Directive 2014/33/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to lifts and safety components for lifts (recast) (Text with EEA relevance)

CHAPTER V

UNION MARKET SURVEILLANCE CONTROL OF LIFTS OR SAFETY COMPONENTS FOR LIFTS ENTERING THE UNION MARKET AND UNION SAFEGUARD PROCEDURE

Article 37

Union market surveillance and control of lifts or safety components for lifts entering the Union market

Article 15(3) and Articles 16 to 29 of Regulation (EC) No 765/2008 shall apply to lifts and safety components for lifts.

Article 38

Procedure for dealing with lifts or safety components for lifts presenting a risk at national level

1 Where the market surveillance authorities of one Member State have sufficient reason to believe that a lift or a safety component for lifts covered by this Directive presents a risk to the health or safety of persons or, where appropriate, to the safety of property, they shall carry out an evaluation in relation to the lift or the safety component for lifts concerned covering all relevant requirements laid down in this Directive. The relevant economic operators shall cooperate as necessary with the market surveillance authorities for that purpose.

Where, in the course of the evaluation referred to in the first subparagraph, the market surveillance authorities find that a lift does not comply with the requirements laid down in this Directive, they shall, without delay, require the installer to take all appropriate corrective actions to bring the lift into compliance with those requirements within a reasonable period commensurate with the nature of the risk, as they may prescribe.

Where, in the course of the evaluation referred to in the first subparagraph, the market surveillance authorities find that a safety component for lifts does not comply with the requirements laid down in this Directive, they shall, without delay, require the relevant economic operator to take all appropriate corrective actions to bring the safety component for lifts into compliance with those requirements, to withdraw the safety component for lifts from the market or to recall it within a reasonable period commensurate with the nature of the risk, as they may prescribe.

The market surveillance authorities shall inform the relevant notified body accordingly.

Article 21 of Regulation (EC) No 765/2008 shall apply to the measures referred to in the second and third subparagraph of this paragraph.

2 Where the market surveillance authorities consider that the non-compliance is not restricted to their national territory, they shall inform the Commission and the other Member

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States of the results of the evaluation and of the actions which they have required the economic operators to take.

3 The economic operator shall ensure that all appropriate corrective action is taken in respect of all the lifts and safety components for lifts concerned that it has placed or made available on the market throughout the Union.

4 Where the installer does not take adequate corrective action within the period referred to in the second subparagraph of paragraph 1, the market surveillance authorities shall take all appropriate provisional measures to restrict or prohibit the placing on their national market or the use of the lift concerned, or to recall it.

Where the relevant economic operator does not take adequate corrective action within the period referred to in the third subparagraph of paragraph 1, the market surveillance authorities shall take all appropriate provisional measures to prohibit or restrict the safety component for lifts being made available on their national market, to withdraw the safety component for lifts from that market or to recall it.

The market surveillance authorities shall inform the Commission and the other Member States, without delay, of those measures.

5 The information referred to in the third subparagraph of paragraph 4 shall include all available details, in particular the data necessary for the identification of the non-compliant lift or safety component for lifts, their origin, the nature of the non-compliance alleged and the risk involved, the nature and duration of the national measures taken and the arguments put forward by the relevant economic operators. In particular, the market surveillance authorities shall indicate whether the non-compliance is due to either of the following:

a failure of the lift or the safety component for lifts to meet the essential health and safety requirements of this Directive; or

b shortcomings in the harmonised standards referred to in Article 14 conferring a presumption of conformity.

6 Member States other than the Member State initiating the procedure under this Article shall, without delay, inform the Commission and the other Member States of any measures adopted and of any additional information at their disposal relating to the non-compliance of the lift or the safety component for lifts concerned and, in the event of disagreement with the adopted national measure, of their objections.

7 Where, within three months of receipt of the information referred to in the third subparagraph of paragraph 4, no objection has been raised by either a Member State or the Commission in respect of a provisional measure taken by a Member State, that measure shall be deemed justified.

8 Member States shall ensure that appropriate restrictive measures, such as withdrawal of a safety component for lifts from the market, are taken, in respect of the lift or the safety component for lifts concerned, without delay.

Article 39

Union safeguard procedure

1 Where, on completion of the procedure set out in Article 38(3) and (4), objections are raised against a measure taken by a Member State, or where the Commission considers a national measure to be contrary to Union legislation, the Commission shall, without delay, enter into consultation with the Member States and the relevant economic operator or operators and shall

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evaluate the national measure. On the basis of the results of that evaluation, the Commission shall adopt an implementing act determining whether the national measure is justified or not.

