

Directive 2014/90/EU of the European Parliament and of the Council of 23 July 2014 on marine equipment and repealing Council Directive 96/98/EC (Text with EEA relevance)

CHAPTER 5

UNION MARKET SURVEILLANCE, CONTROL OF PRODUCTS, SAFEGUARD PROVISIONS

Article 25

EU market surveillance framework

1 As regards marine equipment, the Member States shall undertake market surveillance in accordance with the EU market surveillance framework laid down in Chapter III of Regulation (EC) No 765/2008, subject to paragraphs 2 and 3 of this Article.

2 National market surveillance infrastructures and programmes shall take into account the specific features of the marine equipment sector, including the various procedures carried out as part of the conformity assessment, and in particular the responsibilities placed on the flag State administration by the international conventions.

3 Market surveillance may include documentary checks as well as checks of marine equipment which bears the wheel mark, whether or not it has been placed on board ships. Checks of marine equipment already placed on board shall be limited to such examination as can be carried out while the equipment concerned remains fully functional on board.

4 Where the market surveillance authorities of a Member State, as defined in Regulation (EC) No 765/2008, intend to carry out sample checks, they may, when it is reasonable and practicable to do so, request the manufacturer to make the necessary samples available or to give on-the-spot access to the samples at the manufacturer's own cost.

Article 26

Procedure for dealing with marine equipment presenting a risk at national level

1 Where the market surveillance authorities of a Member State have sufficient reason to believe that marine equipment covered by this Directive presents a risk to maritime safety, to health or to the environment, they shall carry out an evaluation in relation to the marine equipment concerned covering all the requirements laid down in this Directive. The relevant economic operators shall cooperate as necessary with the market surveillance authorities.

Where, in the course of that evaluation, the market surveillance authorities find that the marine equipment 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 marine equipment into compliance with those requirements, to withdraw the marine equipment from the market, or to recall it within such reasonable period, commensurate with the nature of the risk, as they may prescribe.

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

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

2 Where the market surveillance authorities consider that non-compliance is not restricted to their national territory or to ships flying their flag, they shall inform the Commission and the other Member States, by means of the information system made available by the Commission for market surveillance purposes, of the results of the evaluation carried out under paragraph 1 and of the actions which they have required the economic operator to take.

3 The economic operator shall ensure that all appropriate corrective action is taken in respect of all the products concerned that it has made available on the market throughout the Union or, as the case may be, placed or delivered to be placed on board EU ships.

4 Where the relevant economic operator does not take adequate corrective action within the period prescribed by the market surveillance authorities in accordance with the second subparagraph of paragraph 1, or otherwise fails to meet its obligations under this Directive, the market surveillance authorities shall take all appropriate provisional measures to prohibit or restrict the marine equipment being made available on their national market or placed on board ships flying their flag, to withdraw the product 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 on the measures taken by the market surveillance authorities referred to in paragraph 4 shall include all available details, in particular the data necessary for the identification of the non-compliant marine equipment, the origin of the product, the nature of the alleged non-compliance and the risk involved, the nature and duration of the national measures taken and the arguments put forward by the economic operator concerned. In particular, the market surveillance authorities shall indicate whether the non-compliance is due to either:

- a failure of the marine equipment to comply with the applicable design, construction and performance requirements as laid down pursuant to Article 4;
- b non-compliance with the testing standards referred to in Article 4 during the conformity assessment procedure;
- c shortcomings in those testing standards.

6 Member States other than the Member State initiating the procedure 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 marine equipment concerned, and, in the event of disagreement with the notified national measure, of their objections.

7 Where, within four months of receipt of the information concerning the measures taken by the market surveillance authorities, as referred to in paragraph 4, no objection has been raised by a Member State or by 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 in respect of the marine equipment concerned, such as withdrawal of the product from their market, are taken without delay.

Article 27

EU safeguard procedure

1 Where, on completion of the procedure set out in Article 26(3) and (4), objections are raised against a measure taken by a Member State, or where the Commission considers that a national measure may 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 evaluate the relevant national measure. On the basis of the results of that evaluation, the Commission shall decide whether or not the relevant national measure is justified.

2 For the purposes of paragraph 1, where the Commission is satisfied that the procedure followed in the adoption of the national measure is appropriate for an exhaustive and objective evaluation of the risk and that the national measure complies with Article 21 of Regulation (EC) No 765/2008, it may limit itself to examining the appropriateness and proportionality of the relevant national measure in relation to the said risk.

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

4 If the relevant national measure is considered justified, all Member States shall take the measures necessary to ensure that the non-compliant marine equipment is withdrawn from their market, and, where necessary, recalled. They shall inform the Commission accordingly.

5 If the relevant national measure is considered unjustified, the Member State concerned shall withdraw it.

6 Where the non-compliance of the marine equipment is attributed to shortcomings in the testing standards referred to in Article 4, the Commission may, in order to fulfil the objective of this Directive, confirm, modify or revoke a national safeguard measure by means of implementing acts in accordance with the examination procedure referred to in Article 38(2).

The Commission shall furthermore be empowered to adopt, by means of delegated acts in accordance with the procedure referred to in Article 37, interim harmonised requirements and testing standards for that specific item of marine equipment. The criteria laid down in Article 8(3) shall apply accordingly. These requirements and testing standards shall be made accessible free of charge by the Commission.

7 Where the testing standard concerned is a European standard, the Commission shall inform the relevant European standardisation body or bodies and shall bring the matter before the committee set up by Article 5 of Directive 98/34/EC. That committee shall consult the relevant European standardisation body or bodies and deliver its opinion without delay.

