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*****I**
REPORT

on the proposal for a directive of the European Parliament and of the Council 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
(COM(2012)0136 – C7-0087/2012 – 2012/0066(COD))

Committee on the Environment, Public Health and Food Safety

Rapporteur: Vladko Todorov Panayotov

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a directive of the European Parliament and of the Council 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 (COM(2012)0136 – C7-0087/2012 – 2012/0066(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2012)0136),
 - having regard to Article 294(2), Article 192(1) and Article 114(1) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0087/2012),
 - having regard to the opinion of the Committee on Legal Affairs on the use of delegated acts,
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Economic and Social Committee of 24 May 2012¹,
 - after consulting the Committee of the Regions,
 - having regard to Rules 55 and 37a of its Rules of Procedure,
 - having regard to the report of the Committee on the Environment, Public Health and Food Safety (A7-0131/2013),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

¹ OJ C 229, 31.7.2012, p. 140.

Amendment 1

Proposal for a directive Title

Text proposed by the Commission

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

Amendment

Proposal for a Directive of the European Parliament and of the Council 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 *and of button cells with low mercury content*

Justification

Although beyond the scope of the Commission proposal, the revision of Directive 2006/66/EC is an opportunity for removing an exemption that is clearly out of date today: the possibility for button cell batteries to still contain mercury. An EC commissioned report (BIOIS 2012)¹ proposed that the best policy option, from an environmental and economic point of view, is to ban the placing on the market of mercury-containing button cell batteries in the EU, with a view to reduce the negative environmental impact from the use of mercury in these products.

Amendment 2

Proposal for a directive Recital 4

Text proposed by the Commission

(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.

Amendment

(4) The existing exemption for that use should continue to apply until 31 December 2015 in order to enable *producers, the recycling industry and consumers along the whole value chain* to further adapt the relevant *substitute* technologies *across all the regions of the Union in a uniform manner.*

¹ Study on the potential for reducing Mercury pollution from dental amalgam and batteries, EC, DG-ENVI, 5 March, 2012, http://ec.europa.eu/environment/chemicals/mercury/pdf/Final_report_11.07.12.pdf

Amendment 3

Proposal for a directive Recital 4 a (new)

Text proposed by the Commission

Amendment

(4 a) 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. It is important to reduce the risk of mercury being released into the environment, as button cells easily escape separate collection. The Union button cell market is already experiencing a shift towards Hg-free button cells. Hg-free versions are now commercially available for all applications and have nearly the same performance parameters as the mercury-containing ones, as also confirmed by the majority of industry. It is therefore appropriate to prohibit the marketing of button cells with a mercury content exceeding 0,0005% by weight. As a consequence of such a prohibition, it is expected that countries exporting large amounts of button cells to the Union market would be encouraged to accelerate the switch to the manufacture of Hg-free button cells, which can have a global impact on the use of mercury in this industry sector.

Amendment 4

Proposal for a directive Recital 6

Text proposed by the Commission

Amendment

(6) In order to supplement or amend Directive 2006/66/EC, the power to adopt

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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.

acts in accordance with Article 290 of the Treaty *on the Functioning of the European Union (TFEU)* should be delegated to the Commission in respect of ***a common methodology for the calculation of annual sales of portable batteries and accumulators to end-users***, Annex III regarding treatment and recycling requirements, criteria for the assessment of equivalent conditions regarding treatment and recycling outside the 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 ***to the*** Council.

Justification

It is important to ensure a level playing field for all participants.

Amendment 5

Proposal for a directive Recital 6 a (new)

Text proposed by the Commission

Amendment

(6 a) The producer registration requirements and format should be consistent with the registration requirements and format established pursuant to Article 16(3) of, and Annex X, Part A to, Directive 2012/19/EU of the European Parliament and of the Council of 4 July 2012 on waste electrical and electronic equipment (WEEE)¹.

The producer registration requirements and format should remain consistent with the registration requirements and format

adopted by the Commission Decision of August 5, 2009 - (2009/603/EC) - 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.

¹ OJ L 197, 24.7.2012, p. 38.

Justification

Since batteries and accumulators are incorporated into the EEE, it is natural the producer registration process to follow the same procedure. This will save producers' time to be used for organising the production. The registration requirements for the batteries were adopted in a Commission Decision of August 2009(2009/603/EC). There are registration systems in the EU not only for batteries incorporated in equipment but also for batteries sold individually. The requirements of Commission Decision 2009/603/EC should also remain applicable.

Amendment 6

Proposal for a directive

Recital 7

Text proposed by the Commission

(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 powers.

Amendment

(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 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 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers.

Justification

cf. justification to Recital 6

Amendment 7

Proposal for a directive

Article 1 – point -1 (new)

Directive 2006/66/EC

Article 3 – point 13 a (new)

Text proposed by the Commission

Amendment

-1. In Article 3 the following point (13a) is inserted:

'(13a) 'making available on the market' means any supply of a battery or an accumulator for distribution, consumption or use on the Union market in the course of a commercial activity, whether in return for payment or free of charge;'

Amendment 8

Proposal for a directive

Article 1 – point -1 a (new)

Directive 2006/66/EC

Article 3 – paragraph 14

Text proposed by the Commission

Amendment

-1a. In Article 3 point (14) is replaced by the following:

'(14) 'placing on the market' means making available a battery or an accumulator on the Union market for the first time;'

Amendment 9

Proposal for a directive

Article 1 – point -1b (new)

Directive 2006/66/EC

Article 4 – paragraph 2

Text proposed by the Commission

Amendment

-1b. Article 4(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 31 December 2014.'

Amendment 10

Proposal for a directive

Article 1 – point 1 a (new)

Directive 2006/66/EC

Article 4 – paragraph 4

Text proposed by the Commission

Amendment

1a. Article 4(4) is deleted

Justification

Once the ban on Cadmium has entered into force, no review of the exemption for CPTs should be necessary in the future.

