

Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements - Response from Fire Protection Association, London Road, Moreton in Marsh, Gloucestershire, GL56 0RH, Registered ID 58986353784-22

1.0 Introduction

Following the decision to withdraw the Block Exemption Regulation provisions for Security Devices, the Fire Protection Association and RISC Authority welcomes the invitation to comment on the draft Horizontal Guidelines as they have already led to differing interpretations to emerge regarding; the definitions and purpose of standardisation that have been used; the need mandatory consultations and the allocation of voting rights.

2.0 RISC Authority

Insofar as RISC Authority conducts research and performs representation on behalf of a group of UK insurers into risk mitigation measures from fire and security risks; it is assumed, for the purpose of this document, that part or all of its activities falls into the definition of a horizontal co-operation agreement. Acting as a portal for communication between its membership and other stakeholders, through its working groups, RISC Authority is well placed to offer advice and receive notification on all relevant subject matter. Underpinned by extensive research, RISC Authority publishes through the Fire Protection Association (FPA), a wide range of guides and recommendations for risk mitigation in the areas of fire and security.

3.0 Fire Protection Association

Formed in 1946 to act as the UK's national fire safety organisation, the Fire Protection Association (FPA) is a not for profit, limited by guarantee company whose members (owners) include, the Association of British Insurers, Lloyd's of London, the Chief Fire Officers Association, the Institution of Fire Engineers and the Fire Industry Association. FPA receives no levy or direct support from insurers but does offer the industry risk management services and advice at market rates. Having responded to the *Report and Working Document on the Functioning of the Insurance Block Exemption Regulation* and the *June 2009 Public Event*, FPA welcomes the opportunity to offer this response to *the Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements*.

4.0 Standardisation

4.1 The description and definition of standardisation agreements used within the draft guidelines is particularly wide ranging and, in our view, would benefit from some clarification, as we do not believe that the publication of risk management guides, which accounts for the vast majority of work of the RISC Authority, can be considered either restrictive or anticompetitive. Without such clarification we are concerned that overly bureaucratic processes may need to be adopted to ensure compliance with these guidelines and this may result in the work being dropped or considerably diluted which in turn would have a detrimental effect on both insurers and consumers alike.

4.2 Having been present at the June 2009 public event in Brussels, it appeared that the main complaint emanating from the trade regarding the existence of the Block Exemption Regulations for Security Devices was in respect of third party certification and approval and your draft guidelines acknowledge this to be an issue. However, the definition of standardisation used goes much further than this and appears to now encompass production processes and methods.

4.3 Much of the work undertaken by RISC Authority in the UK, focuses on risk management and risk control techniques with the outputs being codes of best practice, technical bulletins or

guidance notes. Neither the working groups, who assist in their preparation, nor the practitioners at whom

these documents are aimed, would view the majority of them as standards and they would probably be of little or no interest to CEN or CENELEC and could certainly not be harmonised. We strongly believe therefore that there needs to be clarification as to whether these guidelines are designed to encompass risk management and risk control guides within the definition of standards.

- 4.4 A small amount of work currently commissioned by RISC Authority would clearly and unambiguously fall into the standardisation definition as outlined. However, as previously advised, this work centres on installation codes, and falls outside the harmonisation process. Nevertheless, where such work is undertaken, the trade and other external stakeholders are fully consulted and their responses fully considered before decisions are made on the final text and on publication.

5.0 Voluntary Consensus Codes

- 5.1 RISC Authority believes it has established a transparent, inclusive and auditable system for its work, where the appropriate trade groups are invited to form part of the working groups and so are integral to agreeing the programme and assisting in the development of the recommendations that emerge. The trade are always consulted on outcomes; as their consent is necessary if changes in procedure are required; hence in many ways the process is virtually identical to that described as acceptable practice in Example 4 of the Guidelines.

- 5.2 The risk management guides that result from the majority of its work programme are not considered to be anticompetitive or restrictive in any way. RISC Authority recommendations are consensus based, voluntary, non binding and generally not product specific; for example *The Recommendations for Hot Work* is simply a risk management guide; or *Approved Document B including requirements for Property Protection* which just enhances the government's building code.

- 5.3 The codes and guidance produced cannot be considered mandatory in anyway, individual insurers make their own decisions on the acceptability of risk and have their own thresholds and requirements and this is confirmed in a note that form parts of all RISC Authority documents published by FPA - as demonstrated below.

