

ZVEI Position Derogation for ATEX Products under Battery Regulation (EU) 2023/1542 Art. 11

Addition of an exemption for ATEX products

1 Introduction

Ex Products with an intended use in potentially explosive atmospheres and therefore falling within the scope of Directive 2014/34/EU (ATEX) are first and foremost designed ensuring the health and safety of users. Ex Products are found in various industries, reaching from the energy sector, foodstuff all the way to pharmaceutical manufacturing. These products typically make use standardized means and design methods, which are based on harmonised European standards, for complying with the essential health and safety requirements of Directive 2014/34/EU. The means and methods include, among others, the use of encapsulating materials or non-repairable flamepaths, as well as glued or cemented joints. Further batteries are often rigorously tested and assessed prior to being employed in Ex Products and the available range of batteries allowed to be used is limited to a few types.

Ex Products are intended only for professional users in Ex environments. Explosion-proof applications require special safety-related requirements (e.g. for removability), some of which contradict the requirements under the Battery Regulation (EU) 2023/1542.

Regulation (EU) 2023/1542 specifies in Article 11 that the design of Ex Products must enable readiness to remove or replace a portable battery by generalists. In contrast, ATEX equipment according to the corresponding Directive 2014/34/EU and available harmonised European standards often explicitly requires means to be implemented to prevent easy access or access by unauthorized personnel to prevent the ignition of a potentially explosive atmosphere. This means that for example removability (if any) may only be carried out by specialists with specific tools. Depending on the nature of the Ex Products safe operation and prevention of an explosion must be ensured by manufacturers taking into consideration, normal operation, as well as expected and rare-malfunctions all while considering the intended use and reasonable foreseeable misuse; imposing Article 11 on Ex Products potentially endangers the safe use of these products and therefore the affected industries. Products under the ATEX Directive are not intended for the consumer market, nevertheless the regulation (EU) 2023/1542 does not exempt Ex products from the scope. As a result, the two laws contain contradicting requirements making it impossible for responsible manufacturers to comply with both simultaneously or may result in unsafe work conditions.

Even the JRC Report “Support for the new batteries regulatory framework” from 2024 addresses in Chapter 4 a full derogation of products under the ATEX Directive (2014/34/EU) due to the consideration of safety reasons.

2 Proposed amendment

Therefore, we suggest including appropriate exemptions under regulation (EU) 2023/1542 Article 11 §2 for products that fall within the scope of the ATEX directive:

Article 11 *Removability and replaceability of portable batteries and LMT batteries*

2. *By way of derogation from paragraph 1, the following products incorporating portable batteries may be designed in such a way as to make the battery removable and replaceable only by independent professionals:*

- (a) *appliances specifically designed to operate primarily in an environment that is regularly subject to splashing water, water streams or water immersion, and that are intended to be washable or rinseable;*
- (b) *professional medical imaging and radiotherapy devices, as defined in Article 2, point (1), of Regulation (EU) 2017/745, and in vitro diagnostic medical devices, as defined in Article 2, point (2), of Regulation (EU) 2017/746;*
- (c) *products, under the scope of Article 1 of Directive 2014/34/EU (ATEX Directive).***

ZVEI: Electro and Digital Industry Association

The ZVEI represents the common interests of the electrical and digital industry and the associated service companies in Germany and at international level. The association has more than 1,100 member companies, and 170 employees work in the ZVEI Group.

At the end of 2024, the sector employed about 890,000 people in Germany. Its turnover in 2024 was 220 billion euros.

The electrical and digital industry is one of the most innovative economic sectors in Germany. One fifth of the industry's turnover is accounted for by product innovations. Every third innovation in the manufacturing industry as a whole gets its original impetus here. Almost a quarter of all R&D expenditure in the manufacturing sector in Germany comes from the electrical and digital industry. Every year, the sector spends around 20 billion euros on R&D and more than seven billion euros on investments.

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