



EUROPEAN COMMISSION

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Proposal for a

COUNCIL DECISION

**on the position to be taken by the European Union
in the EEA Joint Committee
concerning an amendment to Annex II
(Technical regulations, standards, testing and certification)
to the EEA Agreement**

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 Union 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.

More concretely, this amendment aims to incorporate Regulation (EC) No 764/2008 laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another Member State; Regulation (EC) No 765/2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and Decision No 768/2008/EC on a common framework for the marketing of products.

An adaptation is proposed in relation to Liechtenstein as to the Regulation (EC) No 764/2008. The EEA Joint Committee Decision No 97/2007 exempted Liechtenstein from the application of Annex I, Chapters XII and XXVII of Annex II, and Protocol 47 of the EEA Agreement, for so long as the Agriculture Agreement between the EU and Swiss Confederation applies to Liechtenstein. Therefore Liechtenstein wishes for exemption from the Regulation (EC) No 764/2008 for those products.

In relation to the Regulation (EC) No 765/2008, Liechtenstein shall have the possibility to have recourse to the accreditation body of Switzerland for the product sectors covered by the Agreement between the European Community and the Swiss Confederation on mutual recognition in relation to conformity assessment and in respect of which EU and Swiss requirements are deemed equivalent pursuant to Article 1(2) and (3) of that Agreement. Moreover, for products not originating in the EEA and exported from Liechtenstein to another EEA State, there may be a need to check products at the border in order to make sure that they are in conformity with EEA legislation, due to Liechtenstein's regional union with Switzerland, where Liechtenstein may have applied Swiss technical regulations and standards.

Concerning Decision No 768/2008/EC, as the Decision refers to future legislation, the proposed text underlines the fact that the EEA relevance of all legal acts are considered individually, and that the incorporation of one act is without prejudice to the incorporation of others.

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 taken by the European Union
in the EEA Joint Committee
concerning an amendment to Annex II
(Technical regulations, standards, testing and certification)
to the EEA Agreement**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 43(2), 114(1) and 207(2), in conjunction with 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 Area¹, and in particular Article 1(3) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Regulation (EC) No 764/2008 of the European Parliament and of the Council of 9 July 2008 laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another Member State and repealing Decision No 3052/95/EC is to be incorporated into the Agreement.
- (2) Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 is to be incorporated into the Agreement.
- (3) Decision No 768/2008/EC of the European Parliament and of the Council of 9 July 2008 on a common framework for the marketing of products, and repealing Council Decision 93/465/EEC is to be incorporated into the Agreement.
- (4) Decision No 768/2008/EC sets out common principles and reference provisions for future legislation harmonizing the conditions for the marketing of products and a reference text for existing legislation.
- (5) Regulation (EC) No 764/2008 repeals Decision No 3052/95/EC of the European Parliament and of the Council which is incorporated into the Agreement and is therefore to be repealed under the Agreement.

¹ OJ L 305, 30.11.1994, p. 6.

- (6) Regulation (EC) No 765/2008 repeals Council Regulation (EEC) No 339/93 which is incorporated into the Agreement and is therefore to be repealed under the Agreement.
- (7) Decision No 768/2008/EC repeals Council Decision 93/465/EEC which is incorporated into the Agreement and is therefore to be repealed under the Agreement,
- (8) Annex II to the EEA Agreement should therefore be amended accordingly.
- (9) The position of the Union in the EEA Joint Committee should therefore be based on the attached draft Decision,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken by the Union in the EEA Joint Committee on the proposed amendment to Annex II (Technical regulations, standards, testing and certification) to the EEA Agreement 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 day of its adoption.