“IMPORTANT NOTICE

This document has been developed through the RISC Authority and published by the Fire Protection Association (FPA). RISC Authority membership comprises a group of UK insurers that actively support a number of expert working groups developing and promulgating best practice for the protection of people, property, business and the environment from loss due to fire and other risks. The technical expertise for this document has been provided by the Technical Directorate of the FPA, external consultants, and experts from the insurance industry who together form the various RISC Authority Working Groups. Although produced with insurer input it does not (and is not intended to) represent a pan-insurer perspective. Individual insurance companies will have their own requirements which may be different from or not reflected in the content of this document.”

- 5.4 All RISC Authority publications are available from the RISC Authority website.

6.0 The Requirement to Consult

- 6.1 As already outlined, relevant industry groups are consulted in respect of all RISC Authority work, where they are easily identifiable or indeed if they exist at all. However, as the work covers so many disciplines and processes it would appear to be inappropriate to adopt a 'one size' fits all solution. The schedule in Appendix 1 outlines the scope of the current RISC Authority programme and the groups currently consulted, a system that works well at present, although as you will see there are

certain blank boxes where no obvious consultation group exist and demonstrates the enormity of the task of mandatory consultation and highlights some the potential problems if no response is received or where no easily identifiable group exists.

- 6.2 Formalising this process with the allocation of voting rights will be bureaucratically difficult; will make certain projects simply too complex to complete and this in turn we believe will have a detrimental effect on risk management work in the UK.
- 6.3 Previous evidence has already highlighted a possible divergence of objectives between stakeholder groups involved in the consultation process. For example, some will be motivated by life safety considerations only, and others simply by cost; insurers engage in this type of work to protect life and property and their involvement and the existence of such guidance does actually make it easier to switch providers. The allocation of formal voting rights may result in a reluctance by insurers to engage and commission such work, particularly if they believe it will result in a dilution of procedures and an increase in the associated risk.

7.0 Concluding Remarks

- 7.1 FPA and RISC Authority welcomes the development of this guidance, however we do believe that as currently drafted; problems exist in definitions and process that could lead to an increase in bureaucracy and fall in future collaborative work. Where programmes such as RISC Authority have been successful in the past, it has been in being able to react quickly to support technology advance in risk reduction measures. It would appear in no party's interest, if through fear and ambiguity, that such collaboration becomes less likely in the years ahead.
- 7.2 Previously submitted evidence has outlined that when considering the continuing need for, or the desirability of, insurer led collaborative codes; it is worth bearing in mind that harmonised CEN standards set a minimum level for security devices and the supply industry is required to meet or exceed them. The building owner has the right to specify and purchase equipment which exceeds the requirements of the harmonised standards should he choose to do so, providing the products exist. Any withdrawal or lessening of collaboration may result in the building insurer not being in a position to specify product performance requirements which exceed those of the harmonised standards, even if the need is evident. This change in process will inevitably result in need for European product innovation and development to be driven by published standards, which is unlikely to happen. The most likely outcome is that security device innovation will be driven from outside Europe.
- 7.3 Alternatively, individual insurers may be forced into developing their own codes and rules, as is now common with some of the larger US insurers, such as Factory Mutual, who require manufacturers to pass their own tests and specifications and so immediately increasing their costs. Such a move may also create a further disincentive for customers to move insurance providers; if individual insurer requirements were to evolve in radically different ways.
- 7.4 We strongly believe that insurer collaboration on risk management guides and procedures is in all party's best interest and provides an effective means to introduce new technologies in a timely fashion.

APPENDIX 1

List of all current RISC Authority outputs; short description of content; mapping to euro norm or other technical specification and consultation groups.

Shorthand title	Content taking form of classification, standard, code, model etc	Euro norm OR technical specification thought to exist covering same subject	Consultation Group
LPC Rules for Automatic Sprinkler Installations	Recommends installation standards for named hazards and out of scope sprinklers by Technical Bulletins	EN 12845	BAFSA
IRMP Reports	Evaluates changes for fire & rescue service response	None	UK Fire & rescue Services
Large Loss Report	Evaluates the contributory factors to large losses	None	CLG, LGA, CFOA
Essential Principles	None - Strategic Document	None - Strategic Document	Passive Fire Protection Federation
Design Guide for the Protection of Buildings - Protected Zone	Good practice guide - enhancing Building Regulations	Various grades of Fire Resistance & Reaction to Fire	Passive Fire Protection Federation
Design Guide for the Protection of Buildings - Food Factories	Good practice guide - enhancing Building Regulations	Various grades of Fire Resistance & Reaction to Fire	Passive Fire Protection Federation
Design Guide for the Protection of Buildings -	Good practice guide - enhancing Building Regulations	Various grades of Fire Resistance & Reaction to Fire	Passive Fire Protection Federation
Design Guide for the Protection of Buildings - Warehouses	Good practice guide - enhancing Building Regulations	Various grades of Fire Resistance & Reaction to Fire	Passive Fire Protection Federation
Design Guide for the Protection of Buildings - Protection of Openings	Good practice guide - enhancing Building Regulations	Various grades of Fire Resistance & Reaction to Fire	Passive Fire Protection Federation
Design Guide for the Protection of Buildings - Compartmentation	Good practice guide - enhancing Building Regulations	Various grades of Fire Resistance & Reaction to Fire	Passive Fire Protection Federation

