

Unofficial Note of the Technical Adaptation Committee on the Batteries Directive (2006/66/EC)

Meeting held in Brussels on 20 October 2008

A. Summary of Meeting

General discussion of Member State (MS) views prior to an informal vote on the draft Decision on the Registration of producers; followed by a general discussion on the TAC Sub-group's options on a reporting format. Overview of Member State (MS) Small Producer exemption proposals. Presentation on options for the framework to underpin the Directive's Capacity marking requirements. Update on the amendment to Article 6(2) of the Directive; request for an exemption for medical devices; updates on recycling efficiencies and a study into the necessary "*sound evidence*" that will be needed to demonstrate that exported batteries will be dealt with to the standards required by the Directive (Article 15); and finally, a question about MP3 players and removability of waste battery requirements.

B. Detail

1. Registration Format

Registration should be viewed as the "act of enrolling"; the EU and Member States (MSs) have been criticised heavily by industry for disproportionate administrative burdens. MSs should consider these issues in this discussion.

Key points were addressed that had been raised in correspondence:

- The intention of 'registration' is once in each MS, not once in the lifetime of the organisation as some MSs have sought clarification on.
- 'Minimum Requirements' request – MSs to ask for additional information specific for each country. The view was that this may be problematic. The intention is for a harmonised approach hence an "oversimplified system".

The discussion commenced as one MS explained that like a number round the table it had concerns over data protection issues, the need to know producer's brands and concerns about this registration process meaning changes would be needed to other registration processes (e.g. WEEE).

Where MS had already transposed this requirement, concerns were expressed over the time it has taken for proposals to come forward, and now proposed amendments. If MSs are now asked to consider how best to exploit other systems, then information such as NACE codes should be looked at. Propose to delete Point 5 "national tax number" as these may change over time. A view supported by three other MSs, however an alternative unique number may be more appropriate. The need for Points 2 of 7 of the decision were not clear clarification was sought on Point

9, “electronic signature”. However, one MS supported the use of “electronic signatures”.

One MS that has had a registration procedure in place for a number of years requested all of the information proposed including how producers discharge their obligations to be included. One MS supported this call adding that batteries included in EEE and vehicles should also be included in the registration form.

The proposal was welcomed by one MS but did not agree with the call for information on how producers will discharge its obligations. No need for an annual re-registration as producers will be required to keep their information up to date.

It was pointed out that industry will always say such measures are a burden. However, it is important to collect comprehensive information – Point 6 is insufficient as producers should provide details on the type of batteries placed on the market. Unclear why distant sellers are identified separately. Distant sellers supplying householders would not fall within the definition of a producer, but this information may be useful. More information on the amount of batteries placed on the market was needed.

Registration costs should be proportionate and based on the size of the company and not just on the processes. A view supported by some MSs adding that costs should be down to the individual MSs.

The same MS believed that additional information requests should not be prohibited. Cited Article 176 setting out that Article 175 should not stop MSs from introducing stricter requirements. The registration format should be simplified where possible.

However, this could be a problem with a form that requests specific information plus an additional open-ended request for information. MSs were asked again if they were able to use existing registration formats such as under WEEE and ELV. Article 2 may also be seen as retrospective. It should not be a requirement for MSs to change existing registration systems, rather work through the issues that need to be resolved.

Some of the points raised by MS were addressed:

- “registration” was to record *who* is placing batteries on the market, whereas “reporting” sets out the *types* and *amount* of batteries placed on the market.
- an alternative unique reference number could be considered if the tax number is not consistent across the EU.
- distance sellers were no different to any other producer and it may not be necessary to include this information. However, it may be important for MSs to know if they are selling into your country.
- the Directive does not stipulate if a producer should discharge its obligation individually or as a member of a scheme. This is a spill-over from WEEE. Not

possible to ask for information that is not referred to in the Directive. Article 175 would not be enough to set minimum requirements rather than harmonised as stipulated in the Directive.

- believing that there was a drafting error in the latter half of the first sentence in Article 2 and this would be looked at again.

The Registration Format would be review in light of MSs call for the information on how producers will discharge their obligation to be included. However, this may not be fair as producers would be required to re-register each time it swaps schemes.

Test vote: Only one MS supported the proposed Commission Decision.

2. Reporting Requirements

Proposals have been developed by the working group and resulted in the two options presented to TAC today.

In one particular MS special recycling requirements for mercury button cells have been proposed that should be identified as a specific chemistry especially where batteries may be hazardous). Not clear why it is necessary to include all these types of batteries beyond 'mercury', 'cadmium', 'lead' and 'others'.

In some MSs they have not been successful at collecting data on a voluntary basis. If MSs are talking time to create a single reporting format then it should be obligatory. Difference in hazardous and non-hazardous batteries should also be identified. Four MSs preferred data to be collected by weight and quantity (option 1) as this information can be used to scrutinize other data provided.

However, one other MS favoured reporting by weight only. Not necessary to include data on industrial and automotive batteries as the Directive does not require it.

A representative of the TAC working group responded – were asked to draft a format that each MS could use in their national law in order to save duplication of effort from each MS. However, it was clear that whatever format MS's chose for reporting, they should make it obligatory in their national law for all producers within their territory. Do not believe that weight was necessary whilst quantity presents more problems in itself (counting of individual batteries or packs?). The working group was not asked to go to the level of detail that has been discussed here so far.

One MSs favoured a measure by weight, however, whilst the majority want weight, SMEs want weight and quantity. With a streamlined registration system, is it possible that aspects of registration will creep into the reporting format.

