Regulation (EU) 2016/424 of the European Parliament and of the Council of 9 March 2016 on cableway installations and repealing Directive 2000/9/EC (Text with EEA relevance)

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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 2000/9/EC of the European Parliament and of the Council[(3)] lays down rules for cableway installations that are designed, constructed and operated with a view to transporting persons.

(2) Directive 2000/9/EC is based on the ‘new approach’ principles, as set out in the Council Resolution of 7 May 1985 on a new approach to technical harmonisation and standards[(4)]. Thus, it sets out only the essential requirements applying to cableway installations, whereas technical details are adopted by the European Committee for Standardisation (CEN) and the European Committee for Electrotechnical Standardisation (Cenelec) in accordance with Regulation (EU) No 1025/2012 of the European Parliament and of the Council[(5)]. Conformity with the harmonised standards so set, the reference numbers of which are published in the *Official Journal of the European Union*, provides a presumption of conformity with the requirements of Directive 2000/9/EC. Experience has shown that those basic principles have worked well in that sector and should be maintained and even further promoted.

(3) Experience acquired from the implementation of Directive 2000/9/EC has shown the need to modify some of its provisions in order to clarify and update them and thus ensure legal certainty, mainly as regards the scope and the conformity assessment of subsystems.

(4) Since the scope, essential requirements and conformity assessment procedures have to be identical in all Member States, there is almost no flexibility in transposing a

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directive based on the new approach principles into national law. In order to simplify the regulatory framework, Directive 2000/9/EC should be replaced by a regulation, which is the appropriate legal instrument as it imposes clear and detailed rules which do not give room for divergent transposition by Member States and thus ensures a uniform implementation throughout the Union.

(5) Decision No 768/2008/EC of the European Parliament and of the Council[(6)] lays down common principles and reference provisions intended to apply across the legislation harmonising the conditions for the marketing of products in order to provide a coherent basis for revision or recasts of that legislation. Directive 2000/9/EC should therefore be adapted to that Decision.

(6) Regulation (EC) No 765/2008 of the European Parliament and of the Council[(7)] 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.

(7) The scope of this Regulation should reflect the scope of Directive 2000/9/EC. This Regulation should apply to cableway installations designed to transport persons used in particular in high-altitude tourist resorts, in urban transport facilities or in sports facilities. Cableway installations are mainly lift systems, such as funicular railways, aerial ropeways (cable cars, gondolas, chairlifts) and drag lifts. Traction by cable and the passenger transport function are the essential criteria in determining whether a cableway installation is covered by this Regulation.

(8) This Regulation should apply in its entirety to new cableway installations, to modifications of cableway installations requiring a new authorisation and covers subsystems and safety components which are new to the Union market when they are placed on it; that is to say, they are either new subsystems and safety components made by a manufacturer established in the Union or subsystems and safety components, whether new or second-hand, imported from a third country. This Regulation does not apply to the relocation of cableway installations installed on the territory of the Union or to the relocation of subsystems or safety components that were incorporated into such installations, except where such relocation implies a major modification of the cableway installation.

(9) New types of cableway installations have been developed that are intended for both transport and leisure activities. Such installations should be covered by this Regulation.

(10) It is appropriate to exclude certain cableway installations from the scope of this Regulation, either because they are subject to other specific Union harmonisation legislation or because they can be adequately regulated at national level.

(11) Lifts, including cable-operated lifts, whether vertical or inclined, permanently serving specific levels of buildings and constructions and not operating between cableway stations, are subject to specific Union legislation and should be excluded from the scope of this Regulation. Cableway installations covered by this Regulation are excluded from the scope of Directive 2014/33/EU of the European Parliament and of the Council[(8)].

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(12) Cableway installations that are categorised by Member States as historic, cultural or heritage installations, that entered into service before 1 January 1986 and are still in operation, and that have not had any significant changes in design or construction, should be excluded from the scope of this Regulation. This exclusion also applies to subsystems and safety components specifically designed for such cableway installations. Member States should ensure a high level of protection of the health and safety of persons and of property concerning such cableway installations, if necessary by way of national legislation.

(13) In order to ensure legal certainty, the exclusion of cable-operated ferries should cover all cable-operated installations where the users or carriers are waterborne, such as cable-operated waterski installations.

(14) In order to ensure that cableway installations and their infrastructure, subsystems and safety components guarantee a high level of protection of the health and safety of persons and of property, it is necessary to lay down rules for the design and the construction of cableway installations.

(15) Member States should ensure the safety of cableway installations at the time of their construction, entry into service and during their operation.

