Directive 1999/92/EC of the European Parliament and of the Council of 16 December 1999 on minimum requirements for improving the safety and health protection of workers potentially at risk from explosive atmospheres (15th individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC)

DIRECTIVE 1999/92/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 16 December 1999

on minimum requirements for improving the safety and health protection of workers potentially at risk from explosive atmospheres (15th individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 137 thereof,

Having regard to the proposal from the Commission[(1)], submitted after consultation with the Advisory Committee on Safety, Hygiene and Health Protection at Work and the Safety and Health Commission for the Mining and Other Extractive Industries,

Having regard to the opinion of the Economic and Social Committee[(2)],

After consulting the Committee of the Regions,

Acting in accordance with the procedure referred to in Article 251 of the Treaty, in the light of the joint text approved by the Conciliation Committee on 21 October 1999[(3)],

Whereas:

(1) Article 137 of the Treaty provides that the Council may adopt, by means of Directives, minimum requirements for encouraging improvements, especially in the working environment, to guarantee a better level of protection of the health and safety of workers;

(2) Under the terms of that Article, those Directives are to avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings;

(3) The improvement of occupational safety, hygiene and health is an objective which should not be subordinated to purely economic considerations;

(4) Compliance with the minimum requirements for improving the safety and health protection of workers potentially at risk from explosive atmospheres is essential if workers' safety and health protection is to be ensured;

(5) This Directive is an individual Directive within the meaning of Article 16(1) of Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work[(4)]; therefore, the provisions of

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the said Directive, in particular those relating to worker information, to the consultation and participation of workers and to the training of workers, are also fully applicable to cases in which workers are potentially at risk from explosive atmospheres, without prejudice to more restrictive or specific provisions contained in this Directive;

(6) This Directive constitutes a practical step towards the achievement of the social dimension of the internal market;

(7) Directive 94/9/EC of the European Parliament and of the Council of 23 March 1994 on the approximation of the laws of the Member States concerning equipment and protective systems intended for use in potentially explosive atmospheres[(5)] states that it is intended to prepare an additional Directive based on Article 137 of the Treaty covering, in particular, explosion hazards which derive from a given use and/or types and methods of installation of equipment;

(8) Explosion protection is of particular importance to safety; whereas explosions endanger the lives and health of workers as a result of the uncontrolled effects of flame and pressure, the presence of noxious reaction products and consumption of the oxygen in the ambient air which workers need to breathe;

(9) The establishment of a coherent strategy for the prevention of explosions requires that organisational measures complement the technical measures taken at the workplace; Directive 89/391/EEC requires the employer to be in possession of an assessment of the risks to workers' health and safety at work; this requirement is to be regarded as being specified by this Directive in that it provides that the employer is to draw up an explosion protection document, or set of documents, which satisfies the minimum requirements laid down in this Directive and is to keep it up to date; the explosion protection document includes the identification of the hazards, the evaluation of risks and the definition of the specific measures to be taken to safeguard the health and safety of workers at risk from explosive atmospheres, in accordance with Article 9 of Directive 89/391/EEC; the explosion protection document may be part of the assessment of the risks to health and safety at work required by Article 9 of Directive 89/391/EEC;

(10) An assessment of explosion risks may be required under other Community acts; whereas, in order to avoid unnecessary duplication of work, the employer should be allowed, in accordance with national practice, to combine documents, parts of documents or other equivalent reports produced under other Community acts to form a single ‘safety report’;

(11) The prevention of the formation of explosive atmospheres also includes the application of the substitution principle;

(12) Coordination should take place when workers from several undertakings are present at the same workplace;

(13) Preventive measures must be supplemented if necessary by additional measures which become effective when ignition has taken place; maximum safety can be achieved by combining preventive measures with other additional measures limiting the detrimental effects of explosions on workers;

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(14) Council Directive 92/58/EEC of 24 June 1992 on the minimum requirements for the provision of safety and/or health signs at work (ninth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC)[6] is fully applicable, in particular to places immediately contiguous to hazardous areas, where smoking, crosscutting, welding and other activities introducing flames or sparks may interact with the hazardous area;

(15) Directive 94/9/EC divides the equipment and protective systems which it covers into equipment groups and categories; this Directive provides for a classification by the employer of the places where explosive atmospheres may occur in terms of zones and determines which equipment and protective systems groups and categories should be used in each zone,

HAVE ADOPTED THIS DIRECTIVE:

SECTION I

GENERAL PROVISIONS

Article 1

Object and scope

1 This Directive, which is the 15th individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC, lays down minimum requirements for the safety and health protection of workers potentially at risk from explosive atmospheres as defined in Article 2.

