



EUROPEAN UNION

THE EUROPEAN PARLIAMENT

THE COUNCIL

Brussels, 18 October 2013
(OR. en)

2012/0066 (COD)

PE-CONS 55/13

ENV 579
ENT 195
CODEC 1517

LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2006/66/EC of the European Parliament and of the Council on batteries and accumulators and waste batteries and accumulators as regards the placing on the market of portable batteries and accumulators containing cadmium intended for use in cordless power tools, and of button cells with low mercury content, and repealing Commission Decision 2009/603/EC

**DIRECTIVE 2013/.../EU
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

of

**amending Directive 2006/66/EC
of the European Parliament and of the Council
on batteries and accumulators and waste batteries and accumulators
as regards the placing on the market of portable batteries and accumulators
containing cadmium intended for use in cordless power tools,
and of button cells with low mercury content,
and repealing Commission Decision 2009/603/EC**

(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 192(1) 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 Committee¹,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure²,

¹ OJ C 229, 31.7.2012, p. 140.

² Position of the European Parliament of 10 October 2013 (not yet published in the Official Journal) and decision of the Council of

Whereas:

- (1) Directive 2006/66/EC of the European Parliament and of the Council¹ prohibits the placing on the market of portable batteries and accumulators, including those incorporated into appliances, that contain more than 0,002 % of cadmium by weight. However, portable batteries and accumulators intended for use in cordless power tools are exempted from that ban.
- (2) The Commission has reviewed that exemption in accordance with Article 4(4) of Directive 2006/66/EC.
- (3) That review has led to the conclusion that, in order to gradually diminish the amount of cadmium released into the environment, the prohibition of the use of cadmium should be extended to portable batteries and accumulators intended for use in cordless power tools because suitable cadmium-free substitutes for such applications are available on the market, namely nickel-metal hydride and lithium-ion battery technologies.
- (4) The existing exemption for portable batteries and accumulators intended for use in cordless power tools should continue to apply until 31 December 2016 in order to enable the recycling industry and consumers along the whole value chain to further adapt to the relevant substitute technologies across all the regions of the Union in a uniform manner.

¹ Directive 2006/66/EC of the European Parliament and of the Council of 6 September 2006 on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/157/EEC (OJ L 266, 26.9.2006, p. 1).

- (5) Directive 2006/66/EC prohibits the placing on the market of all batteries or accumulators, whether or not incorporated into appliances, that contain more than 0,0005 % of mercury by weight. However, button cells with a mercury content of no more than 2 % by weight are exempted from that prohibition. The Union button cell market is already experiencing a shift towards mercury-free button cells. It is therefore appropriate to prohibit the marketing of button cells with a mercury content exceeding 0,0005 % by weight.
- (6) As a consequence of the entry into force of the Lisbon Treaty, the powers conferred on the Commission under Directive 2006/66/EC need to be aligned with Articles 290 and 291 of the Treaty on the Functioning of the European Union (TFEU).
- (7) In order to supplement or amend Directive 2006/66/EC, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of criteria for the assessment of equivalent conditions regarding treatment and recycling outside the Union, capacity labelling of portable and automotive batteries and accumulators and exemptions from the labelling requirements. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and the Council.

- (8) Wherever appropriate, the producer registration requirements and format should be coherent with regard to the registration rules and format established pursuant to Article 16(3) of, and Part A of Annex X to Directive 2012/19/EU of the European Parliament and of the Council¹.
- (9) In order to ensure uniform conditions for the implementation of Directive 2006/66/EC, implementing powers should be conferred on the Commission in respect of transitional arrangements regarding minimum collection rates, a common methodology for the calculation of annual sales of portable batteries and accumulators to end-users, detailed rules regarding the calculation of recycling efficiencies, and a questionnaire or outline for national implementation reports. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council².
- (10) Directive 2006/12/EC of the European Parliament and of the Council³ was repealed by Directive 2008/98/EC of the European Parliament and of the Council⁴ with effect from 12 December 2010.
- (11) Directive 2006/66/EC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

¹ Directive 2012/19/EU of the European Parliament and of the Council of 4 July 2012 on waste electrical and electronic equipment (WEEE) (OJ L 197, 24.7.2012, p. 38).

