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)

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)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[(1)],

Acting in accordance with the ordinary legislative procedure[(2)],

Whereas:

(1) Directive 95/16/EC of the European Parliament and of the Council of 29 June 1995 on the approximation of the laws of the Member States relating to lifts[(3)] has been substantially amended[(4)]. Since further amendments are to be made, that Directive should be recast in the interests of clarity.

(2) Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products[(5)] lays down rules on the accreditation of conformity assessment bodies, provides a framework for the market surveillance of products and for controls on products from third countries, and lays down the general principles of the CE marking.

(3) Decision No 768/2008/EC of the European Parliament and of the Council of 9 July 2008 on a common framework for the marketing of products[(6)] lays down common principles and reference provisions intended to apply across sectoral legislation in order to provide a coherent basis for revision or recasts of that legislation. Directive 95/16/EC should be adapted to that Decision.

(4) The lifts covered by this Directive only come into existence as finished products once they have been permanently installed in buildings or constructions. Consequently,

lifts cannot be imported into the Union and are only placed on the market and not subsequently made available: there are no 'importers' or 'distributors' of lifts.

(5) This Directive covers safety components for lifts which are new to the Union market when they are placed on the market; that is to say they are either new safety components made by a manufacturer in the Union or new or second-hand safety components imported from a third country.

(6) On 8 June 1995 the Commission adopted Recommendation 95/216/EC of 8 June 1995 concerning improvement of safety of existing lifts[7] to the Member States concerning improvement of safety of existing lifts.

(7) This Directive should apply to all forms of supply, including distance selling.

(8) Economic operators should be responsible for the compliance of lifts and safety components for lifts with this Directive, in relation to their respective roles in the supply chain, so as to ensure a high level of protection of health and safety of persons and, where appropriate, the safety of property, and to guarantee fair competition on the Union market.

(9) All economic operators intervening in the supply and distribution chain should take appropriate measures to ensure that they only place on the market lifts and make available on the market safety components for lifts which are in conformity with this Directive. It is necessary to provide for a clear and proportionate distribution of obligations which correspond to the role of each economic operator in the supply and distribution chain.

(10) In order to facilitate communication between economic operators, market surveillance authorities and consumers, Member States should encourage economic operators to include a website address in addition to the postal address.

(11) The manufacturer and the installer, having detailed knowledge of the design and production process, are best placed to carry out the conformity assessment procedure. Conformity assessment should therefore remain solely the obligation of the manufacturer or of the installer.

(12) It is necessary to ensure that safety components for lifts from third countries entering the Union market comply with this Directive, and in particular that the appropriate conformity assessment procedures have been carried out by the manufacturer with regard to those safety components for lifts. Provision should therefore be made for importers to make sure that the safety components for lifts they place on the market comply with the requirements of this Directive and that they do not place on the market safety components for lifts which do not comply with such requirements or present a risk. Provision should also be made for importers to make sure that conformity assessment procedures have been carried out and that marking of safety components for lifts and documentation drawn up by manufacturers are available for inspection by the competent national authorities.

(13) When placing a safety component for lifts on the market, every importer should indicate on the safety component for lifts his name, registered trade name or registered trade

mark and the postal address at which he can be contacted. Exceptions should be provided for in cases where the size or nature of the safety component for lifts does not allow it.

(14) The distributor makes a safety component for lifts available on the market after it has been placed on the market by the manufacturer or the importer and should act with due care to ensure that its handling of the safety component for lifts does not adversely affect the compliance of the safety component for lifts.

(15) Any economic operator that either places a safety component for lifts on the market under his own name or trade mark or modifies a safety component for lifts in such a way that compliance with this Directive may be affected should be considered to be the manufacturer and should assume the obligations of the manufacturer.

(16) Distributors and importers, being close to the market place, should be involved in market surveillance tasks carried out by the competent national authorities, and should be prepared to participate actively, providing those authorities with all necessary information relating to the safety components for lifts concerned.

(17) Ensuring traceability of a safety component for lifts throughout the whole supply chain helps to make market surveillance simpler and more efficient. An efficient traceability system facilitates market surveillance authorities' task of tracing economic operators who made non-compliant safety components for lifts available on the market. When keeping the information required under this Directive for the identification of other economic operators, economic operators should not be required to update such information in respect of other economic operators who have either supplied them with a safety component for lifts or to whom they have supplied a safety component for lifts.

(18) This Directive should be limited to the expression of the essential health and safety requirements. In order to facilitate conformity assessment for lifts and safety components for lifts with those requirements it is necessary to provide for a presumption of conformity for lifts and safety components for lifts which are in conformity with harmonised standards that are adopted in accordance with Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European Standardisation[(8)] for the purpose of expressing detailed technical specifications of those requirements. The essential health and safety requirements of this Directive will guarantee the intended level of safety only if appropriate conformity assessment procedures ensure compliance therewith.

