

Directive 2013/53/EU of the European Parliament and of the Council
of 20 November 2013 on recreational craft and personal watercraft
and repealing Directive 94/25/EC (Text with EEA relevance)

CHAPTER VI

**UNION MARKET SURVEILLANCE, CONTROL OF PRODUCTS
ENTERING THE UNION MARKET AND SAFEGUARD PROCEDURES**

Article 43

Union market surveillance and control of products entering the Union market

Article 15(3) and Articles 16 to 29 of Regulation (EC) No 765/2008 shall apply to products covered by this Directive.

Article 44

Procedure for dealing with products presenting a risk at national level

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

In the case of an economic operator, where, in the course of that evaluation, the market surveillance authorities find that the product does not comply with the requirements laid down in this Directive, they shall without delay require the relevant economic operator to take the appropriate corrective action to bring the product into compliance with those requirements, to withdraw the product from the market, or to recall it within a reasonable period, commensurate with the nature of the risk, as they may prescribe.

In the case of a private importer, where, in the course of that evaluation, the market surveillance authorities find that the product does not comply with the requirements laid down in this Directive, the private importer shall be informed without delay of the appropriate corrective action to be taken to bring the product into compliance with those requirements, to suspend the putting into service of the product or to suspend the use of the product, commensurate with the nature of the risk.

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 subparagraphs of this paragraph.

2 Where the market surveillance authorities consider that non-compliance is not restricted to their national territory, they shall inform the Commission and the other Member States of the results of the evaluation and of the actions which they have required the relevant economic operator to take.

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3 The economic operator shall ensure that the appropriate corrective action is taken in respect of all the products concerned that it has made available on the market throughout the Union.

The private importer shall ensure that the appropriate corrective action is taken in respect of the product that he has imported in the Union for his own use.

4 Where the relevant economic operator 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 prohibit or restrict the product being made available on their national market, to withdraw the product from that market or to recall it.

Where the private importer does not take adequate corrective action, the market surveillance authorities shall take all appropriate provisional measures to prohibit the putting into service of the product, or prohibit or restrict the use of the product in their territory.

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

5 The information referred to in paragraph 4 shall include all available details, in particular the data necessary for the identification of the non-compliant product, the origin of the product, 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 operator or the private importer. In particular, the market surveillance authorities shall indicate whether the non-compliance is due to either:

- a failure of the product to meet requirements relating to the health or safety of persons, the protection of property or the environment laid down in 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 product concerned, and, in the event of disagreement with the notified national measure, of their objections.

7 Where, within three months of receipt of the information referred to in 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 are taken in respect of the product concerned, such as withdrawal of the product from their market, without delay.

Article 45

Union safeguard procedure

1 Where, on completion of the procedure set out in Article 44(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 or the private importer and shall 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 or the private importer.

2 If the national measure is considered justified, all Member States shall take the measures necessary to ensure that the non-compliant product is withdrawn from their market, and shall inform the Commission accordingly. If the national measure is considered unjustified, the Member State concerned shall withdraw the measure.

3 Where the national measure is considered to be justified and the non-compliance of the product is attributed to shortcomings in the harmonised standards referred to in point (b) of Article 44(5) of this Directive, the Commission shall apply the procedure of Article 11 of Regulation (EU) No 1025/2012.

Article 46

Formal non-compliance

1 Without prejudice to Article 44, where a Member State makes one of the following findings, it shall require the relevant economic operator or the private importer to put an end to the non-compliance concerned:

- a the CE marking, has been affixed in violation of Article 16, Article 17 or Article 18;
- b the CE marking, as referred to in Article 17, has not been affixed;
- c the EU declaration of conformity or the declaration referred to in Annex III has not been drawn up;
- d the EU declaration of conformity or the declaration referred to in Annex III has not been drawn up correctly;
- e the technical documentation is either not available or not complete;
- f the information set out in Article 7(6) or Article 9(3) is absent, false or incomplete;
- g any other administrative requirement provided for in Article 7 or Article 9 is not fulfilled.

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 product being made available on the market or ensure that it is recalled or withdrawn from the market, or in the case of a product imported by a private importer for his own use, that its use is prohibited or restricted.