(16) This Regulation should not affect the right of the Member States to specify the requirements they deem necessary as regards land use and regional planning, and in order to ensure the protection of the environment and of the health and safety of persons, and in particular workers and operating personnel, when using cableway installations.

(17) This Regulation should not affect the right of the Member States to specify adequate procedures for the authorisation of planned cableway installations, the inspection of cableway installations prior to their entry into service and their monitoring during operation.

(18) This Regulation should take into account the fact that the safety of cableway installations depends equally on the surrounding conditions, on the quality of the industrial goods supplied and on the way in which they are assembled, installed on-site and monitored during operation. The causes of serious accidents may be linked to the choice of site, to the system of transport itself, to the structures, or to the way in which the system is operated and maintained.

(19) Although this Regulation does not cover the actual operation of cableway installations, it should provide a general framework intended to ensure that such installations situated on the territory of Member States are operated in such a way as to offer passengers, operating personnel and third parties a high degree of protection.

(20) Member States should take the necessary steps to ensure that cableway installations enter into service only if they comply with this Regulation and are not liable to endanger the health or safety of persons or property when properly installed, maintained and operated in accordance with their intended purpose.

(21) Member States should lay down procedures for authorising the construction of planned cableway installations and the modification of such installations and for their entry

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into service in order to ensure that the cableway installation is safely constructed and assembled on-site, in accordance with the safety analysis, the results of which are included in the safety report, and all relevant regulatory requirements.

(22) The safety analysis for planned cableway installations should identify the components on which the safety of the cableway installation depends.

(23) The safety analysis for planned cableway installations should take into account the constraints linked to the operation of cableway installations, albeit not in such a way as to jeopardise the principle of free movement of goods for subsystems and safety components or the safety of the cableway installations themselves.

(24) Rules on authorising the entry into service of cableway installations fall within the competence of Member States. Authorisation for entry into service is granted by the competent authorities or bodies. Monitoring of the operating safety of cableway installations also falls within the competence of Member States. Member States should therefore determine the person responsible for the cableway installation and, accordingly, for the safety analysis of a planned cableway installation.

(25) This Regulation aims to ensure the functioning of the internal market for subsystems of cableway installations and for safety components for cableway installations. Subsystems and safety components complying with this Regulation should benefit from the principle of free movement of goods.

(26) Subsystems and safety components should be allowed to be incorporated in a cableway installation provided that they permit the construction of cableway installations which comply with this Regulation and are not liable to endanger the health or safety of persons or property when properly installed, maintained and operated in accordance with their intended purpose.

(27) The essential requirements should be interpreted and applied so as to take account of the state of the art at the time of design and manufacture as well as of technical and economic considerations which are consistent with a high degree of health and safety protection.

(28) Economic operators should be responsible for the compliance of subsystems and safety components with the requirements of this Regulation, in relation to their respective roles in the supply chain, so as to ensure a high level of protection of public interests, such as the health and safety of persons and protection of property, and to guarantee fair competition on the Union market.

(29) All economic operators intervening in the supply and distribution chain should take appropriate measures to ensure that they only make available on the market subsystems and safety components which are in conformity with this Regulation. 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.

(30) The manufacturer of subsystems or safety components, having detailed knowledge of the design and production process, is best placed to carry out the conformity assessment

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procedure. Conformity assessment should therefore remain solely the obligation of the manufacturer of the subsystem or the safety component.

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

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

(33) The distributor makes a subsystem or a safety component 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 subsystem or the safety component does not adversely affect its compliance.

(34) When placing on the market a subsystem or a safety component, every importer should indicate on the subsystem or safety component his name, registered trade name or registered trade mark and the postal address at which he can be contacted, as well as a website, where available. Exceptions should be provided for in cases where the size or nature of the subsystem or safety component does not allow it. This includes cases where the importer would have to open the packaging to put his name and address on the subsystem or safety component.

(35) Any economic operator that either places a subsystem or a safety component on the market under his own name or trademark, or modifies a subsystem or a safety component in such a way that compliance with the requirements of this Regulation may be affected, should be considered to be the manufacturer and should assume the obligations of the manufacturer.

(36) 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 subsystems or the safety components concerned.

(37) Ensuring traceability of a subsystem or a safety component throughout the whole supply chain helps to make market surveillance simpler and more efficient. An efficient traceability system facilitates the market surveillance authorities' task of tracing economic operators who made non-compliant subsystems or safety components available on the market. When keeping the information required under this Regulation for the identification of other economic operators, economic operators should not be