Amendment 11

Proposal for a directive

Article 1 – point 1 b (new)

Directive 2006/66/EC

Article 6 – paragraph 2

Text proposed by the Commission

Amendment

Article 6(2) is replaced by the following:

'2. Member States shall take the necessary measures to ensure that

batteries or accumulators that do not meet the requirements of this Directive are not placed on the market [...].

Member States shall take the necessary measures to ensure that batteries or accumulators which do not meet the requirements of this Directive are no longer made available on the market three years after the respective phase-out date.

Batteries and accumulators which do not meet the requirements of this Directive and which are placed on the market after the respective phase-out dates shall be withdrawn from the market.'

Amendment 12

Proposal for a directive

Article 1 – point 2

Directive 2006/66/EC

Article 10 – paragraph 4 – subparagraph 2

Text proposed by the Commission

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)***'.

Amendment

The Commission shall ***be empowered to adopt delegated acts in accordance with Article 23a in order to establish*** or amend a common methodology for the calculation of annual sales of portable batteries and accumulators to end-users.';

Justification

Commission decision 2008/763/EC establishes the common methodology for the calculation of annual sales of portable batteries and accumulators to end-users. Modifications of the common methodology, as a matter of general application within the meaning of Art. 290 TFEU, should be made through delegated acts.

Amendment 13

Proposal for a directive

Article 1 – point 2 a (new)

Directive 2006/66/EC

Article 11

Text proposed by the Commission

Amendment

2a. Article 11 is replaced by the following:

'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 removed by the end-user, Member States shall ensure that manufacturers design appliances in such a way that waste batteries and accumulators can be easily removed by professionals that are independent of the manufacturer. Appliances into which batteries and accumulators are incorporated shall be accompanied by instructions how they can be removed safely by the end-user or by independent professionals. Where appropriate, the instructions shall also inform the end-user of the type of the incorporated batteries and accumulators. These provisions shall not apply where, for safety, performance, medical or data integrity reasons, continuity of power supply is necessary and requires a permanent connection between the appliance and the battery or accumulator.'

Amendment 14

Proposal for a directive

Article 1 – point 4

Directive 2006/66/EC

Article 12 – paragraph 7

Text proposed by the Commission

4. Article 12(7) is **deleted**;

Amendment

4. Article 12(7) is **replaced by the following**:

‘Before amending or supplementing Annex III the Commission shall consult with relevant stakeholders, in particular producers, collectors, recyclers, treatment operators, environmental organisations, consumer organisations and employee associations [...].’;

Justification

Maintaining the consultation requirement in the current Directive. Considering the opinion of “real-life players” will ensure the use of working with the best available technologies in practice.

Amendment 15

Proposal for a directive

Article 1 – point 10

Directive 2006/66/EC

Article 23a – paragraph 2

Text proposed by the Commission

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.

Amendment

2. The delegation of power referred to in Articles **10(4)**, 12(6), 15(3), Article 17 and Article 21(2) and 21(7) shall be conferred on the Commission for ***a period of five years*** from the date of entry into force of this Directive. ***The Commission shall draw up a report in respect of the delegations 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.***

Justification

Other EU legislative institutions have to be informed on the adoption of delegated acts in the

Union and on the results of those acts.

Amendment 16

Proposal for a directive

Article 1 – point 10

Directive 2006/66/EC

Article 23a – paragraph 3

Text proposed by the Commission

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.

Amendment

3. The delegation of power referred to in Articles **10(4)**, 12(6), 15(3), Article 17 and Article 21(2) and 21(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.

Amendment 17

Proposal for a directive

Article 1 – point 10

Directive 2006/66/EC

Article 23a – paragraph 5

Text proposed by the Commission

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

Amendment

5. A delegated act adopted pursuant to Articles **10(4)**, 12(6), 15(3), Article 17 and Article 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.’;

the European Parliament or of the Council.’;

Amendment 18
Proposal for a directive
Article 2 – paragraph 1

Text proposed by the Commission

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.

Amendment

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Article 1(1) **and Article 1 (-1b)** by **12** months after entry into force *of this Directive* at the latest. They shall forthwith communicate to the Commission the text of those provisions.

Amendment 19
Proposal for a directive
Article 3 – title

Text proposed by the Commission

Entry into force

Amendment

Entry into force **and consolidation**

Amendment 20
Proposal for a directive
Article 3 – paragraph 1

Text proposed by the Commission

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

Amendment

This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union. ***A consolidated version of Directive 2006/66/EC shall be drawn up within three months of the date of entry into force of this Directive.***

EXPLANATORY STATEMENT

Introduction:

Directive 2006/66/EC of the European Parliament and of the Council¹ prohibits placing on the market of portable batteries or accumulators, including those incorporated into appliances, that contain more than 0,002 % of cadmium by weight. However, there is an exemption for emergency and alarm systems, including emergency lighting, medical equipment and cordless power tools.

Article 4 of Directive 2006/66/EC requires the Commission to review the exemption for CPTs. The current proposal aims at amending the Directive by limiting the exemption for the use of cadmium in portable batteries and accumulators intended for use in cordless power tools until 31 December 2015. Given the environmental effects of cadmium the Commission proposal is welcomed.

The end date was chosen by the EC following an impact assessment combining the socio-economical dimension and the environmental dimension of the removal of NiCd batteries in cordless power tools, comparing the overall impact of the removal of the Cd exemption over time. It should be noted that the Impact Assessment of the Commission does not present results from a comparative life-cycle assessment of the chargers for the various batteries in its conclusions on the environmental impacts of the three battery types (NiCd, NiMH and Li-ion batteries) as it only focuses on the environmental impacts of the battery packs themselves²². The environmental impacts of the three battery types (including the environmental impacts of their chargers) as provided in Annex 13 of the EIA, part 2, for informational purposes, show that additional R&D might be necessary in order to improve the energy, materials' and environmental footprint of the highly specialized chargers for Li-ion batteries compared to the already mature technologies existing for NiCd and NiMH batteries.