Article 28

Compliant products which present a risk to maritime safety, to health or to the environment

1 Where, having performed an evaluation under Article 26(1), a Member State finds that marine equipment which is in compliance with this Directive nevertheless presents a risk to maritime safety, to health or to the environment, it shall require the economic operator concerned to take all appropriate measures to ensure that the marine equipment concerned, when placed on the market, no longer presents that risk, to withdraw the marine equipment from the market

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or to recall it within such 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 products concerned that it has made available on the market throughout the Union or placed on board EU ships.

3 The Member State shall immediately inform the Commission and the other Member States. The information provided shall include all available details, in particular the data necessary for the identification of the marine equipment concerned, the origin and the supply chain of the marine equipment, 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 taken. On the basis of the results of that evaluation, the Commission shall decide whether or not the measure is justified and shall where necessary propose appropriate measures. Article 27(2) shall apply *mutatis mutandis* for this purpose.

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

Article 29

Formal non-compliance

1 Without prejudice to Article 26, 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 wheel mark has been affixed in violation of Article 9 or Article 10;
- b the wheel mark has not been affixed;
- c the EU declaration of conformity has not been drawn up;
- d the EU declaration of conformity has not been drawn up correctly;
- e technical documentation is either not available or not complete;
- f the EU declaration of conformity has not been sent to the ship.

2 Where the non-compliance referred to in paragraph 1 persists, the Member State concerned shall take all appropriate measures to restrict or to prohibit the marine equipment being made available on the market or to ensure that it is recalled or withdrawn from the market.

Article 30

Exemptions based on technical innovation

1 In exceptional circumstances of technical innovation, the flag State administration may permit marine equipment which does not comply with the conformity assessment procedures to be placed on board an EU ship if it is established by trial or otherwise to the satisfaction of the flag State administration that such equipment meets the objectives of this Directive.

2 The trial procedures shall in no way discriminate between marine equipment produced in the flag Member State and marine equipment produced in other States.

3 Marine equipment covered by this Article shall be given a certificate by the flag Member State which shall at all times be carried with the equipment and which gives the flag Member State's permission for the equipment to be placed on board the ship and imposes any restrictions or lays down any provisions relating to the use of the equipment.

4 Where a Member State allows marine equipment covered by this Article to be placed on board an EU ship, that Member State shall forthwith communicate the particulars thereof together with the reports of all relevant trials, assessments and conformity assessment procedures to the Commission and to the other Member States.

5 Within 12 months of receipt of the communication referred to in paragraph 4, the Commission, if it considers that the conditions laid down in paragraph 1 are not met, may require the Member State concerned to withdraw the permission granted within a specified deadline. For this purpose, the Commission shall act by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 38(2).

6 Where a ship with marine equipment on board which is covered by paragraph 1 is transferred to another Member State, the receiving flag Member State may take the necessary measures, which may include tests and practical demonstrations, to ensure that the equipment is at least as effective as equipment which does comply with the conformity assessment procedures.

Article 31

Exemptions for testing or evaluation

A flag State administration may permit marine equipment which does not comply with the conformity assessment procedures or which is not covered by Article 30 to be placed on board an EU ship for reasons of testing or evaluation, if the following cumulative conditions are complied with:

- (a) the marine equipment shall be given a certificate by the flag Member State which shall at all times be carried with the equipment, state that Member State's permission for the equipment to be placed on board the EU ship, impose all necessary restrictions and lay down any other appropriate provisions as regards the use of the equipment concerned;
- (b) the permission shall be limited to the period considered by the flag State as being necessary to complete the testing, which should be as short as possible;
- (c) the marine equipment shall not be relied on in place of equipment which meets the requirements of this Directive and shall not replace such equipment, which shall remain on board the EU ship in working order and ready for immediate use.

Article 32

Exemptions in exceptional circumstances

1 In exceptional circumstances, which shall be duly justified to the flag State administration, when marine equipment needs to be replaced in a port outside the Union where it is not practicable in terms of reasonable time, delay and cost to place on board equipment which bears the wheel mark, other marine equipment may be placed on board subject to paragraphs 2 to 4.

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2 The marine equipment placed on board shall be accompanied by documentation issued by a Member State of the IMO which is a party to the relevant conventions, certifying compliance with the relevant IMO requirements.

3 The flag State administration shall be informed at once of the nature and characteristics of such other marine equipment.

4 The flag State administration shall, at the earliest opportunity, ensure that the marine equipment referred to in paragraph 1, along with its testing documentation, complies with the relevant requirements of the international instruments and of this Directive.

5 Where it has been demonstrated that specific marine equipment bearing the wheel mark is not available on the market, the flag Member State may authorise other marine equipment to be placed on board, subject to paragraphs 6 to 8.

6 The authorised marine equipment shall comply, as much as possible, with the requirements and testing standards referred to in Article 4.

7 The marine equipment placed on board shall be accompanied by an interim certificate of approval issued by the flag Member State or by another Member State, stating the following:

- a the equipment bearing the wheel mark which the certified equipment is due to replace;
- b the exact circumstances under which the certificate of approval has been issued, and in particular the unavailability in the market of equipment bearing the wheel mark;
- c the exact design, construction and performance requirements against which the equipment has been approved by the certifying Member State;
- d the testing standards applied, if any, in the relevant approval procedures.

8 The Member State issuing an interim certificate of approval shall inform the Commission forthwith. If the Commission considers that the conditions of paragraphs 6 and 7 have not been met, it may require that Member State to revoke that certificate or take other appropriate measures by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 38(2).