Article 20(1)
Article 22(2)	Article 20(2)
Article 22(3)	Article 20(3)
Article 22(4)	Article 20(4)
Article 23(1) and (3)	Article 34(1)
Article 23(2)	Article 34(4)
Article 24(1)	Article 22(1)
Article 24(2)	Article 22(2) to (5)
Article 24(3)	—
Article 24(4)	—
Article 25(1)	—
Article 25(2), point (a)	Article 31(2), point (f) and Article 33(1), points (i) and (k)
Article 25(2), point (b)	Article 31(2), points (g) and (m) and Article 33(1), points (i) and (k)
Article 25(3)	—
Article 26	—
Article 27(1), first sentence	Article 25(2)
Article 27(1), second sentence	Article 25(3)
Article 27(2)	Article 25(4)
Article 27(3), first subparagraph	Article 26(1)
Article 27(3), second subparagraph	Article 26(2)
Article 27(4)	—

Article 27(5)	—
Article 28(1)	Article 27, first paragraph, point (a)
Article 28(2)	Article 27, first paragraph, point (b)
Article 29(1)	Article 28(1)
Article 29(2)	Article 28(2)
Article 29(3)	Article 28(3)
Article 29(4)	Article 28(4)
Article 29(5)	Article 25(5)
Article 32(1), point (d)	—
Article 32(1), point (e)	Article 36(2), point (e)

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GIVEN under my Official Seal,
30 June, 2022.

LEO VARADKAR,
Minister for Enterprise, Trade and Employment..

EXPLANATORY NOTE

(This note is not part of the instrument and does not purport to be a legal interpretation)

These Regulations give full effect in Irish law to the provisions of the Regulation (EU) 2019/1020 of the European Parliament and of the Council of 20 June 2019 in relation to Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres (known as ATEX).

These Regulations amend the European Union (Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres) Regulations 2017 (S.I. No. 230 of 2017) that gave effect to Directive 2014/34/EU of the European Parliament and of the Council of 26 February 2014.

The purpose of these Regulations is to add the provisions relating to market surveillance and compliance for equipment and protective systems intended for use in potentially explosive atmospheres required to be introduced by Regulation (EU) 2019/1020. These Regulations provide the market surveillance authority with the necessary enforcement powers and set out additional responsibilities for relevant economic operators in respect to market surveillance of ATEX equipment placed on the market within the EU.

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