The rapporteur suggests extending the exemption for NiCd batteries with one more year, until 31.12.2016, in order to allow extra time to enable all economic actors along the whole value chain to further adapt the relevant substitute technologies across all EU regions in a uniform manner and along the lines of the natural business cycle of CPTs.

1. Figures on batteries and market shares:

Three types of rechargeable batteries are used in cordless power tools: Nickel cadmium (NiCd), Nickel metal hydride (NiMH), and Lithium-ion (Li-Ion) batteries.

The total share of NiHM within the EU CPT market is relatively low compared to NiCd and Li-Ion batteries, and they are mostly used in the Nordic European countries. This is why the report focuses on NiCd vs. Li-Ion batteries to evaluate the adequate date for the exemption withdrawal.

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).

According to EPTA, in 2011 40 % of all power tools are cordless power tools. Within this 40 %, 70 % is Li-Ion and 27 % NiCd (and only 3 % of NiMH). This tendency is increasing in favour of Li-Ion and to the detriment of NiCd which is naturally disappearing from the market.

Nevertheless, the current figures of market shares are reversed for Eastern European Member States, and it will therefore take longer in this region for the Cadmium market to disappear completely under the business-as-usual scenario. The industry is still selling 4 million NiCd CPTs per year, predominantly in Eastern Europe, within an overall market of 16 million CPTs per year. Indeed, Li-Ion batteries are still more expensive compared to NiCd batteries, which explains their slower progression in the Eastern part of the EU where the purchasing power of the population tends to be inferior to the purchasing power in the Western European countries. An additional year will be beneficial to consumers to adjust gradually their preferences to the relevant substitute technologies available on the market across all EU regions in a more uniform manner.

2. Cadmium vs. Lithium:

In all regulations concerning hazardous substances and chemicals (REACH, RoHS, ELV), Cadmium is among the short listed ones due to its negative impact on the environment and on human health. Cadmium is toxic whenever it accumulates in the environment and in the human body as it tends to remain there for an unknown period of time and might cause often irreversible damages.

Cadmium may leak into the environment due to improperly handled waste portable batteries. However, it is important to note that NiCd batteries account for a very small percentage of the Cadmium emissions into the atmosphere and the water. MSW incinerators and landfilling contribute to only 2.6 % of the overall Cadmium air emissions and to 2.3% of the overall Cadmium water emissions as opposed to oil and coal combustion into the air (43.5 %) or iron and steel production's contribution to water emissions (40 %) as well as fertilizers and sewage sludge.¹ In the end, the relative contribution of Cadmium emissions from MSW due to NiCd batteries to the water and to the air amounts to about only 1 % altogether.

Both the Fertilizers' Regulation and the Sewage sludge Directive are old and should be revised soon but Cadmium is anyhow available in many other forms and substances that humans are currently still exposed to, apart from the CPT batteries (such as pigments, electroplating, semiconductors and photovoltaic cells, fertilizers and pharmaceuticals). Finally, it should be taken into consideration that the Cadmium contained in CPTs can, if proper collection schemes and recycling systems are put in place, be recycled at a rate of 100 %, and the industry has made significant progress to close the cycle of Cadmium in batteries. This greatly limits these risks to the environment and to human health. Having in mind the possibility for 100 % recycling of collected NiCd batteries, the rapporteur suggests the environmental and health risk is minor and can be managed.

¹ EURAS Final Report Contribution of Spent Batteries to the Metal Flows of Municipal Solid Waste, October 2005

Lithium batteries have many technological advantages compared to the NiCd ones, which explains their fast market penetration and their increasing market share. Li-Ion batteries are lighter and more energy efficient; they possess high power discharge and a slow self-discharge when not in use, and at the same time they do not display the memory effect. However, Li-ion batteries may explode if overheated or if charged at an excessively high voltage and may be irreversibly damaged if discharged below a certain voltage. In addition, they need a more sophisticated charger, compared to NiCd batteries, and have approximately twice as short of a life-time compared to NiCd batteries (4 years vs. 8 years respectively). Li-ion batteries are currently more expensive than NiCd batteries, they do not work as well at very low temperatures, and currently there are not enough economic incentives to develop large-scale recycling structures for them: raw materials are relatively cheap and available and the quantities of waste Li-ion batteries are not great enough to justify large-scale recycling processes to be put in place. The expected growing presence of Li-ion batteries on the market with a view to the future ban on Cd use in the batteries might change the balance and might increase the profitability of the recycling process for Li-ion batteries.. Li-ion batteries' recycling is still developing as opposed to the already mature battery recycling technologies NiCd and NiMH in the EU, but technological developments and innovation in this field may soon change this situation and make it economically viable to develop Li-ion recycling processes with a view to the growing waste stream of Li-ion batteries.

Thus, an extension of the exemption with one more year, until 31.12.2016, would enable a reasonable compromise, protecting both the interests of consumers and businesses along the whole value-chain while ensuring the protection of the environment and human health and simultaneously providing some additional time for technological development, best-practice sharing, and innovation in the field.

3. The exhaustion of stocks and spare parts

The maintenance of products which will have already been put on the market when the ban enters into force and especially the spare parts which might still be needed is a question which is often raised.

First of all, the rapporteur believes that the upstream distributors will have already foreseen the ban of NiCd batteries, so only small quantities of them, if any, should still be on the shelves by the moment the exemption is withdrawn. Measures, such as ensuring the availability of spare parts for a limited period of time after the exemption is lifted might slightly decrease the negative social impact on final consumers, especially in the non-professional sector, who might not be able to absorb so readily the costs related to the switch from one technology to another. However, NiCd-based CPTs could be easily replaced in the short term, though at a higher cost, by NiMH-based CPTs as the chargers used for NiMH batteries can be used for charging both types of tools with the appropriate battery. Due to the technologies already available in place, the immediate impact of the ban on final consumers can thus be manageable. The existence of this substitute option can further mitigate a potential sudden increase of electrical waste equipment as a result of the ban on NiCd batteries.