The options proposed were welcomed and would not oblige MSs to use the form, however, welcomed MSs aligning themselves to the final version.

This was not the understanding of one MS which understood that MS would be required to report on Directive targets therefore providing them with a mandate to

harmonise reporting. A view supported by one other MS questioning the objective of reporting and the working group – will proposals give MSs the scope to make producers comply?

The Directive sets out a mandate to come up with a questionnaire to ask MSs for information on meeting Directive objectives during the third year of the cycle. What MSs request of their producers is a matter for MSs. It is unlikely to be a complex questionnaire, based more on whether and how the MS achieved the objectives of the Directive. The reporting will not be detailed, not to the level of information that MSs may want from their producers.

3. Producer Exemption

Those Member States that submitted an exemption to the European Commission were invited to present on their proposals. No discussion.

4. Capacity Labelling

Bio Intelligence presented on the findings of their interim report. Key points from the presentation include:

- Many issues to consider with lots of information that will need to be displayed to the consumer.
- Consumer choice focused on size of battery required rather than performance.
- A common test methodology for primary and secondary batteries are possible, but the results may be misleading.
- Rechargeable batteries discharge even in low power-drawing applications – can be confusing as the consumer may think that primary batteries are better. Need to consider the whole life cycle of a battery or accumulator.
- Primary batteries sold with equipment should be exempted from capacity marking requirements; capacity labelling for other batteries should be limited to 5 specific primary geometries – AAA, AA, C, D and small 9 volt square batteries.
- No major problems with harmonising the capacity measurements of rechargeable batteries.

Use of the terms “performance” and “capacity” were clarified as they appeared to be used indiscriminately. Performance is used in reference to primary portables as it applies to performance based on the application (*this battery is 200 times better than...*), whereas as the capacity of rechargeables is fixed.

There were mixed views on the use of images to designate the capacitance of a battery. One MS favoured mAh for medium use applications. However, expert thought that it cannot be limited to medium applications as this confuses/frustrates the consumer.

More information was sought by a number of MSs on the use of images/icon labelling and whether this would limit the information to the use of batteries with the appliances the images represent. Additionally, different types of battery might respond differently. It was suggested that the icon could be accompanied with more information. However, some batteries are already marked with these types of images already.

The report and progress to date was welcomed by one MS and looked forward to receiving the final report and proposals from the Commission. The presentation raised a number of complex issues that, on first sight, looked as if many of the options considered would need to be integrated rather than choosing a single option. Experts/representatives of the industry would need to be consulted. The use of IEE standards was welcomed as the basis for some aspects of the study as these should be used to underpin the Commission's proposals

Following the discussion, it was proposed that the next stage should be taken on the basis of the report.

Two MSs felt it would be difficult to endorse a way forward and questioned how this would proceed without first providing TAC with proposals. MSs would need time to consider the interim report with national experts

It was agreed that MSs should have time to consult first and the consultants report would be circulated to TAC to digest and consult on. A next step may be to issue a questionnaire to MSs and representatives of industry to help shape the policy.

5. AOB

- a. **Article 6(2)** – Clarification was sought if national legislation would need to be amended to make a specific reference to reflect the amendment to Article 6(2) of the Directive.

This would be checked and a view reported back to TAC.

- b. **Q&A Document** – A representative of ECUMED presented to TAC on the justification for an exemption from the requirement to remove portable batteries from infected medical equipment.

The first point to be stressed was that the Batteries Directive requires appliances to be designed in a way that batteries can be readily removed at the end of the life of the battery. The exemption for infected medical equipment under WEEE applies to appliances when they become waste, not to medical equipment before they become waste.

TAC was asked if it believed that the WEEE and Batteries Directives complemented each other, or overlapped – are the points raised by ECUMED an issue for the WEEE TAC or Batteries TAC?

Two MSs considered this an issue more relevant for the WEEE TAC. However, noted that infected medical equipment and implanted medical equipment is exempt from the WEEE requirements

It was also highlighted that under Article 2 “Definitions” of the Directive, appliances was drawn as EEEE captured by the WEEE Directive.

With no other contributions, it was proposed that medical equipment should not be exempted from the requirements of Article 11 of the Directive and the issue should be referred to the WEEE TAC for consideration.

One MS added that it was sympathetic to the views expressed by the ECUMED representative and had tried to take a pragmatic approach to addressing this complex issue in its guidance document. The text used would be forwarded to TAC members so that MSs may consider this as a possible approach.

One MS could not support a blanket exemption for medical equipment and would need to look at this on a case-by-case basis.

c. **Other Issues**

- *Article 21(5)* – Article 21(5) and the labelling of small batteries was clarified – in case of small batteries sold separately, the symbol should be on the packaging. In the case of the batteries being sold incorporated into EEE, the symbol should be printed on the packaging.

However, one MS that has already transposed has had to take a decision to inform producers at the time laying its national legislation. It has advised producers that if the symbol could not be printed on the battery, it should be printed on the appliance. The view expressed in the previous paragraph was reinforced.

- *Recycling Efficiencies* – A study has been launched on the calculation of the Article 12(6)/Annex 3 recycling efficiencies. MSs and industry representatives will be consulted shortly.
- *Article 15* – The same consultants have also been engaged to study what “sound evidence” will be needed to demonstrate that batteries have been exported to a place where they are recycled to the requirements of the Directive. Advice on implementing rules to be received 5 months from now.
- *MP3 Players (e.g. iPod)* – A MS sought clarification from MSs regarding the interpretation of Article 11 and the iPod.