² 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 (OJ L 55, 28.2.2011, p. 13).

³ Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste (OJ L 114, 27.4.2006, p. 9).

⁴ Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (OJ L 312, 22.11.2008, p. 3).

Article 1

Directive 2006/66/EC is amended as follows:

(1) Article 4 is amended as follows:

(a) paragraph 2 is replaced by the following:

"2. The prohibition set out in paragraph 1(a) shall not apply to button cells with a mercury content of no more than 2 % by weight until ...⁺."

(b) point (c) of paragraph 3 is replaced by the following:

"(c) cordless power tools; this exemption in respect of cordless power tools shall apply until 31 December 2016.";

(c) paragraph 4 is replaced by the following:

"4. As regards button cells for hearing aids, the Commission shall maintain under review the exemption referred to in paragraph 2 and report to the European Parliament and the Council on the availability of button cells for hearing aids which are in compliance with paragraph 1(a) no later than ...⁺⁺. Where justified due to the lack of availability of button cells for hearing aids which are in compliance with paragraph 1(a), the Commission shall accompany its report by an appropriate proposal with a view to extending the exemption referred to in paragraph 2 with regard to button cells for hearing aids.";

⁺ OJ: Please insert the date: 21 months after the entry into force of this Directive.

⁺⁺ OJ: Please insert the date: 12 months before the date referred to in paragraph 2.

(2) Article 6(2) is replaced by the following:

"2. Batteries and accumulators which do not meet the requirements of this Directive, but which were lawfully placed on the market prior to the date of application of the respective prohibitions in Article 4, may continue to be marketed until stocks are exhausted.";

(3) Article 10(4) is replaced by the following:

"4. The Commission may establish by means of implementing acts transitional arrangements to address difficulties faced by a Member State in satisfying the requirements of paragraph 2 as a result of specific national circumstances. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 24(2).

In order to ensure uniform application of this Article, the Commission shall establish by means of implementing acts a common methodology for the calculation of annual sales of portable batteries and accumulators to end-users by 26 September 2007. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 24(2).";

- (4) Article 11 is replaced by the following:

"Article 11

Removal of waste batteries and accumulators

Member States shall ensure that manufacturers design appliances in such a way that waste batteries and accumulators can be readily removed. Where they cannot be readily removed by the end-user, Member States shall ensure that manufacturers design appliances in such a way that waste batteries and accumulators can be readily removed by qualified professionals that are independent of the manufacturer. Appliances in which batteries and accumulators are incorporated shall be accompanied by instructions on how those batteries and accumulators can be safely removed by either the end-user or by independent qualified professionals. Where appropriate, the instructions shall also inform the end-user of the types of battery or accumulator incorporated into the appliance.

The provisions set out in the first paragraph shall not apply where, for safety, performance, medical or data integrity reasons, continuity of power supply is necessary and a permanent connection between the appliance and the battery or accumulator is required.";

(5) Article 12(6) is replaced by the following:

"6. The Commission shall, by means of implementing acts, adopt detailed rules regarding the calculation of recycling efficiencies by 26 March 2010. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 24(2).";

(6) Article 12(7) is deleted;

(7) Article 15(3) is replaced by the following:

"3. The Commission shall be empowered to adopt delegated acts in accordance with Article 23a to lay down detailed rules supplementing the rules referred to in paragraph 2 of this Article, in particular criteria for the assessment of equivalent conditions as referred to therein.";

(8) Article 17 is replaced by the following:

"Article 17

Registration

Member States shall ensure that each producer is registered. Registration shall be subject to the same procedural requirements in each Member State in accordance with Annex IV.";

(9) Article 18(2) is replaced by the following:

"2. Member States shall make public the draft exemption measures referred to in paragraph 1, and the grounds for proposing them and shall notify them to the Commission and other Member States.";

(10) Article 21 is amended as follows:

(a) paragraph 2 is replaced by the following:

"2. Member States shall ensure that the capacity of all portable and automotive batteries and accumulators is indicated on them in a visible, legible and indelible form by 26 September 2009. The Commission shall be empowered to adopt delegated acts in accordance with Article 23a laying down detailed rules supplementing that requirement, including harmonised methods for the determination of capacity and appropriate use by 26 March 2009.";