(19) Regulation (EU) No 1025/2012 provides for a procedure for objections to harmonised standards where those standards do not entirely satisfy the requirements of this Directive.

(20) The harmonised standards relevant to this Directive should also take into account the United Nations Convention on the Rights of Persons with Disabilities[(9)].

(21) In order to enable economic operators to demonstrate and the competent authorities to ensure that lifts placed on the market and safety components for lifts made available on the market conform to the essential health and safety requirements, it is necessary to provide for conformity assessment procedures. Decision No 768/2008/EC establishes

modules for conformity assessment procedures, which include procedures from the least to the most stringent, in proportion to the level of risk involved and the level of safety required. In order to ensure inter-sectoral coherence and to avoid ad-hoc variants, conformity assessment procedures should be chosen from among those modules.

(22) The installer or the manufacturer should draw up an EU declaration of conformity to provide information required under this Directive on the conformity of a lift or safety component for lifts with this Directive and with other relevant Union harmonisation legislation.

(23) To ensure effective access to information for market surveillance purposes, the information required to identify all applicable Union acts should be available in a single EU declaration of conformity. In order to reduce the administrative burden on economic operators, that single EU declaration of conformity may be a dossier made up of relevant individual declarations of conformity.

(24) The CE marking, indicating the conformity of a lift or safety component for lifts, is the visible consequence of a whole process comprising conformity assessment in a broad sense. General principles governing the CE marking are set out in Regulation (EC) No 765/2008. Rules governing the affixing of the CE marking should be laid down in this Directive.

(25) The conformity assessment procedures set out in this Directive require the intervention of conformity assessment bodies, which are notified by the Member States to the Commission.

(26) Experience has shown that the criteria set out in Directive 95/16/EC that conformity assessment bodies have to fulfil to be notified to the Commission are not sufficient to ensure a uniformly high level of performance of notified bodies throughout the Union. It is, however, essential that all notified bodies perform their functions to the same level and under conditions of fair competition. That requires the setting of obligatory requirements for conformity assessment bodies wishing to be notified in order to provide conformity assessment services.

(27) If a conformity assessment body demonstrates conformity with the criteria laid down in harmonised standards, it should be presumed to comply with the corresponding requirements set out in this Directive.

(28) In order to ensure a consistent level of conformity assessment quality it is also necessary to set requirements for notifying authorities and other bodies involved in the assessment, notification and monitoring of notified bodies.

(29) The system set out in this Directive should be complemented by the accreditation system provided for in Regulation (EC) No 765/2008. Since accreditation is an essential means of verifying the competence of conformity assessment bodies, it should also be used for the purposes of notification.

(30) Transparent accreditation as provided for in Regulation (EC) No 765/2008, ensuring the necessary level of confidence in certificates of conformity, should be considered by the national public authorities throughout the Union as the preferred means of

demonstrating the technical competence of conformity assessment bodies. However, national authorities may consider that they possess the appropriate means of carrying out that evaluation themselves. In such cases, in order to ensure the appropriate level of credibility of evaluations carried out by other national authorities, they should provide the Commission and the other Member States with the necessary documentary evidence demonstrating the compliance of the conformity assessment bodies evaluated with the relevant regulatory requirements.

(31) Conformity assessment bodies frequently subcontract parts of their activities linked to the assessment of conformity or have recourse to a subsidiary. In order to safeguard the level of protection required for the lifts and safety components for lifts to be placed on the Union market, it is essential that conformity assessment subcontractors and subsidiaries fulfil the same requirements as notified bodies in relation to the performance of conformity assessment tasks. Therefore, it is important that the assessment of the competence and the performance of bodies to be notified and the monitoring of bodies already notified cover also activities carried out by subcontractors and subsidiaries.

(32) It is necessary to increase the efficiency and transparency of the notification procedure and, in particular, to adapt it to new technologies so as to enable online notification.

(33) Since notified bodies may offer their services throughout the Union, it is appropriate to give the other Member States and the Commission the opportunity to raise objections concerning a notified body. It is therefore important to provide for a period during which any doubts or concerns as to the competence of conformity assessment bodies can be clarified before they start operating as notified bodies.

(34) In the interests of competitiveness, it is crucial that notified bodies apply the conformity assessment procedures without creating unnecessary burdens for economic operators. For the same reason, and to ensure equal treatment of economic operators, consistency in the technical application of the conformity assessment procedures needs to be ensured. That can best be achieved through appropriate coordination and cooperation between notified bodies.