The technological and the environmental challenges which can be expected as a result of the potentially larger amount of electrical waste equipment, due to the necessity to suddenly dispose of equipment for which there will not be provisional spare parts, can be managed technically due to the availability of the NiMH technology option. In terms of recycling of waste batteries, the industry can

benefit from additional time in order to be able to manage a potential increase of electrical waste equipment as a result of the ban on NiCd batteries. Recycling companies are already taking steps in that direction by developing their capacities to recycle the increasing quantities of Li-ion and NiMH batteries that will be expected as the NiCd ban enters into force. In any case the European legislator needs to send a strong and clear message as to when the actual ban is coming to the downstream distributors. With a definitive date in mind for enforcing the ban fully after 31.12.2016, producers will not be tempted to flood the market with an excessive amount of stocks right before the withdrawal enters into force.

4. Extension of scope - Mercury in button cells

Although beyond the scope of this Commission proposal, the revision of the exemption for Cd is an opportunity for removing another exemption which appears to be out of date today: the possibility for button cell batteries to still contain mercury. The EC-commissioned report by BIOIS 2012 demonstrates the need to reduce the risk of mercury being released into the environment, as button cells easily escape separate waste collection schemes and this increases the risk of polluting the environment.

As the majority of button cell producers have changed their technology, this exemption is becoming obsolete and the EU button cell market is already experiencing a shift towards Hg-free button cells. Currently, Hg free button cells represent approximately 39% of the EU button cell market. Hg-free versions are now commercially available for all applications, and with the same performance parameters as the mercury ones, as also confirmed by the majority of the industry¹.

Such a decision would also encourage countries exporting large amounts of button cells in the EU market, such as China, to accelerate the switch to the manufacture of Hg-free button cells, which could have a global impact on the use of mercury in this industry sector. If this exemption is not removed now, a change may only take place at the review of the Battery directive foreseen by 2016 – allowing approximately 2.4-3.9 ton Hg/year contained in button cell batteries to continue escaping separate waste collection schemes with high possibilities of polluting the environment. Several states in the USA have already banned use of Hg-bearing button cells.

Therefore, in view of reducing the environmental impact from the use of mercury in these products and to reduce their contribution to the overall mercury problem, as well as taking into account economic viability, the rapporteur believes that placing on the market of button cell batteries containing mercury should be banned as of 31.12.2016.

In conclusion, the rapporteur suggests extending the exemption for NiCd batteries with one more year, until 31.12.2016. Having in mind the possibility for 100 % recycling of collected NiCd batteries, the rapporteur suggests the risk is minor and can be managed. An extension of the exemption with one more year would enable a reasonable compromise, protecting both the interests of consumers and businesses in the whole value-chain while ensuring the protection

¹ Catherine Galligan, Gregory Morose An Investigation of Alternatives to Miniature Batteries Containing Mercury December 17, 2004, Prepared for The Maine Department of Environmental Protection Lowell Center for Sustainable Production, University of Massachusetts Lowell

of the environment and human health and simultaneously providing some additional time for technological development, best-practice sharing, learning and innovation in the field.

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS ON THE USE OF DELEGATED ACTS

Mr Matthias Groote
Chair
Committee on the Environment, Public Health
and Food Safety

BRUSSELS

Subject: Opinion drawn up pursuant to Rule 37a of the Rules of Procedure on the use of delegated acts, in the context of Parliament's scrutiny of the Amendment of Directive 2006/66/EC (placing on the market of portable batteries and accumulators containing cadmium intended for use in cordless power tools) (COM(2012)0136 – C7-0087/2012 – 2012/0066(COD))

Dear Mr Chair,

By letter of 3 December 2012, you asked the Committee on Legal Affairs, pursuant to Rule 37a of the Rules of Procedure, to give an opinion on the provisions of the above-mentioned proposal which delegate legislative powers to the Commission in accordance with Article 290 TFEU and on the provisions conferring implementing powers on the Commission in accordance with Article 291 TFEU.

Having regard to the preparation of the draft report in ENVI and the approach taken to the proposal in the Council, which suggests replacing the provisions of the proposal providing for the adoption of delegated acts by provisions providing for the adoption of implementing acts, you ask the Committee on Legal Affairs to examine the Commission proposal, with particular attention to the objectives, content, scope and duration of the delegation, and to the conditions to which it is subject.

I - Background

The main purpose of the proposal is to amend Directive 2006/66/EC (hereinafter "the Batteries Directive") in order to extend its prohibition of the placing of the market of batteries and accumulators containing cadmium to cordless power tools, but the proposal also intends to align with Articles 290 and 291 TFEU¹ the provisions in the Batteries Directive which

¹ While Article 290 TFEU is self-executing, the rules and general principles concerning Article 291 TFEU are laid down in 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 or control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

provided for procedures under the now repealed Comitology Decision¹, and which were introduced by Directive 2008/12/EC².

The Commission proposed provisions on delegated acts to replace provisions providing for the regulatory procedure with scrutiny (RPS) in five cases. It further proposed that one previous RPS provision and two provisions which provided for the regulatory procedure should be replaced by provisions on implementing acts.

In a Presidency compromise text presented in the Council, it has been suggested that only one provision which previously provided for RPS should be replaced by a provision which provides for delegated acts, whereas the other seven provisions mentioned above should all provide for implementing acts.

II - Background to delegated and implementing acts

The Working Group on Simplification of the European Convention on the Future of Europe recommended in its Final Report that the hierarchy of Community legislation should be clarified by demarcating, as far as possible, matters falling within the legislative area and by adding a new category of legislation³:

"At present there is no mechanism which enables the legislator to delegate the technical aspects or details of legislation whilst retaining control over such delegation. As things stand, the legislator is obliged either to go into minute detail in the provisions it adopts, or to entrust to the Commission the more technical or detailed aspects of the legislation as if they were implementing measures, subject to the control of the Member States, in accordance with the provisions of Article 202 TEC."

