II

(Non-legislative acts)

INTERNATIONAL AGREEMENTS

COUNCIL DECISION

of 25 June 2012

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

(2012/364/EU)

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 Area [1], 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 [2] is to be incorporated into the Agreement on the European Economic Area ('EEA 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 [3] is to be incorporated into the EEA 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 [4] is to be incorporated into the EEA Agreement.

(4) Decision No 768/2008/EC sets out common principles and reference provisions for future legislation harmonising 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 of 13 December 1995 establishing a procedure for the exchange of information on national measures derogating from the principle of the free movement of goods within the Community [5] which is incorporated into the EEA Agreement. The EEA Agreement should therefore be amended to take account of Regulation (EC) No 764/2008.

(6) Regulation (EC) No 765/2008 repeals Council Regulation (EEC) No 339/93 of 8 February 1993 on checks for conformity with the rules on product safety in the case of products imported from third countries [6] which is incorporated into the EEA Agreement. The EEA Agreement should therefore be amended to take account of Regulation (EC) No 765/2008.

(7) Decision No 768/2008/EC repeals Council Decision 93/465/EEC of 22 July 1993 concerning the modules for the various phases of the conformity assessment procedures and the rules for the affixing and use of the CE conformity marking, which are intended to be used in the technical harmonization directives [7] which is incorporated into the EEA Agreement. The EEA Agreement should therefore be amended to take account of Decision No 768/2008/EC.

(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,

[1] OJ L 305, 30.11.1994, p. 6.
[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.
[7] OJ L 220, 30.8.1993, p. 23.

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 Luxembourg, 25 June 2012.

For the Council
The President
C. ASHTON

DRAFT

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, and in particular Article 98 thereof,

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 [1] is to be incorporated into the Agreement on the European Economic Area ('EEA 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 [2] is to be incorporated into the EEA 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 [3] is to be incorporated into the EEA 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 of 13 December 1995 establishing a procedure for the exchange of information on national measures derogating from the principle of the free movement of goods within the Community [4] which is incorporated into the EEA Agreement. The EEA Agreement should therefore be amended to take account of Regulation (EC) No 764/2008.

(6) Regulation (EC) No 765/2008 repeals Council Regulation (EEC) No 339/93 of 8 February 1993 on checks for conformity with the rules on product safety in the case of products imported from third countries [5] which is incorporated into the EEA Agreement. The EEA Agreement should therefore be amended to take account of Regulation (EC) No 765/2008.

(7) Decision No 768/2008/EC repeals Council Decision 93/465/EEC of 22 July 1993 concerning the modules for the various phases of the conformity assessment procedures and the rules for the affixing and use of the CE conformity marking, which are intended to be used in the technical harmonization directives [6] which is incorporated into the EEA Agreement. The EEA Agreement should therefore be amended to take account of Decision No 768/2008/EC.

(8) Annex II to the EEA Agreement should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Chapter XIX of Annex II to the EEA 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

[1] OJ L 218, 13.8.2008, p. 21.
[2] OJ L 218, 13.8.2008, p. 30.
[3] OJ L 218, 13.8.2008, p. 82.
[4] OJ L 321, 30.12.1995, p. 1.
[5] OJ L 40, 17.2.1993, p. 1.
[6] OJ L 220, 30.8.1993, p. 23.

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).

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 (EC) No 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 EEA 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.]