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THE EUROPEAN UNION**

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PROPOSAL

from:	Commission
dated:	27 March 2012
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Subject:	Proposal for a Directive of the European Parliament and of the Council of ... amending Directive 2006/66/EC 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

Delegations will find attached a proposal from the Commission, submitted under a covering letter from Jordi AYET PUIGARNAU, Director, to Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union.

Encl.: COM(2012) 136 final



EUROPEAN COMMISSION

Brussels, 26.3.2012
COM(2012) 136 final

2012/0066 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of [...]

amending Directive 2006/66/EC 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

(Text with EEA relevance)

{SWD(2012) 65 final}

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EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

The Batteries Directive (Directive 2006/66/EC¹) seeks to make the use of batteries and accumulators as reflected in the activities of all operators involved in their life-cycle, less harmful to the environment. It lays down specific rules on placing batteries and accumulators on the market and on the collection, treatment, recycling and disposal of waste batteries and accumulators.

The Directive prohibits the placing on the market of batteries and accumulators containing mercury and cadmium. This ban on using cadmium in batteries and accumulators applies to 'portable batteries and accumulators, including those incorporated in appliances, that contain more than 0.002% of cadmium by weight' (Article 4(1)(b) of the Batteries Directive). The prohibition of the use of cadmium in batteries was not proposed by the Commission, being introduced by the co-legislators in the co-decision procedure. Both the Council² and the European Parliament³ prepared separate impact assessments on substantive amendments, such as the cadmium ban, to the Commission proposal.

Article 4(3) exempts portable batteries and accumulators intended for use in:

- a) emergency and alarm systems, including emergency lighting;
- b) medical equipment;
- c) cordless power tools (CPT).

Article 4(4) of the Batteries Directive requires the Commission to review the exemption from the cadmium ban provided for portable batteries and accumulators intended for use in CPT (Article 4(3)(c)) and to submit a report to the European Parliament and to the Council together, if appropriate, with relevant proposals, with a view to the prohibition of cadmium in batteries and accumulators.

The Commission was asked only to review this exemption as at the time of the adoption of the Directive in 2006 there were doubts whether technical substitutes were already available for this application. In this context, Recital 11 clarifies: '*The Commission should evaluate the need for adaptation of this Directive, taking account of available technical and scientific evidence. In particular, the Commission should carry out a review of the exemption from the cadmium ban provided for portable batteries and accumulators intended for use in cordless power tools.(..)*'.

¹ OJ L 266, 26.9.2006, p. 1. Directive as last amended by Directive 2008/103/EC (OJ L 327, 5.12.2008, pp. 7–8).

² Draft impact assessment of key Council amendments to the Commission proposal for a Batteries Directive (November, 2004), available at: <http://register.consilium.eu.int/pdf/en/04/st14/st14372.en04.pdf>.

³ Ban on leaded batteries: Analysis of an amendment to Article 4 in the Council common position for adopting a Directive on batteries and accumulators and waste batteries and accumulators and repealing 91157/EEC (November, 2005), available at: http://www.europarl.europa.eu/comparl/envi/pdf/externalexpertise/ieep_6leg/batteries.pdf.

A Commission Report was submitted to the European Parliament and to the Council in December 2010⁴. It concluded that it was not then appropriate to bring forward proposals concerning the exemption for cadmium-containing portable batteries intended for use in cordless power tools (CPT) because not all the technical information (notably costs and benefits of cadmium and its substitutes) was available to support such a decision.

Since then, this additional information has been gathered and used by the Commission to prepare an impact assessment, in line with its guidelines on impact assessments.

This proposal also aligns the Batteries Directive with Articles 290 and 291 of the Treaty on the Functioning of the European Union in line with the Commission's commitment to review provisions attached to the regulatory procedure with scrutiny in each instrument it intends to modify⁵.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENT

An on-line public stakeholder consultation (10 March-10 May 2010) was launched via the EUROPA website, based on a study published in 2009. Contributions and a summary of stakeholder comments were published on the EUROPA website.

Stakeholders were invited to give their views on the environmental, social and economic impact that might result from any future ban on cadmium in portable batteries and accumulators intended for use in cordless power tools.

Some stakeholders favoured withdrawal of the exemption for the use of nickel-cadmium (NiCd) batteries in cordless power tools, since they viewed the economic costs as minimal and the environmental benefits as substantial in the long term. Others opposed withdrawal of the exemption and underlined that the data on the economic, environmental and social impact did not justify withdrawal. Overall, the stakeholder consultation confirmed the need for a comparative life-cycle assessment in order to provide a firm basis for the cost-benefit analysis.

A stakeholder workshop (peer review) was organised on 18 July 2011. The objective was to provide input to the comparative life-cycle assessment of the three different battery chemistries used in portable batteries intended for use in cordless power tools. This assessment was carried out by a consultant on behalf of the Commission.

The Commission's impact assessment concludes that compared to the baseline scenario the other policy options related to a withdrawal of the exemption (immediate withdrawal or withdrawal in 2016) would lead to a lower overall environmental impact, both in terms of avoiding releases of cadmium to the environment and in terms of aggregated environmental impacts based on six environmental indicators.

⁴ The Commission Report is available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52010DC0698:EN:NOT>

⁵ The text of the Commission Statement available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:055:0019:0020:EN:PDF>

In the case of delayed withdrawal of the exemption (in 2016), the environmental benefits would be slightly lower than under the option of immediate withdrawal but the costs would be much lower compared to this option. Some recyclers and cordless power tool manufacturers have given cost-estimates for both policy options related to the withdrawal of the exemption (in the range of €40- 60 million in the case of immediate withdrawal and €33 million in the case of withdrawal by 2016). It is however doubtful whether all these costs should be attributed to the cases of withdrawal of the exemption, given that the amounts of cadmium batteries used in cordless power tools will decrease by 50% between 2013 and 2025 under the baseline scenario.