The Group therefore proposed to introduce "delegated acts", which would flesh out the detail or amend certain elements of a legislative act, under some form of authorisation defined by the legislator, and "implementing acts", which would implement legislative acts. With delegated acts, it would be for the legislator to determine whether and to what extent it was necessary to adopt at Union level acts implementing legislative acts and/or delegated acts, and, where appropriate, the committee procedure mechanism (Article 202 TEC) which should accompany the adoption of such acts. Legislative acts were therefore defined by the Group as being adopted directly on the basis of the Treaty and containing the *essential elements* and the *fundamental policy choices* in a certain field. The powers to be delegated would range from rules on the technical and detailed elements which develop a legislative act, to the subsequent amendment of certain aspects of the legislative act itself. However, the

¹ Council Decision 1999/468/EC laying down the procedures for the exercise of implementing powers conferred on the Commission (OJ L 184, 17.7.1999, p. 23), as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

² Directive 2008/12/EC of the European Parliament and of the Council of 11 March 2008 amending Directive 2006/66/EC (OJ L 76, 19.3.2008, p. 39).

³ Working Group IX on simplification, Final Report of 29 November 2002, pp. 8-12.

Group thought that, if it were decided to create the new category of delegated acts, it might be possible to simplify certain committee procedures, but pointed out that any change would not come under the Treaty directly but under secondary legislation.

These suggestions resulted in proposals for provisions in the Draft Treaty Establishing the Constitution of Europe on delegated and implementing acts. These provisions ultimately survived virtually untouched in the Lisbon Treaty: Articles 290 and 291 TFEU.

Article 290 TFEU provides that (emphasis added):

"1. A legislative act may delegate to the Commission the power to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act.

The objectives, content, scope and duration of the delegation of power shall be explicitly defined in the legislative acts. The essential elements of an area shall be reserved for the legislative act and accordingly shall not be the subject of a delegation of power.

2. Legislative acts shall explicitly lay down the conditions to which the delegation is subject; these conditions may be as follows:

(a) the European Parliament or the Council may decide to revoke the delegation;

(b) the delegated act may enter into force only if no objection has been expressed by the European Parliament or the Council within a period set by the legislative act.

For the purposes of (a) and (b), the European Parliament shall act by a majority of its component members, and the Council by a qualified majority.

3. The adjective "delegated" shall be inserted in the title of delegated acts."

Article 291 TFEU provides that (emphasis added):

"1. Member States shall adopt all measures of national law necessary to implement legally binding Union acts.

2. Where uniform conditions for implementing legally binding Union acts are needed, those acts shall confer implementing powers on the Commission, or, in duly justified specific cases and in the cases provided for in Articles 24 and 26 of the Treaty on European Union, on the Council.

3. For the purposes of paragraph 2, the European Parliament and the Council, acting by means of regulations in accordance with

the ordinary legislative procedure, shall lay down in advance the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.

4. The word "implementing" shall be inserted in the title of implementing acts."

It should be noted that, in contrast to the approach taken in Article 291 TFEU concerning implementing measures, Article 290 TFEU does not contain a legal basis for the adoption of a horizontal act - the Implementing Acts Regulation cited above for Article 291 TFEU - setting out the rules and general principles applicable to delegations of power. Those conditions must therefore be set out in each basic act.

Declaration No 39 to TFEU on financial services has the following wording:

"Declaration on Article 290 of the Treaty on the Functioning of the European Union

The Conference takes note of the Commission's intention to continue to consult experts appointed by the Member States in the preparation of draft delegated acts in the financial services area, in accordance with its established practice. "

In preparation for the practical implementation of Article 290 TFEU, the Committee on Legal Affairs on 23 March 2010 adopted a non-legislative initiative report on the power of legislative delegation, rapporteur József Szájer¹. The following are excerpts from the explanatory memorandum of the report, which set out the background to the demarcation between delegated and implementing acts:

"Control of the power delegated by the Legislator should in all logic remain the preserve of the Legislator. Moreover, any other form of control by anyone but the Legislator would per se be contrary to Article 290 TFEU. In particular, Member States, and a fortiori committees composed of experts from the Member States, have no role to play in this area."

[...]

It is undisputed that the primary responsibility for the implementation of Union law lies with the Member States. This is made clear in Article 4(3) second subparagraph TEU (ex Article 10 EC - "the Member States shall take any appropriate measure (...) to ensure fulfilment of the obligations arising out of the

¹ Report on the power of legislative delegation (A7-0110/2010).

Treaties") and in Article 291 TFEU itself ("Member States shall adopt all measures of national law necessary to implement legally binding Union acts"). This was also the case prior to the entry into force of the Lisbon Treaty.

However, where the Legislator considers that uniform conditions for implementing legally binding Union acts are needed, a binding piece of secondary law (whether a legislative act or not) must empower the Commission to adopt implementing measures. Article 291 TFEU, following on directly from the "comitology" mechanisms based on Article 202 EC, provides a basis for the adoption of implementing acts by the Commission, subject to certain controls by the Member States of the Commission's exercise of implementing powers¹. Given the primary responsibility of Member States for implementation, it is natural that Article 291 mentions them to the exclusion of the Legislator. There is no fundamental conceptual difference between the previous system based on Article 202 EC and the future system based on Article 291 TFEU.

It is clear that it is the Legislator that establishes the conditions for the exercise of such implementing powers. A new legal framework for implementing acts is urgent because the current "comitology" decision is partly incompatible with the new regime established under Article 291 TFEU.