Shorthand title	Content taking form of classification, standard, code, model etc	Euro norm OR technical specification thought to exist covering same subject	Consultation Group
Business Resilience	None - Management Guide	None	Business Continuity Institute
Modern Methods of Construction	None Report to Insurers	None	Passive Fire Protection Federation
Euro intruder alarm standards	Recommends that insurers set a particular Euro standard system grade as their normal expectation	Yes, EN 50131 series	British Security industry Association
Alarm Signalling using IP (2 documents)	Contains a model describing system design and performance levels chosen from those in Euro standard	Yes, EN 50131 & EN 50136 series	British Security industry Association
Security Fog Devices	Limited - mainly good practice guidance	Yes, in preparation	British Security industry Association
ATM Security	Limited - mainly good practice guidance	Yes, BS EN 1143: Secure storage units.	British Security industry Association
Electronic Security Systems in Empty Buildings	Limited - mainly good practice guidance	No exact equivalent, some reference to EN product & installation standards	British Security industry Association
Keyholding	None	None	British Security industry Association
Bulletin: BT 21CN programme	None	None	British Security industry Association
Bulletin: Security Industry Authority	None	None	British Security industry Association
RC1 Temporary & emergency electrical supplies 2005	Mainly good practice guidance	Equip must be tested and installed to BS 7671	IEE; ECA
RC3a Loss Prevention in electronic equipment installations. . Part 1 Fire Prevention	General Guidance N.B. 4.1.1 reads “where conflict exists between this document and BS6266 this document should prevail”	BS6266:2002: Code of Protection for electronic equipment installations	BFPSA; IEE; ECA

Shorthand title	Content taking form of classification, standard, code, model etc	Euro norm OR technical specification thought to exist covering same subject	Consultation Group
RC3b Loss Prevention in electronic equipment installations. . . . Part 2 Security Protection	Mainly good practice guidance but categorises operations and makes recommendations based in risk	BS 6266 in parts	BSIA
RC3e Recommendations for loss prevention in electronic equipment installations. Part 5. In-cabinet fire protection	Mainly good practice guidance	BS 6266 in part	IEE; BFPESA; ECA
RC3f Loss Prevention in electronic equipment installations. . . . Part 6 Protection Against Electrical Disturbances	Mainly good practice guidance - reference to (and listing of) UKAS accredited organizations	BS 7671 in part	IEE; ECA
RC4 Recommendations for space heaters burning waste fuel	General guidance	A limited number of British Standards referenced in parts	
RC5 Fire protection of laboratories	Mainly good practice guidance.	A considerable number of British Standards and various pieces of legislation referred to.	Royal Society of Chemistry
RC7 Hot work (2007)	Mainly good practice guidance - Suggests a written undertaking 'should be obtained' from contractors	Refers to RRO; Electricity at Work Regulations 1989; use of third party accredited equipment - and various BS's	Contractors Legal Group (formerly Construction Confederation)

Shorthand title	Content taking form of classification, standard, code, model etc	Euro norm OR technical specification thought to exist covering same subject	Consultation Group
RC 8 Handling gas/LPG (2005)	Mainly good practice guidance	<p>Defines cylinder colour coding to BS EN 1089-3</p> <p>Comply BS EN 1089-2</p> <p>Mentions:</p> <p>COSHH</p> <p>DSEAR</p> <p>Carriage of Dangerous Goods and use of Transportable Pressure Equip Regs 2004</p> <p>A considerable number of British Standards referred to in references, none directly comparable</p>	HSE; LPGA
RC9 Oil Fired installations	Mainly good practice guidance	BS 2869	OFTEC
RC11 Use of fork lift trucks	Mainly good practice guidance	HSE HS (G) 113 Lift trucks in potentially flammable atmospheres	HSE; Fork Truck Association
RC12 Prevention and control of dust explosions	Mainly good practice guidance	Relies mainly on requirements of DSEAR	HSE; IChemE
RC15 Portable space heaters	Mainly good practice guidance	None	HSE; LPGA
RC16a Fish & Chip frying ranges	Mainly good practice guidance	BS 6350: 1983: Specification for gas heated fish & chip frying ranges	LPGA
RC16b Cooking equipment	Mainly good practice guidance - specifies organizations that contractors should belong to, e.g. LPCB certified fixed system company	BS 7671:2001: Requirements for electrical installations	IEE; ECA; LPGA
RC17 Fire safety in shrink-wrapping processes (2005)	Mainly good practice guidance.	Refers to various British Standards, but none are directly comparable.	LPGA