Done at Brussels,

*For the Council
The President*

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DECISION No .../2012 OF THE EEA JOINT COMMITTEE

of
amending Annex II (Technical regulations, standards, testing and certification)
to the EEA Agreement

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area, as amended by the Protocol adjusting the Agreement on the European Economic Area (“the EEA Agreement”), and in particular Article 98 thereof,

Whereas:

- (1) Annex II to the Agreement was amended by Decision of the EEA Joint Committee No ... of ...¹.
- (2) Regulation (EC) No 764/2008 of the European Parliament and of the Council of 9 July 2008 laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another Member State and repealing Decision No 3052/95/EC² is to be incorporated into the Agreement.
- (3) Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93³ is to be incorporated into the Agreement.
- (4) Decision No 768/2008/EC of the European Parliament and of the Council of 9 July 2008 on a common framework for the marketing of products, and repealing Council Decision 93/465/EEC⁴ is to be incorporated into the Agreement.
- (5) Decision No 768/2008/EC sets out common principles and reference provisions for future legislation harmonizing the conditions for the marketing of products and a reference text for existing legislation.
- (6) Regulation (EC) No 764/2008 repeals Decision No 3052/95/EC of the European Parliament and of the Council⁵ which is incorporated into the Agreement and is therefore to be repealed under the Agreement.
- (7) Regulation (EC) No 765/2008 repeals Council Regulation (EEC) No 339/93⁶ which is incorporated into the Agreement and is therefore to be repealed under the Agreement.

¹ OJ L ...
² OJ L 218, 13.8.2008, p. 21.
³ OJ L 218, 13.8.2008, p. 30.
⁴ OJ L 218, 13.8.2008, p. 82.
⁵ OJ L 321, 30.12.1995, p. 1.
⁶ OJ L 40, 17.2.1993, p. 1.

- (8) Decision No 768/2008/EC repeals Council Decision 93/465/EEC⁷ which is incorporated into the Agreement and is therefore to be repealed under the Agreement,
- (9) Annex II to the EEA Agreement should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Chapter XIX of Annex II to the Agreement shall be amended as follows

1. The text of point 3b (Council Regulation (EEC) No 339/93) shall be replaced by the following:

‘32008 R 0765: Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 (OJ L 218, 13.8.2008, p. 30).

The provisions of the Regulation shall, for the purposes of this Agreement, be read with the following adaptations:

- (a) The following shall be added at the end of Article 4 (2):

“Liechtenstein shall also have recourse to the national accreditation body of Switzerland for the product sectors covered by the Agreement between the European Community and the Swiss Confederation on mutual recognition in relation to conformity assessment and in respect of which EU and Swiss requirements are deemed equivalent pursuant to Article 1(2) and (3) of that Agreement”.

- (b) Products exported from Liechtenstein to the other Contracting Parties may be subjected to border controls according to Articles 27-29.’

2. The text of point 3d (Council Decision 93/465/EEC) shall be replaced by the following:

‘32008 D 0768: Decision No 768/2008/EC of the European Parliament and of the Council of 9 July 2008 on a common framework for the marketing of products, and repealing Council Decision 93/465/EEC (OJ L 218, 13.8.2008, p. 82).’

3. The text of point 3f (Decision No 3052/95/EC of the European Parliament and of the Council) shall be replaced by the following:

‘32008 R 0764: Regulation (EC) No 764/2008 of the European Parliament and of the Council of 9 July 2008 laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another Member State and repealing Decision No 3052/95/EC (OJ L 218, 13.8.2008, p. 21).

⁷ OJ L 220, 30.8.1993, p. 23.

The provisions of the Regulation shall, for the purposes of this Agreement, be read with the following adaptations:

The Regulation shall only apply to products covered by Article 8 (3) of the Agreement.

The Regulation shall not apply to Liechtenstein in relation to products covered by Annex I, Chapters XII and XXVII of Annex II and Protocol 47 to the Agreement, as long as the application of the Agreement between the European Community and the Swiss Confederation on trade in agricultural products is extended to Liechtenstein.’

4. The following shall be inserted in point 3h (Directive 2001/95/EC of the European Parliament and of the Council):

‘, as amended by:

- **32008 R 0765**: Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 (OJ L 218, 13.8.2008, p. 30).’

Article 2

The texts of Regulations (EC) No 764/2008 and 765/2008 and Decision No 768/2008/EC in the Icelandic and Norwegian languages, to be published in the EEA Supplement to the *Official Journal of the European Union*, shall be authentic.

Article 3

This Decision shall enter into force on , provided that all the notifications under Article 103(1) of the Agreement have been made to the EEA Joint Committee*.

Article 4

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Union*.

Done at Brussels, .

For the EEA Joint Committee

The President

*The Secretaries
to the EEA Joint Committee*

* [No constitutional requirements indicated.] [Constitutional requirements indicated.]