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## PROPOSAL

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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	4 May 2015
To:	Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union

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No. Cion doc.:	COM(2015) 186 final
Subject:	Proposal for a COUNCIL DECISION on the position to be adopted, on behalf of the European Union, in the EEA Joint Committee concerning an amendment to Annex II (Technical regulations, standards, testing and certification) to the EEA Agreement (Batteries and Accumulators)

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Delegations will find attached document COM(2015) 186 final.

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Encl.: COM(2015) 186 final



EUROPEAN  
COMMISSION

Brussels, 4.5.2015  
COM(2015) 186 final

2015/0097 (NLE)

Proposal for a

## **COUNCIL DECISION**

**on the position to be adopted, on behalf of the European Union,  
in the EEA Joint Committee concerning an amendment to Annex II (Technical  
regulations, standards, testing and certification) to the EEA Agreement  
(Batteries and Accumulators)**

## **EXPLANATORY MEMORANDUM**

### **1. CONTEXT OF THE PROPOSAL**

In order to ensure the requisite legal security and homogeneity of the Internal Market, the EEA Joint Committee is to integrate all the relevant EU legislation into the EEA Agreement as soon as possible after its adoption.

### **2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS**

The draft Decision of the EEA Joint Committee (annexed to the proposed Council Decision) aims to amend Annex II (Technical regulations, standards, testing and certification) to the EEA Agreement in order to incorporate Directive 2013/56/EU of the European Parliament and of the Council<sup>1</sup> into the EEA Agreement.

The EEA EFTA States propose to provide for derogation for Liechtenstein from Article 17 of Directive 2006/66/EC, as amended by Directive 2013/56/EU. Justification for the envisaged adaptation is as follows.

Article 17 of Directive 2006/66/EC (as amended by Directive 2013/56/EU) obliges Member States to ensure that each producer is registered and that registration shall be subject to the same procedural requirements in accordance with Annex IV to Directive 2006/66/EC.

#### *1) The legal situation in Liechtenstein*

By virtue of the Customs Union Treaty<sup>2</sup> of 1923 (*Zollvertrag*), which entered into force on 1 January 1924, Liechtenstein is part of the Swiss Customs Territory. According to Article 4 of the Treaty, Swiss customs legislation, as well as any other Swiss Federal legislation the application of which is necessary for the proper functioning of the Customs Union, is applicable in Liechtenstein.

The Customs Union Treaty is the only legal basis permitting the Swiss Customs Authorities to apply Swiss customs legislation in Liechtenstein. Liechtenstein does not have its own laws or regulations in this field. Also, from a technical customs matter viewpoint as well as for the Foreign Trade Statistics, Liechtenstein is generally considered as Swiss territory due to the Customs Union and therefore does not usually appear as a separate country for Customs procedures in an international context. All laws, regulations, administrative agreements, etc. of the Customs Union, which via Switzerland are also applicable in Liechtenstein, are listed in Annexes and published in the Liechtenstein Law Gazette (*Liechtensteinisches Landesgesetzblatt*) in order to ensure legal security for Liechtenstein's economic operators. The Annexes are continuously updated as soon as changes in corresponding Swiss laws and regulations occur.

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<sup>1</sup> Directive 2013/56/EU of the European Parliament and of the Council of 20 November 2013 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, OJ L 329, 10.12.2013, p. 5.

<sup>2</sup> Customs Union Treaty of 29 March 1923 between Switzerland and Liechtenstein (*Zollvertrag*, ZV; LR 0.631.112).

As a consequence, the Swiss Chemicals Act of 15 December 2000, ChemA, (*Chemikaliengesetz vom 15. Dezember 2000*) and the Swiss Chemical Risk Reduction Ordinance of 18 May 2005, ORRChem, (*Chemikalien-Risiko-Reduktionsverordnung vom 18. Mai 2005, ChemRRV*) apply equally in Switzerland and Liechtenstein. Annex 2.15 ORRChem lays down specific rules concerning batteries, e.g. the bring-back and take-back obligation, the prepaid disposal fee and reporting obligation of manufacturers of batteries. The Swiss rules regarding batteries are equivalent to the European provisions. Amendments to Directive 2006/66/EC are emulated as is the case with the provisions laid down in Directive 2013/56/EU. Because of the applicability of the ORRChem in Liechtenstein, the enforcement with regard to Liechtenstein is partially within the exclusive competence of the Swiss authorities or the organisations appointed by the Swiss authorities (cf. Annex 2.15 No 6 ORRChem). The organisation appointed by the Swiss authorities operating in the field of the disposal of batteries levies is INOBAT (*Interessenorganisation Batterieentsorgung*).