Shorthand title	Content taking form of classification, standard, code, model etc	Euro norm OR technical specification thought to exist covering same subject	Consultation Group
RC19 Storage of aerosol products	Mainly good practice guidance.	Reference to DSEAR, CHIP and COSHH Regulations	British Aerosol Manufacturers Association
RC20 Part 1: Fire safety in the storage and use of highly flammable and flammable liquids: Part 1: General principles (2006)	Mainly good practice guidance.	Makes detailed reference to several HSE guidance notes and supports DSEAR	HSE
RC20 Part 2. Storage of liquids in drums, cans and other containers	Mainly good practice guidance	HSG 51. Storage of flammable liquids in containers. Reference also to DSEAR and BS EN 60079-10 for electrical installations	HSE
RC20 Part 3. Storage in external fixed tanks (Now RC57)	Mainly good practice guidance	HSG 176 Storage of flammable liquids in tanks. DSEAR Regulations, BS EN 60079-10 for electrical installations	HSE
RC21 Atrium building (1990)	Mainly good practice guidance but states: 'levels of protection prescribed by law for life safety will not be sufficient' States it aims to 'create a statement of insurers' philosophy and requirements	None	BFPSA; PFPF
RC27 Space Heating	Mainly good practice guidance	None	LPGA
RC28 Spark detection and suppression systems on pneumatic conveying systems	Guidance - recommends machinery and installation to Euro standard	CEA 4044: June 2004: Gas extinguishing installations - Specifications for Spark detection etc.	ECA; IEE
RC29 Spark erosion machinery	Mainly good practice guidance	None	HSE

Shorthand title	Content taking form of classification, standard, code, model etc	Euro norm OR technical specification thought to exist covering same subject	Consultation Group
RC 30 Electrical and non-electrical equipment in flammable atmospheres	Mainly good practice guidance.	Mentions statutory requirements of: EU Directive DSEAR EPS Regs ATEX Directive Mentions zoned areas as defined by BS 60079-10 and 14 Equip tested to BS EN 13463-1	HSE; ECA; IEE
RC31 Fire safety in automotive refinishing and spraying processes	Mainly good practice guidance.	Refers to various British Standards, but none are directly comparable. Also refers to HSE guidance documents with similar remits	HSE; EA
RC32 Fire safety in spray painting processes (excluding automotive refinishing) (2001)	Mainly good practice guidance	Elements of: - The spraying of flammable liquids, HSG 178, Health and Safety Executive, 1998. BS EN 50177: 1996: Automatic electrostatic spraying installations for flammable coating powder. Code of safe practice: application of thermosetting coating powders by electrostatic spraying. British Coatings Federation of Great Britain, 2001. BS EN 1539: 2000: Dryers and ovens, in which flammable substances are released - Safety requirements, BSI.	HSE; EA

Shorthand title	Content taking form of classification, standard, code, model etc	Euro norm OR technical specification thought to exist covering same subject	Consultation Group
RC33 Portable accommodation units	Mainly good practice guidance	None	National Prefabricated Building Association; Association of Local Authority Risk Managers
RC35 Protection of buildings against lightning strike (2005)	Mainly good practice guidance. States clearly that lightning protection 'is not a legal requirement' but that 'the requirements of the Electricity at Work Regulations 1989...will apply to most businesses.'	BS 6651:1999; Draft IEC 62305-2: Protection against lightning: Part 2: Risk Management; NFPA 780	Association of Technical Lightning and Access Specialists
RC36 Bakery Ovens	Mainly good practice guidance	BS EN 1673: 2000: Food processing machinery NFPA 86 Standard for ovens & furnaces DSEAR Regulations 2003	
RC37 Electrical lighting (2005)	Mainly good practice guidance	Installation to BS 7671. High voltage equip 'shall be' constructed to BS 559. Lighting system should comply BS EN 60570	IEE; ECA; NICEIC
RC38 Frost protection methods for sprinklers (2004)	Mainly good practice guidance.	Refers to BS EN 12845; BS 6351; BS EN 60079: Part 14.	BAFSA
RC39 Fire risk management in Printing industry	Mainly good practice guidance	A number of standards mentioned but none specifically applicable	HSE
RC41 Recommendations for minimising the release of hazardous materials following a fire - Part 1: Asbestos			HSE; Asbestos Removal Contractors Association; EA