The Commission shall address its decision to all Member States and shall immediately communicate it to them and the relevant economic operator or operators.

2 If the national measure relating to a lift is considered justified, all Member States shall take the measures necessary to ensure that the placing on the market or use of the non-compliant lift concerned is restricted or prohibited, or that the lift is recalled.

If the national measure relating to a safety component for lifts is considered justified, all Member States shall take the necessary measures to ensure that the non-compliant safety component for lifts is withdrawn from their market.

The Member States shall inform the Commission accordingly.

If the national measure is considered unjustified, the Member State concerned shall withdraw that measure.

3 Where the national measure is considered justified and the non-compliance of the lift or the safety component for lifts is attributed to shortcomings in the harmonised standards referred to in point (b) of Article 38(5) of this Directive, the Commission shall apply the procedure provided for in Article 11 of Regulation (EU) No 1025/2012.

Article 40

Compliant lifts or safety components for lifts which present a risk

1 Where, having carried out an evaluation under Article 38(1), a Member State finds that although a lift is in compliance with this Directive, it presents a risk to the health or safety of persons and, where appropriate, the safety of property, it shall require the installer to take all appropriate measures to ensure that the lift concerned no longer presents that risk or to recall the lift or restrict or prohibit its use within a reasonable period, commensurate with the nature of the risk, as it may prescribe.

Where, having carried out an evaluation under Article 38(1), a Member State finds that, although a safety component for lifts is in compliance with this Directive, it presents a risk to the health or safety of persons and, where appropriate, the safety of property, it shall require the relevant economic operator to take all appropriate measures to ensure that the safety component for lifts concerned, when placed on the market, no longer presents that risk, to withdraw the safety component for lifts from the market or to recall it within a reasonable period, commensurate with the nature of the risk, as it may prescribe.

2 The economic operator shall ensure that corrective action is taken in respect of all the lifts or safety components for lifts concerned that he has placed or made available on the market throughout the Union.

3 The Member State shall immediately inform the Commission and the other Member States. That information shall include all available details, in particular the data necessary for the identification of the lifts or safety components for lifts concerned, the origin and the supply chain of the lifts or safety components for lifts, the nature of the risk involved and the nature and duration of the national measures taken.

4 The Commission shall without delay enter into consultation with the Member States and the relevant economic operator or operators and shall evaluate the national measures

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taken. On the basis of the results of that evaluation, the Commission shall decide by means of implementing acts whether the national measure is justified or not, and where necessary, propose appropriate measures.

The implementing acts referred to in the first subparagraph of this paragraph shall be adopted in accordance with the examination procedure referred to in Article 42(3).

On duly justified imperative grounds of urgency relating to the protection of health and safety of persons, the Commission shall adopt immediately applicable implementing acts in accordance with the procedure referred to in Article 42(4).

5 The Commission shall address its decision to all Member States and shall immediately communicate it to them and the relevant economic operator or operators.

Article 41

Formal non-compliance

1 Without prejudice to Article 38, where a Member State makes one of the following findings, it shall require the relevant economic operator to put an end to the non-compliance concerned:

a the CE marking has been affixed in violation of Article 30 of Regulation (EC) No 765/2008 or of Article 19 of this Directive;

b the CE marking has not been affixed;

c the identification number of the notified body has been affixed in violation of Article 19 or has not been affixed, where required by Article 19;

d the EU declaration of conformity has not been drawn up;

e the EU declaration of conformity has not been drawn up correctly;

f the technical documentation referred to in Annexe IV, Parts A and B, and Annexes VII, VIII and XI is either not available or not complete;

g the name, registered trade name or registered trade mark or the address of the installer, manufacturer or importer has not been indicated in compliance with Article 7(6), Article 8(6) or Article 10(3);

h the information allowing identification of the lift or the safety component for lifts has not been indicated in compliance with Article 7(5) or Article 8(5);

i the lift or the safety component for lifts is not accompanied by the documents referred to in Article 7(7) or Article 8(7) or those documents are not in compliance with the applicable requirements.

2 Where the non-compliance referred to in paragraph 1 persists, the Member State concerned shall take all appropriate measures to restrict or prohibit the use of the lift or to recall it, or to restrict or prohibit the making available on the market of the safety component for lifts or ensure that it is recalled or withdrawn from the market.