2 This Directive shall not apply to:

- a areas used directly for and during the medical treatment of patients;
- b the use of appliances burning gaseous fuels in accordance with Directive 90/396/EEC[7];
- c the manufacture, handling, use, storage and transport of explosives or chemically unstable substances;
- d mineral-extracting industries covered by Directive 92/91/EEC[8] or Directive 92/104/EEC[9];
- e the use of means of transport by land, water and air, to which the pertinent provisions of the international agreements (e.g. ADNR, ADR, ICAO, IMO, RID), and the Community Directives giving effect to those agreements, apply. Means of transport intended for use in a potentially explosive atmosphere shall not be excluded.

3 The provisions of Directive 89/391/EEC and the relevant individual Directives are fully applicable to the domain referred to in paragraph 1, without prejudice to more restrictive and/or specific provisions contained in this Directive.

Article 2

Definition

For the purposes of this Directive, ‘explosive atmosphere’ means a mixture with air, under atmospheric conditions, of flammable substances in the form of gases, vapours,

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mists or dusts in which, after ignition has occurred, combustion spreads to the entire unburned mixture.

SECTION II

OBLIGATIONS OF THE EMPLOYER

Article 3

Prevention of and protection against explosions

With a view to preventing, within the meaning of Article 6(2) of Directive 89/391/EEC, and providing protection against explosions, the employer shall take technical and/or organisational measures appropriate to the nature of the operation, in order of priority and in accordance with the following basic principles:

— the prevention of the formation of explosive atmospheres, or where the nature of the activity does not allow that,

— the avoidance of the ignition of explosive atmospheres, and

— the mitigation of the detrimental effects of an explosion so as to ensure the health and safety of workers.

These measures shall where necessary be combined and/or supplemented with measures against the propagation of explosions and shall be reviewed regularly and, in any event, whenever significant changes occur.

Article 4

Assessment of explosion risks

1 In carrying out the obligations laid down in Articles 6(3) and 9(1) of Directive 89/391/EEC the employer shall assess the specific risks arising from explosive atmospheres, taking account at least of:

— the likelihood that explosive atmospheres will occur and their persistence,

— the likelihood that ignition sources, including electrostatic discharges, will be present and become active and effective,

— the installations, substances used, processes, and their possible interactions,

— the scale of the anticipated effects.

Explosion risks shall be assessed overall.

2 Places which are or can be connected via openings to places in which explosive atmospheres may occur shall be taken into account in assessing explosion risks.

Article 5

General obligations

To ensure the safety and health of workers, and in accordance with the basic principles of risk assessment and those laid down in Article 3, the employer shall take the necessary measures so that:

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— where explosive atmospheres may arise in such quantities as to endanger the health and safety of workers or others, the working environment is such that work can be performed safely,

— in working environments where explosive atmospheres may arise in such quantities as to endanger the safety and health of workers, appropriate supervision during the presence of workers is ensured in accordance with the risk assessment by the use of appropriate technical means.

Article 6

Duty of coordination

Where workers from several undertakings are present at the same workplace, each employer shall be responsible for all matters coming under his control.

Without prejudice to the individual responsibility of each employer as provided for in Directive 89/391/EEC, the employer responsible for the workplace in accordance with national law and/or practice shall coordinate the implementation of all the measures concerning workers' health and safety and shall state, in the explosion protection document referred to in Article 8, the aim of that coordination and the measures and procedures for implementing it.

Article 7

Places where explosive atmospheres may occur

1 The employer shall classify places where explosive atmospheres may occur into zones in accordance with Annex I.

2 The employer shall ensure that the minimum requirements laid down in Annex II are applied to places covered by paragraph 1.

3 Where necessary, places where explosive atmospheres may occur in such quantities as to endanger the health and safety of workers shall be marked with signs at their points of entry in accordance with Annex III.

Article 8

Explosion protection document

In carrying out the obligations laid down in Article 4, the employer shall ensure that a document, hereinafter referred to as the ‘explosion protection document’, is drawn up and kept up to date.

The explosion protection document shall demonstrate in particular:

— that the explosion risks have been determined and assessed,

— that adequate measures will be taken to attain the aims of this Directive,

— those places which have been classified into zones in accordance with Annex I,

— those places where the minimum requirements set out in Annex II will apply,

— that the workplace and work equipment, including warning devices, are designed, operated and maintained with due regard for safety,