Shorthand title	Content taking form of classification, standard, code, model etc	Euro norm OR technical specification thought to exist covering same subject	Consultation Group
RC43 Storage, handling and use of oxidising materials	Mainly good practice guidance	A number of standards mentioned but none specifically applicable	HSE; EA
RC44 Catering extract 2006	Offers general guidance on good practice in risk assessment. Provides a checklist to help rate level of risk.	Mentions DW172 Suggests performance standard eg LPS 1263	BSRIA
RC46 - Recommendations for fire safety in the manufacture of Biodiesel fuel			HSE
RC47 Automatic fire detection and alarm systems 2007	Guidance on effective management of AFD systems. Details recommendations of CFOA unwanted alarms policy and suggests key 'requirements' for effective site control. Offers guidance checklists for preventing false alarms and managing systems	Mentions equipment standards: BS 5839 BS 6266 BS EN54 Also mentions performance standards LPS 1014, BAFE SP203-1	CFOA; BAFE; ECA
RC48 Arson	Mainly good practice guidance		CFOA; APB, ACF
RC49 Acetylene in cylinders	Mainly good practice guidance covering alternatives to acetylene and best management practice.	Various codes impact including INDG279 and INDG 327 from HSE	BGCA; HSE
RC50 Recommendations for fire safety in saunas	Mainly good practice guidance		
RC51 - Recommendations for design, location and management of smoking shelters	Mainly good practice guidance		

Shorthand title	Content taking form of classification, standard, code, model etc	Euro norm OR technical specification thought to exist covering same subject	Consultation Group
WP1 Frost precautions for new dwellings (1990)	Mainly good practice guidance	None	
WP2 Protection of commercial buildings against water damage (1990)	Mainly good practice guidance	None	
WP3 Assessment of roofs' resistance to wind damage (1994)	'General technical advice'	Refers to Building Regulations and British Standards	
Joint Code of Practice. Fire Prevention on Construction Sites	Mainly good practice guidance	Refers to British Standards. Also mentions performance standards	Principally: Construction Confederation (now called Contractors Legal Group), HSE, London Fire Brigade, CFOA and ABI
Joint Code of Practice. Fire Risk Minimisation Guide	Mainly good practice guidance	Refers to British Standards	Food Industry Panels Group
Business Resilience. A guide to protecting your business and its people (2005)	Mainly good practice guidance	BS 25999	Business Continuity Institute, London First; LGA
Architects Guide	Good practice guide - enhancing Building Regulations	Various grades of Fire Resistance & Reaction to Fire	RIBA, Passive Fire Protection Association
Fire Engineering	Functional requirements for Property Protection	BS 7974	Passive Fire Protection Association, Institution of Fire Engineers
Intumescent paint guide	Good practice guide	Installation codes	ASFP
Business Continuity Software Tool	Good practice guide	BS 25999	Business Continuity Institute, London First< LGA

IRMP Assessment Tool	Assess effects of Fire response plans	NONE	CFOA
Shorthand title	Content taking form of classification, standard, code, model etc	Euro norm OR technical specification thought to exist covering same subject	Consultation Group
Intruder Alarms - Considerations for Installers	Seeks to set standards for how intruder alarm systems are designed by installers	Yes, EN 50131 series	British Security industry Association
Alarm Receiving Centre (ARC) procedures	Seeks to set standards for the procedures adopted in ARCs	Yes, in preparation	British Security industry Association
Securing Means of Escape	None, good practice guidance	Merely some reference to EN product standards	British Security industry Association
Security of Empty Buildings	None, good practice guidance	Merely some reference to EN product & installation standards	British Security industry Association
Intruder Alarms - considerations for claims investigators	None, directed at claims staff and adjusting industry	None	British Security industry Association
Protection against attacks using vehicles (Ram Raids)	None, good practice guidance	No equivalent	British Security industry Association
IP signalling product classification	Would list products/services according to claimed levels performance and compliance with grades of Euro standards	Yes, EN 50131 & EN 50136 series	British Security industry Association
Protecting against aggravated burglary	Good practice guidance	Merely some reference to EN product & installation standards	British Security industry Association
Central locking for houses	Might classify product types	No exact equivalent, probably some reference to EN product & installation standards	British Security industry Association
Bulletin: theft of diesel	Good practice guidance	No	British Security industry Association
Bulletin: theft of metal	Good practice guidance	Probably some reference to EN product & installation standards	British Security industry Association