



## EUROPEAN COMMISSION

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M. Jean-Pierre BEL  
Président du Sénat  
Palais du Luxembourg  
15, rue de Vaugirard  
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Dear President,

*The Commission would like to thank you for the Sénat's Opinion 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) 136 final}, and apologises for the delay in replying.*

*With respect to the issue raised in your Opinion let me provide the following clarifications.*

*Firstly the Commission would emphasize that the Proposal is amending the scope of Directive 2006/66/EC, which establishes the case for Community level action as follows (recital 26):*

*Since the objectives of this Directive namely protecting the environment and ensuring the proper functioning of the internal market cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty.*

*The exclusion of cordless power tools (CPTs) from the ban on using cadmium in batteries and accumulators was not in the Commission's original proposal, but introduced by colegislators. The colegislators also introduced a requirement into the 2006 Directive for the Commission to review the exclusion of the specific product group of CPTs. The basis for Community-level action in respect of the current proposal therefore remains consistent with that of other product groups under the 2006 Directive.*

*In line with standard practice, the Commission carried out an ex ante Impact Assessment<sup>1</sup> for the Proposal which addressed the principles of subsidiarity and proportionality as follows:*

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<sup>1</sup> The impact assessment is available at: <http://ec.europa.eu/environment/waste/batteries/index.htm> under "Proposed Legislation".

*"The principle of subsidiarity requires that the Union shall only take action if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore be better achieved by the Union, by reason of scale of effects of the proposed action. The proportionality principle requires Union action to not go beyond what is necessary to obtain the objectives.*

*The present impact assessment takes account of the principles of subsidiarity and proportionality because:*

- A prohibition on the use of cadmium in portable batteries and exemptions thereof has been established at EU level to avoid distortions of the internal market;*
- The Commission has been requested to review the exemption for the use of cadmium in portable batteries intended for use in cordless power tools. Unilateral action by Member States would have a negative impact on the functioning of the internal market by creating barriers to trade and can distort competition.*

*EU action is necessary as this concerns the review of an exemption for the use of cadmium in portable batteries intended for use in cordless power tools which is established at EU level. All Member States are affected by the use of cadmium in different applications since batteries are freely circulating in the internal market - hence the harmonization and coordination of policies and implementing measures on the EU-level is crucial."*

*The ex ante Impact Assessment as such is explicitly referred to in the above-mentioned Commission proposal. Nevertheless, the Commission fully recognises that it is crucial that the subsidiarity justification, developed in the impact assessments of its proposals, is reflected fully also in the explanatory memorandum. I am committed to ensure that this is done regularly.*

*Yours faithfully,*

*Maroš Šefčovič  
Vice-President*