The resolution finally adopted in plenary on 5 May 2010 includes the following three final paragraphs²:

- "18. Urges the Commission to present as a matter of priority the legislative proposals needed to adapt the acquis to the provisions of Articles 290 and 291 TFEU; considers, in respect of Article 290 TFEU, that this alignment should not be limited to those measures previously dealt with under the regulatory procedure with scrutiny but should cover all appropriate measures of general scope independently of the decision-making procedure or comitology procedure applicable to them prior to the entry into force of the Treaty of Lisbon;*
- 19. Insists that the first priority must be to adapt the acquis in policy areas which, prior to the entry into force of the Treaty of Lisbon, were not subject to the codecision procedure; calls for them to be dealt with on a case-by-case basis in such a*

¹ The rules and general principles for control by Member States are however to be adopted in the form of regulations by the Legislator acting in accordance with the ordinary legislative procedure - Article 291(3) TFEU.

² European Parliament resolution of 5 May 2010 on the power of legislative delegation, P7_TA(2010)0127.

way as to ensure that, in particular, all appropriate measures of general scope which were previously adopted under Articles 4 and 5 of [the Comitology Decision] are defined as delegated acts;

20. *Considers that, in order to fully preserve the Legislator's prerogatives, special attention should be given to the relative use of Articles 290 and 291 TFEU and to the practical consequences of having recourse to one article or the other, be it during the above-mentioned alignment or when dealing with proposals under the ordinary legislative procedure; insists that the co-legislators have the power to decide that the matters previously adopted under the regulatory procedure with scrutiny can be adopted either under Article 290 TFEU or under the ordinary legislative procedure; "*

For the practical application of Article 290 TFEU, a Common Understanding¹ was agreed in April 2011 between Parliament, the Council and the Commission. It sets out the practical arrangements and agreed clarifications and preferences applicable to delegations of legislative power. It does provide guidance and model wordings for the definition of the objectives, content, scope and duration of a delegation, but it is silent as to the demarcation between delegated and implementing acts.

In addition, Parliament's Rules of Procedure were amended to include a new Rule 37a, which has the following wording:

"Delegation of legislative powers

1 When scrutinising a proposal for a legislative act which delegates powers to the Commission as provided for in Article 290 of the Treaty on the Functioning of the European Union, Parliament shall pay particular attention to the objectives, content, scope and duration of the delegation, and to the conditions to which it is subject.

2. The committee responsible for the subject-matter may at any time request the opinion of the committee responsible for the interpretation and application of Union law.

3. The committee responsible for the interpretation and application of Union law may also, on its own initiative, take up questions concerning the delegation of legislative powers. In such cases it shall duly inform the committee responsible for the subject-matter. "

¹ Common Understanding on Delegated Acts, approved on 3 March 2011 by the Conference of Presidents.

III - Parliament's position on the delegation of legislative power

The demarcation between delegated and implementing acts has been the subject of some controversy in a number of legislative procedures following the entry into force of the Lisbon Treaty. The Council has insisted on the use of implementing acts in order better to influence the preparatory phase of such acts through the experts from the Member States sitting in the relevant committees provided for in the Implementing Acts Regulation. In the preparation of delegated acts there is no formal role for national experts. Furthermore, the role, influence and prerogatives of Parliament are far greater when it comes to delegated acts, with the possibility of objecting to a proposed delegated act and revoking a delegation being the strongest tools in its possession. When it comes to implementing acts, the powers of Parliament are limited to a right of scrutiny, and the Commission may adopt a proposed implementing act notwithstanding any objection from Parliament.

The choice of the correct instrument has significant consequences not only for the possibility of Parliament to exercise its right of control or scrutiny, but also for the validity of the legal act itself. The President of the Commission, in a letter to the President of Parliament, has stressed that the delineation between implementing and delegated acts is not a matter of political choice, and that the starting point of any analysis therefore must be the legal criteria established in Articles 290 and 291 TFEU¹. The Commission has therefore sought clarification from the Court of Justice on the delineation issue in a case where it considers that the wrong kind of act has been chosen².

In order to establish a horizontal political position on the issue of delegated acts to protect Parliament's prerogatives and avoid further risk of legal challenges and the risk of annulment of legislative acts with an incorrect choice of delegated or implementing acts, the Conference of Presidents endorsed in 2012 the following 4-step approach with a view to ensuring that Parliament is capable of exercising to the full the powers conferred on it by the Lisbon Treaty³:

1. Choice of the right instrument;
2. Strengthening the Member States' role in the preparatory phase of delegated acts;
3. Inclusion in the basic act ("codecision");
4. Adoption of Parliament's position without a first reading agreement.

As a last step, where delegated acts could not be included in a particular file, although it had been established that they should, this approach calls for refusing to submit the file to the plenary as such, and that further horizontal negotiations with the Council would then be

¹ Letter of 3 February 2012 from President Barroso to President Schulz.

² On 19 September 2012, the Commission brought an action to the Court of Justice against the Parliament and the Council seeking to annul an article in the Biocidal Products Regulation which provides for the adoption of measures establishing the fees payable to the European Chemicals Agency (ECHA) by an implementing act rather than by a delegated act. The Commission argues that since the article in question seeks to supplement certain non-essential elements of the legislative act, and with regard to the nature of the delegation and the purpose of the act to be adopted under those powers, such an act ought therefore to be adopted in accordance with the procedure laid down in Article 290 TFEU and not the procedures laid down in Article 291 TFEU. Case C-427/12, Commission v European Parliament and Council of the European Union.

³ *Political guidelines on a horizontal approach within Parliament on dealing with delegated acts* (Letter of 19 April 2012 from the Chair of the CCC to the President of Parliament).

required.

IV - Analysis

In the absence of any case law from the Court of Justice on the question of the demarcation between delegated and implementing acts, the starting point for any analysis must be the wording of the Treaty itself. Article 290 TFEU only permits a delegation of legislative power for the adoption of "*non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act*" (emphasis added).

To examine whether those criteria are fulfilled here, it is necessary to examine the nature of the power in question on a case-by-case basis.