Consumers might be affected by the higher manufacturing cost of alternative battery technology applied to cordless power tools under the policy options related to the withdrawal of the exemption. Over the period 2013-2025, a cordless power tools with an alternative battery chemistry will, depending on the alternative battery chemistry chosen (nickel metal hydride or lithium-ion), cost €0.8 and €2.1 more respectively if the exemption is immediately withdrawn and an additional €0.4 and €0.9 respectively in the case of withdrawal in 2016.

The social impacts and administrative burden are limited for all policy options and they should not lead to compliance issues.

The impact assessment concludes that if the exemption is withdrawn in 2016, the environmental benefits would be slightly lower than in the case of immediate withdrawal but the costs would be much lower compared to an immediate withdrawal. As withdrawal of the exemption in 2016 would have almost the same level of effectiveness at a higher efficiency compared to an immediate withdrawal, this option is the preferred one.

3. LEGAL ELEMENTS OF THE PROPOSAL

Article 1(1) of this Proposal amends Article 4(3)(c) of Directive 2006/66/EC by limiting the exemption for the use of cadmium in portable batteries and accumulators intended for use in cordless power tools to 1 January 2016. This means that as from this date, the use of cadmium in portable batteries and accumulators intended for use in cordless power tools, included those incorporated into appliances, is restricted to 0,002% of cadmium by weight in line with Article 4(1) of Directive 2006/66/EC.

Paragraphs (2) to (11) of Article 1 of this Proposal identify the delegated and implementing powers of the Commission in Directive 2006/66/EC and establish the corresponding procedures for adoption of these acts.

Article 2 of this Proposal requires Member States to transpose the amendment to Article 4 (3)(c) of Directive 2006/66/EC within 18 months after entry into force of the Directive.

Article 3 of this Proposal stipulates that this Directive enters into force on the twentieth day following that of its publication in the Official Journal.

Article 4 of this Proposal states that this Directive is addressed to Member States.

4. BUDGETARY IMPLICATION

Not applicable.

5. OPTIONAL ELEMENTS

Not applicable.

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(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,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (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/EEC³ 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 therein. However, the portable batteries and accumulators intended for use in cordless power tools have been exempt from that ban.
- (2) The Commission has reviewed that exemption in accordance with Article 4 of Directive 2006/66/EC with a view to the prohibition of cadmium in batteries and accumulators.

¹ OJ C [...], [...], p. [...].

² OJ C [...], [...], p. [...].

³ OJ L 266, 26.9.2006, p. 1.

- (3) That review led to the conclusion that, in order to gradually diminish the amount of cadmium released to the environment, the prohibition of the use of cadmium should be extended to portable batteries and accumulators intended for use in cordless power tools as suitable cadmium-free substitutes for these applications are available on the market, namely nickel-metal hydride and lithium-ion battery technologies.
- (4) The existing exemption for that use should continue to apply until 31 December 2015 in order to enable industry to further adapt the relevant technologies.
- (5) As a consequence of the entry into force of the Lisbon Treaty, the powers conferred under Directive 2006/66/EC upon the Commission need to be aligned with Articles 290 and 291 of the Treaty.
- (6) In order to supplement or amend Directive 2006/66/EC, the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission in respect of Annex III regarding treatment and recycling requirements, criteria for the assessment of equivalent conditions regarding treatment and recycling outside the European Union, producer registration, 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 Council.
- (7) 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, 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 Council of 28 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers⁴.
- (8) Directive 2006/12/EC has been repealed by Directive 2008/98/EC with effect from 12 December 2010.
- (9) Directive 2006/66/EC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 2006/66/EC is amended as follows:

1. Point (c) of Article 4(3) is replaced by the following:
'(c) cordless power tools, until 31 December 2015.'

⁴ OJ L 55, 28.2.2011, p.13

2. 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).’

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).’;

3. The first two sentences of Article 12(6) are replaced by the following:

‘6. The Commission shall be empowered to adopt delegated acts in accordance with Article 23a to adapt or supplement Annex III so as to take account of technical or scientific progress.’;

4. Article 12(7) is deleted;

5. Article 15(3) is replaced by the following:

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

6. 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.

The Commission shall be empowered to adopt delegated acts in accordance with Article 23a establishing such requirements for registration.’;

7. Article 18(2) is replaced by the following:

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

8. 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 this requirement, including harmonised methods for the determination of capacity and appropriate use no later than 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 to grant exemptions from the labelling requirements set out in this Article.’;

9. 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, by means of implementing acts, establish the questionnaire or the outline for those reports 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 period that the report is to cover.’;

10. Article 23a 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 delegation of power referred to in Articles 12(6), 15(3), Article 17 and Articles 21(2) and 21(7) shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Directive.

3. The delegation of power referred to in Articles 12(6), 15(3), Article 17 and Articles 21(2) and 21(7) may be revoked at any time by the European Parliament or by the Council. A decision of revocation 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 Articles 12(6), 15(3), Article 17 and Articles 21(2) and 21(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.’;

11. 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*.

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.

* OJ L 312, 22.11.2008, p. 3.’.

Article 2

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Article 1(1) of this Directive by 18 months after entry into force at the latest. 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 national law which they adopt in the field covered by this Directive.

Article 3

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 4

Addressees

This Directive is addressed to the Member States.

Done at Brussels, 26.3.2012

For the European Parliament
The President

For the Council
The President