(b) paragraph 7 is replaced by the following:

"7. The Commission shall be empowered to adopt delegated acts in accordance with Article 23a in order to grant exemptions from the labelling requirements set out in this Article. As part of the preparation of such delegated acts, the Commission shall consult relevant stakeholders, in particular producers, collectors, recyclers, treatment operators, environmental and consumer organisations, and employee associations.";

(11) Article 22(2) is replaced by the following:

"2. Reports shall be drawn up on the basis of a questionnaire or outline. The Commission shall establish by means of implementing acts the questionnaire or the outline for those reports. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 24(2). The questionnaire or outline shall be sent to Member States six months before the beginning of the first reporting period.";

(12) The following Article is added:

"Article 23a

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 15(3) and Article 21(2) and (7) shall be conferred on the Commission for a period of five years from ...⁺.The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

⁺ OJ: please insert date of entry into force of this Directive.

3. The delegation of power referred to in Article 15(3) and Article 21(2) and (7) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Article 15(3) and Article 21(2) and (7) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council.";

(13) Article 24 is replaced by the following:

"Article 24

Committee procedure

1. The Commission shall be assisted by the Committee established by Article 39 of Directive 2008/98/EC of the European Parliament and of the Council*. That Committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.

* Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (OJ L 312, 22.11.2008, p. 3).";

(14) The following Annex is added:

"ANNEX IV

Procedural requirements for registration

1. Requirements for registration

Registration of producers of batteries and accumulators shall take place with the national authorities or with national producer responsibility organisations authorised by Member States (hereinafter: registration bodies), either on paper or electronically.

The registration procedure may be part of another producer registration procedure.

Producers of batteries and accumulators shall only need to register once in a Member State where they place batteries and accumulators on the Member State market for the first time on a professional basis, and shall be provided with a registration number upon registration.

2. Information to be provided by the producers

Producers of batteries and accumulators shall provide to the registration bodies the following information:

- (i) name of the producer and brand names (if available) under which they operate in the Member State,

- (ii) address(es) of the producer: postal code and location, street name and number, country, URL, telephone number, as well as a contact person, fax number and e-mail address of the producer, if available,
- (iii) indication on the type of batteries and accumulators placed on the market by the producer: portable batteries and accumulators, industrial batteries and accumulators, or automotive batteries and accumulators,
- (iv) information on how the producer meets its responsibilities: by individual or collective scheme,
- (v) date of the application for registration,
- (vi) national identification code of the producer, including European tax number or national tax number of the producer (optional),
- (vii) declaration stating that the information provided is true.

For the purpose of the registration referred to in the second paragraph of point 1, the producers of batteries and accumulators shall not be obliged to provide any other information than listed in point 2 (i) - (vii).

3. Registration fees

Registration bodies may only apply registration fees on the condition that these are cost-based and proportionate.

Registration bodies applying registration fees shall inform the competent national authorities of the methodology of the cost calculation of the fees.

4. Change of registration data

Member States shall ensure that in case the data provided by producers in accordance with point 2 (i) - (vii) changes, producers shall inform the relevant registration body thereof no later than one month after the change.

5. Deregistration

When producers cease to be producers in a Member State, they shall deregister by informing the relevant registration body thereof.";

Article 2
Repeal of Commission Decision 2009/603/EC

Commission Decision 2009/603/EC¹ shall be repealed with effect from ...⁺.

Article 3
Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Article 1 of this Directive by ...⁺. They shall forthwith communicate to the Commission the text of those provisions.
2. When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.
3. Member States shall communicate to the Commission the text of the main provisions of the national law which they adopt in the field covered by this Directive.

¹ Commission Decision 2009/603/EC of 5 August 2009 establishing requirements for registration of producers of batteries and accumulators in accordance with Directive 2006/66/EC of the European Parliament and of the Council (OJ L 206, 8.8.2009, p. 13).

⁺ OJ: Please insert the date: 18 months after entry into force of this Directive.

Article 4

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 5

Addressees

This Directive is addressed to the Member States.

Done at ...,

For the European Parliament
The President

For the Council
The President