Article 1(2) on transitional arrangements regarding minimum waste collection rates

This provision relates to Article 10(4) first subparagraph of the Batteries Directive, which according to Directive 2008/12/EC provided for transitional arrangements regarding minimum waste collection rates of batteries and accumulators to be adopted by the regulatory procedure in Article 5 of the Comitology Decision.

According to Article 13(1)(c) of the Implementing Acts Regulation, where a basic act adopted before the entry into force of that Regulation makes reference to Article 5 of the Comitology Decision, the examination procedure of the Regulation shall apply.

The proposed change to implementing acts in this case is therefore correct.

Article 1(2) on a common methodology for the calculation of annual sales

This provision relates to Article 10(4) second subparagraph of the Batteries Directive, which according to Directive 2008/12/EC provided for the establishment, with the use of RPS, of a common methodology for the calculation of annual sales of portable batteries and accumulators to end-users, in order to monitor waste collection rates. It further provided that that measure was "*designed to amend non-essential elements of this Directive by supplementing it*".

This provision is of general application, since the calculation of sales "*apply to objectively determined situations*"¹. The fact that the words "methodology for the calculation" are preceded by the adjective "common" gives further support to this conclusion.

The original provision further stated that the measure to be taken was designed to amend non-essential elements by supplementing the Directive. This provision can therefore only be aligned by providing for the adoption of delegated acts.

¹ See Case C-263/02, *Commission v. Jégo-Quéré* [2004] ECR I-3425, para. 43.

The proposed change to implementing acts in this case is therefore **incorrect**, and the provision must be the subject of a delegation under Article 290 TFEU.

Article 1(3) on the adapting or supplementing of Annex III to take account of technical or scientific progress

This provision relates to Article 12(6) of the Batteries Directive, which according to Directive 2008/12/EC provided for Annex III of the Batteries Directive (on detailed treatment and recycling requirements) to be adapted or supplemented in accordance with RPS to take account of technical or scientific progress. It further provided that those measures were "*designed to amend non-essential elements of this Directive, inter alia, by supplementing it*".

This provision is of general application, since the technical or scientific progress when it comes to the treatment and recycling requirements relating to batteries and accumulators are "*addressed in abstract terms to undefined classes of persons and apply to objectively determined situations*"¹.

The original provision further stated that the measures to be taken were designed to amend non-essential elements by supplementing the Directive. This provision can therefore only be aligned by providing for the adoption of delegated acts.

The proposed change to delegated acts in this case is therefore correct.

Article 1(5) on detailed rules supplementing the criteria for the assessing equivalent conditions outside the Union

This provision relates to Article 15(3) of the Batteries Directive, which according to Directive 2008/12/EC provided for detailed rules for the assessment of equivalent conditions of recycling operations outside the Union, in the context of exports, to be laid down under RPS. It further provided that those measures were "*designed to amend non-essential elements of this Directive by supplementing it*".

This provision is of general application, since the rules for the assessment of equivalent conditions for recycling operations relating to batteries and accumulators are "*addressed in abstract terms to undefined classes of persons and apply to objectively determined situations*".

The original provision further stated that the measures to be taken were designed to amend non-essential elements by supplementing the Directive. This provision can therefore only be aligned by providing for the adoption of delegated acts.

It could moreover be noted that Parliament in the ongoing procedures concerning the Accounting Directive and the Data Protection Regulation and Directive has taken the position that the determination of equivalence in third countries could only be the subject of a

¹ Ibid.

delegation of legislative powers, and has nothing to do with uniform conditions for implementation.

The proposed change to delegated acts in this case is therefore correct.

Article 1(6) on the requirements for the registration of producers

This provision relates to Article 17 of the Batteries Directive, which according to Directive 2008/12/EC provided for the procedural requirements for the registration of producers to be adopted under RPS. It further provided that those requirements were "*designed to amend non-essential elements of this Directive by supplementing it*".

This provision is of general application since it is "*addressed in abstract terms to undefined classes of persons and apply to objectively determined situations*".

The original provision further stated that the requirements in question were designed to amend non-essential elements by supplementing the Directive. This provision can therefore only be aligned by providing for the adoption of delegated acts.

The proposed change to delegated acts in this case is therefore correct.

Article 1(8)(a) on detailed rules supplementing the labelling of capacity

This provision relates to Article 21(2) of the Batteries Directive, which according to Directive 2008/12/EC provided for detailed rules ensuring that capacity labels on batteries and accumulators are visible, legible and indelible, to be adopted under RPS. It further provided that those measures were "*designed to amend non-essential elements of this Directive by supplementing it*".

This provision is of general application since it is "*addressed in abstract terms to undefined classes of persons and appl[ies] to objectively determined situations*".

The original provision further stated that the measures to be taken were designed to amend non-essential elements by supplementing the Directive. This provision can therefore only be aligned by providing for the adoption of delegated acts.

The proposed change to delegated acts in this case is therefore correct.

Article 1(8)(b) on exemptions from labelling requirements

This provision relates to Article 21(7) of the Batteries Directive, which according to Directive 2008/12/EC provided for exemptions from the labelling requirements in Article 21 to be adopted under RPS. It further provided that those measures were "*designed to amend non-essential elements of this Directive by supplementing it*".

This provision is of general application since it is "*addressed in abstract terms to undefined classes of persons and appl[ies] to objectively determined situations*".

The original provision further stated that the measures to be taken were designed to amend non-essential elements by supplementing the Directive. This provision can therefore only be aligned by providing for the adoption of delegated acts.

The proposed change to delegated acts in this case is therefore correct.

Article 1(9) on a questionnaire to the Member States for reporting purposes

This provision relates to Article 22(2) of the Batteries Directive, which provided for a questionnaire or outline to be established under the regulatory procedure of Article 5 of the Comitology Decision to form the basis for the reports on the implementation of the Directive which the Member States are required to submit every three years.