The present Swiss reporting obligation foresees that manufacturers of batteries must report to INOBAT, in accordance with its requirements, the quantity of batteries, indicating in particular the types of batteries and the pollutant content (cf. Annex 2.15 No 6.3 ORRChem). The requirements of the registration form of INOBAT are almost identical to the requirements according to Annex IV of Directive 2006/66/EC (as amended by Directive 2013/56/EU). Provided for by statute, manufacturers of appliances which incorporate batteries have the possibility to choose between INOBAT or third parties that have assumed liability for the fee and the reporting obligation. Those third parties are bound by a contract to INOBAT. Companies which do not fulfill their obligation to register and report are required by INOBAT to register on the basis of data delivered by the Customs Authorities. The Swiss system simplifies the registration, reporting and the collection of fees, guaranteeing at the same time a complete registration of all manufacturers.

## *2) The economic relevance of batteries and accumulators falling within the scope of application of Directive 2006/66/EC in Liechtenstein*

According to Article 2 of Directive 2006/66/EC, the Directive applies to all types of batteries and accumulators, regardless of their shape, volume, weight, material composition or use (with certain exceptions foreseen in Article 2(2)).

As a very small country with a territory of 160 km<sup>2</sup> and approximately 37,000 inhabitants, no companies producing batteries are reportedly established in Liechtenstein. Due to the smallness of the country and the relative size of the national market, there does not seem to be any economic interest for manufacturers to produce batteries and accumulators in Liechtenstein.

Until now, only a few companies (16 in total) located in Liechtenstein import batteries. As the Swiss registration obligation is applicable in Liechtenstein, these companies have been registered in the Swiss registration system.

Therefore, installing its own registration system would reportedly generate a disproportionate burden for Liechtenstein and its few importers of batteries, in particular considering the marginal and purely formal deviation of the Swiss and the European registration form.

Against this background, considering the specific legal and factual situation as described above, Liechtenstein is applying for an adaptation to Directive 2013/56/EU, amending Directive 2006/66/EC. The adaptation, as proposed by the EEA EFTA States, provides that Article 17 of Directive 2006/66/EC, as amended, does not apply to Liechtenstein.

### **3. LEGAL ELEMENTS OF THE PROPOSAL**

Article 1(3) of Council Regulation (EC) No 2894/94 concerning arrangements for implementing the EEA Agreement provides that the Council establishes the position to be adopted on the Union's behalf on such Decisions, on a proposal from the Commission.

The Commission submits the Draft Decision of the EEA Joint Committee for adoption by the Council as the Union's position. The Commission would hope to be able to present it in the EEA Joint Committee at the earliest possible opportunity.

Proposal for a

## COUNCIL DECISION

**on the position to be adopted, on behalf of the European Union,  
in the EEA Joint Committee concerning an amendment to Annex II (Technical  
regulations, standards, testing and certification) to the EEA Agreement  
(Batteries and Accumulators)**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1) and Article 218(9) thereof,

Having regard to Council Regulation (EC) No 2894/94 of 28 November 1994 concerning arrangements for implementing the Agreement on the European Economic Area<sup>3</sup>, and in particular Article 1(3) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Agreement on the European Economic Area<sup>4</sup> ('the EEA Agreement') entered into force on 1 January 1994.
- (2) Pursuant to Article 98 of the EEA Agreement, the EEA Joint Committee may decide to amend, inter alia, Annex II on Technical regulations, standards, testing and certification to the EEA Agreement ('Annex II').
- (3) Directive 2013/56/EU of the European Parliament and of the Council<sup>5</sup> is to be incorporated into the EEA Agreement.
- (4) Directive 2013/56/EU of the European Parliament and of the Council repeals Commission Decision 2009/603/EC<sup>6</sup>, which is incorporated into the EEA Agreement and which is consequently repealed under the EEA Agreement.
- (5) Given the specific legal and factual situation in Liechtenstein, Article 17 of Directive 2006/66/EC, as amended by Directive 2013/56/EU, is not to apply to Liechtenstein.

<sup>3</sup> OJ L 305, 30.11.1994, p. 6.

<sup>4</sup> OJ L 1, 3.1.1994, p. 3.

<sup>5</sup> Directive 2013/56/EU of the European Parliament and of the Council of 20 November 2013 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, OJ L 329, 10.12.2013, p. 5.

<sup>6</sup> OJ L 206, 8.8.2009, p. 13.

- (6) Annex II to the EEA Agreement should therefore be amended accordingly.
- (7) The position of the Union within the EEA Joint Committee should be based on the attached draft Decision,

HAS ADOPTED THIS DECISION:

*Article 1*

The position to be adopted, on behalf of the European Union, within the EEA Joint Committee on the proposed amendment to Annex II to the EEA Agreement, on Technical regulations, standards, testing and certification, shall be based on the draft decision of the EEA Joint Committee attached to this Decision.

*Article 2*

This Decision shall enter into force on the date of its adoption.

Done at Brussels,

*For the Council  
The President*