(35) Member States should take all appropriate measures to ensure that safety components for lifts may be placed on the market only if, when properly stored and used for their intended purpose, or under conditions of use which can be reasonably foreseen, they do not endanger the health and safety of persons. Safety components for lifts should be considered as non-compliant with the essential health and safety requirements laid down in this Directive only under conditions of use which can be reasonably foreseen, that is when such use could result from lawful and readily predictable human behaviour.

(36) In order to ensure legal certainty, it is necessary to clarify that rules on Union market surveillance and control of products entering the Union market provided for in Regulation (EC) No 765/2008 apply to lifts and safety components for lifts covered by this Directive. This Directive should not prevent Member States from choosing the competent authorities to carry out those tasks.

(37) In order to increase transparency and to reduce processing time, it is necessary to improve the existing safeguard procedure, with a view to making it more efficient and drawing on the expertise available in Member States.

(38) The existing system should be supplemented by a procedure under which interested parties are informed of measures intended to be taken with regard to lifts or safety components for lifts presenting a risk to the health or safety of persons or where appropriate, to the safety of property. It should also allow market surveillance authorities, in cooperation with the relevant economic operators, to act at an earlier stage in respect of such lifts and safety components for lifts.

(39) Where the Member States and the Commission agree as to the justification of a measure taken by a Member State, no further involvement of the Commission should be required, except where non-compliance can be attributed to shortcomings of a harmonised standard.

(40) In order to ensure uniform conditions for the implementation of this Directive, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers[10].

(41) The advisory procedure should be used for the adoption of implementing acts requesting the notifying Member State to take the necessary corrective measures in respect of notified bodies that do not meet or no longer meet the requirements for their notification.

(42) The examination procedure should be used for the adoption of implementing acts with respect to compliant lifts or safety components for lifts which present a risk to the health or safety of persons or to other aspects of public interest protection.

(43) The Commission should adopt immediately applicable implementing acts where, in duly justified cases relating to compliant lifts or safety components for lifts which present a risk to the health or safety of persons, imperative grounds of urgency so require.

(44) In line with established practice, the committee set up by this Directive can play a useful role in examining matters concerning the application of this Directive raised either by its chair or by a representative of a Member State in accordance with its rules of procedure.

(45) When matters relating to this Directive, other than its implementation or infringements, are being examined, i.e. in a Commission expert group, the European Parliament should in line with existing practice receive full information and documentation and, where appropriate, an invitation to attend such meetings.

(46) The Commission should, by means of implementing acts and, given their special nature, acting without the application of Regulation (EU) No 182/2011, determine whether measures taken by Member States in respect of non-compliant lifts or safety components for lifts are justified or not.

(47) The Member States should lay down rules on penalties applicable to infringements of the provisions of national law adopted pursuant to this Directive and ensure that those rules are enforced. The penalties provided for should be effective, proportionate and dissuasive.

(48) Since the objective of this Directive, namely to ensure that lifts and safety components for lifts on the market fulfil the requirements providing for a high level of protection of health and safety while guaranteeing the functioning of the internal market, cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

(49) It is necessary to provide for reasonable transitional arrangements that allow the making available on the market, without the need to comply with further product requirements, of safety components for lifts that have already been placed on the market in accordance with Directive 95/16/EC before the date of application of national measures transposing this Directive. Distributors should therefore be able to supply safety components for lifts that have been placed on the market, namely stock that is already in the distribution chain, before the date of application of national measures transposing this Directive.

(50) In order to monitor and ensure the correct implementation and functioning of this Directive, the Commission is invited to submit a report to the European Parliament and to the Council, exploring also the need for a new legislative proposal in this sector.

(51) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive amendment as compared to the earlier Directive. The obligation to transpose the provisions which are unchanged arises under the earlier Directive.

(52) This Directive should be without prejudice to the obligations of the Member States relating to the time limits for transposition into national law and the dates of application of the Directives set out in Annex XIII, Part B,

HAVE ADOPTED THIS DIRECTIVE:

(**1**) OJ C 181, 21.6.2012, p. 105.

(**2**) Position of the European Parliament of 5 February 2014 (not yet published in the Official Journal) and decision of the Council of 20 February 2014.

(**3**) OJ L 213, 7.9.1995, p. 1.

(**4**) See Annex XIII, Part A.

(**5**) OJ L 218, 13.8.2008, p. 30.

(**6**) OJ L 218, 13.8.2008, p. 82.

(**7**) OJ L 134, 20.6.1995, p. 37.

(**8**) OJ L 316, 14.11.2012, p. 12.

(**9**) Approved by Council Decision 2010/48/EC of 26 November 2009 concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities (OJ L 23, 27.1.2010, p. 35).

(**10**) OJ L 55, 28.2.2011, p. 13.