According to Article 13(1)(c) of the Implementing Acts Regulation, where a basic act adopted before the entry into force of that Regulation makes reference to Article 5 of the Comitology Decision, the examination procedure of the Regulation shall apply.

The proposed change to implementing acts in this case is therefore correct.

The objectives, content, scope and duration of the suggested delegations

As regards the objective, content and scope of the suggested delegations, none of these have been changed as compared with the Batteries Directive when it made reference to the Comitology Decision, taking into account that the proposed changes are intended to align the Directive to Articles 290-291 TFEU. The proposed changes are therefore procedural rather than substantive and do not affect the objective, content and scope.

Amendment 12 in the ENVI draft report seeks to change Article 1(2) of the proposal, on a common methodology for the calculation of annual sales, to provide for delegated acts rather than implementing acts. This is a procedural change and does not affect the objective, content and scope of the proposed delegation as compared with the previous comitology situation.

When it comes to the duration of the suggested delegations, the Commission proposal introduces a new Article 23a with the heading "Exercise of the delegation", which is in line with model "article a" and "option 1" in the Common Understanding. This provides for indeterminate duration of the delegation and a 2+2 months period for objection by Parliament or the Council.

Amendment 14 in the ENVI draft report seeks to change "option 1" to "option 2" of the Common Understanding and provide for delegation periods of 5 years with the Commission being required to report on the delegation of power not later than nine months before the end of a 5-year period, a period which will be tacitly extended unless Parliament or the Council opposes such extension not later than three months before the end of each period.

This suggested amendment is well within the prerogatives of the Legislator to make, and it has the added value of providing for a regular check-up of the delegations.

The Council compromise text

On 14 September 2012, the Cypriot Presidency presented a compromise text on the proposal¹. This text maintains delegated acts for Article 1(8)(b), on exemptions from labelling requirements, but provides for implementing acts in all of the other relevant provisions discussed above.

V - Conclusion and recommendation

At its meeting of 21 February 2013 the Committee on Legal Affairs adopted the following opinion by unanimity²:

In light of the foregoing reasoning, the Committee on Legal Affairs takes the view that with the exception of Article 1(2) of the proposal, which concerns a common methodology for the calculation of annual sales, and which must provide for delegated acts rather than implementing acts, the Commission proposal is correct when it comes to aligning the comitology provisions in the Batteries Directive with Articles 290 and 291 TFEU. The Legislator is free to choose "option 2" of the Common Understanding as regards the duration of the delegation.

In view of the political guidance endorsed by the Conference of Presidents, and since the criteria of Article 290 TFEU are clearly met for the common methodology in Article 1(2) of the proposal, the Committee on Environment, Public Health and Food Security should insist on delegated acts for this provision, and should support the alignment proposed by the Commission for the other relevant provisions. If the Council maintains its compromise text and the position that implementing acts should be used more extensively, the Committee should inform the Council that the file will not be submitted to the plenary as such, and if the Council still persists, the Committee should recommend the adoption of Parliament's position without a first reading agreement.

¹ Council document No 13763/12.

² The following were present: Evelyn Regner (acting Chair), Raffaele Baldassarre (Vice-Chair), Françoise Castex (Vice-Chair), Francesco Enrico Speroni (rapporteur), Luigi Berlinguer, Piotr Borys, Marielle Gallo, Lidia Joanna Geringer de Oedenberg, Eva Lichtenberger, Antonio López-Istúriz White, Bernhard Rapkay, József Szájer, Alexandra Thein, Rainer Wieland, Tadeusz Zwiefka.

Yours sincerely,

Klaus-Heiner Lehne

PROCEDURE

Title	Amendment of Directive 2006/66/EC (placing on the market of portable batteries and accumulators containing cadmium intended for use in cordless power tools)		
References	COM(2012)0136 – C7-0087/2012 – 2012/0066(COD)		
Date submitted to Parliament	26.3.2012		
Committee responsible Date announced in plenary	ENVI 18.4.2012		
Committee(s) asked for opinion(s) Date announced in plenary	ITRE 18.4.2012	IMCO 13.12.2012	JURI 18.4.2012
Not delivering opinions Date of decision	ITRE 23.4.2012	IMCO 25.4.2012	JURI 25.4.2012
Rapporteur(s) Date appointed	Vladko Todorov Panayotov 25.5.2012		
Discussed in committee	28.11.2012	19.2.2013	
Date adopted	20.3.2013		
Result of final vote	+: –: 0:	48 0 2	
Members present for the final vote	Kriton Arsenis, Sophie Auconie, Pilar Ayuso, Paolo Bartolozzi, Sergio Berlatto, Lajos Bokros, Milan Cabrnock, Yves Cochet, Chris Davies, Esther de Lange, Anne Delvaux, Bas Eickhout, Edite Estrela, Elisabetta Gardini, Gerben-Jan Gerbrandy, Matthias Groote, Françoise Grossetête, Satu Hassi, Jolanta Emilia Hibner, Karin Kadenbach, Eija-Riitta Korhola, Jo Leinen, Corinne Lepage, Peter Liese, Zofija Mazej Kukovič, Linda McAvan, Radvilė Morkūnaitė-Mikulėnienė, Miroslav Ouzký, Vladko Todorov Panayotov, Antonia Parvanova, Andrés Perelló Rodríguez, Mario Pirillo, Pavel Poc, Anna Rosbach, Oreste Rossi, Horst Schnellhardt, Richard Seeber, Salvatore Tatarella, Thomas Ulmer, Glenis Willmott, Sabine Wils		
Substitute(s) present for the final vote	Minodora Cliveti, Julie Girling, Philippe Juvin, Jiří Maštálka, James Nicholson, Britta Reimers, Michèle Rivasi, Rebecca Taylor, Vladimir Urutchev, Kathleen Van Brempt		
Substitute(s) under Rule 187(2) present for the final vote	Ioan Enciu		
Date tabled	28.3.2013		