

# **DIVERGENCE BY HARMONISATION: BASICS OF THE EU DIRECTIVE ON BATTERIES: THE LEGAL SCOPE AND ITS IMPACTS**

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## **Article**

### **Management Summary**

This article outlines the objectives and most important provisions of the European Union's Battery Directive 2006/66/EC. It starts with a short description of the political background, followed by an overview of the national implementation status in the 27 EU member states. The main part of the article will focus on the scope of the Directive and try to answer as precisely as possible the most important questions of industry:

- The definition of the "producers" (be it manufacturers, distributors, importers, or distance sellers),
- What kind of batteries does the directive address?
- The principal and secondary obligation of the "producer" such as collection and treatment of old batteries, the ban of certain substances for new batteries, registration, reporting, , labelling and other information requirements,
- Conclusion

### **Preface – Extended Producer Responsibility**

Toward the end of the 20<sup>th</sup> century, one of the dominant political principles of environmental protection in Europe, the "polluter pays" principle, got a new interpretation. With the White Paper "Integrated Product Policy"<sup>1</sup> (IPP), the European Union outlined a new policy based on the "Extended Producer Responsibility", transferring the responsibility for environmental matters from government to industry identifying the producer as a specific type of "polluter". The White Paper described the road map of the European Union to introduce new legislation addressing product and waste related environmental matters to be taken care of by producers.

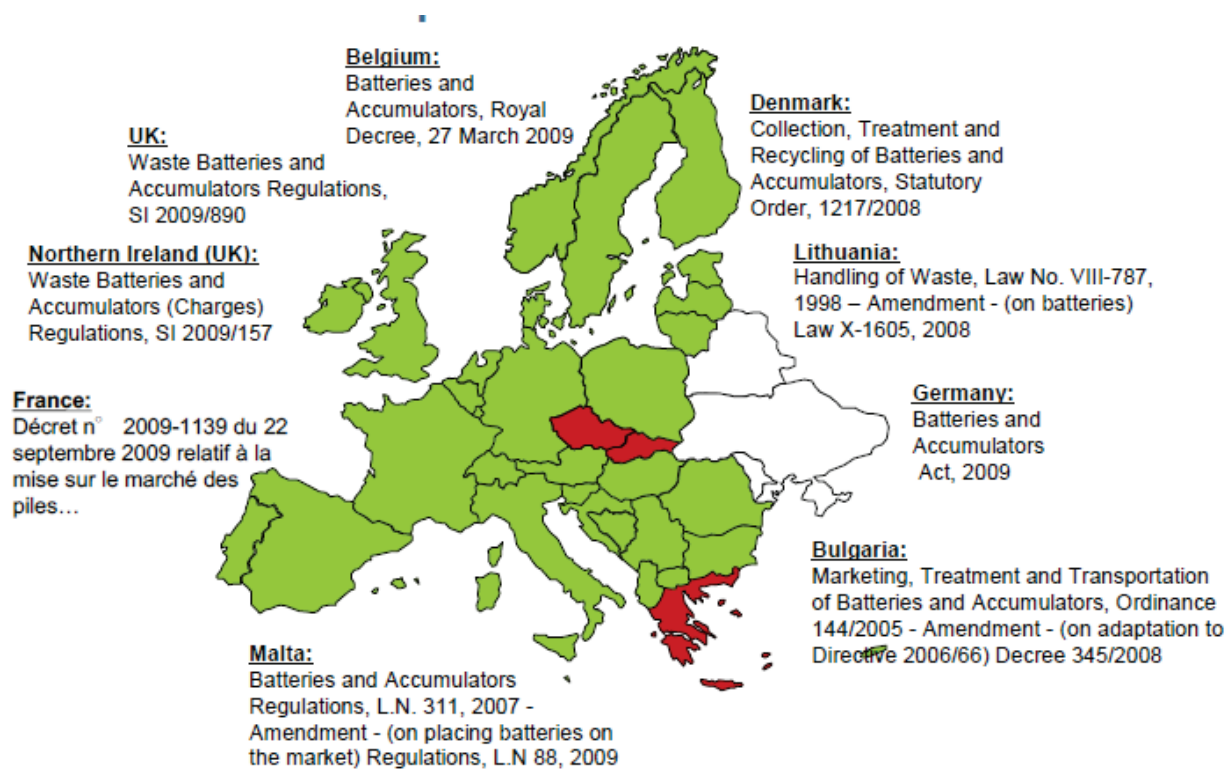
Such environmental legislation was aiming at making producers responsible for environmental attributes of products such as the ban of hazardous substances and the ecological design of products. Additionally, EU legislation obliged producers to take over the management of waste from various important product categories as cars and electrical and electronic equipment, batteries and packaging.

The Battery Directive 2006/66/EC is not the first one. It has been preceded by the Council Directive 91/157/EEC of 18 March 1991 on batteries and accumulators containing certain dangerous substances. To overcome its weaknesses, an insufficient control of the battery waste stream and a disappointing collection rate of old batteries, in September 2006 the European Union adopted the new Battery Directive, which is the basis for new member state national legislative adoption.

By now most of the countries have transposed the Directive completely – sometimes after the expiry of the deadline.

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<sup>1</sup> COM (2003) 302 final: Communication from the Commission to the Council and the European Parliament on Integrated Product Policy.



## What are the most important questions for compliance with the battery legislation in Europe?

### 1. *Personal scope: Am I a producer according to the Directive?*

A producer is “Producer” (see Art. 3 (12) 2006/66/EC): Any person in a member state that, irrespective of the selling technique used (including by means of distance communication), places batteries or accumulators, including those incorporated into appliances or vehicles, on the market for the first time within that Member State on a professional basis.

As you can see in the examples below and the given definition of a “producer,” the “battery producer” can be either the manufacturers, distributors, importers, or distance sellers:

- a) ***A manufacturer of batteries sells to a distributor who in turn sells them to end-users in the same Member State***  
The battery manufacturer is the producer in that Member State, as he is placing the batteries on the market for the first time.
- b) ***A retailer sells batteries to an end-user; he bought the batteries were bought in another Member State***  
The retailer is the producer in that Member State, as he is placing the batteries on the market for the first time.
- c) ***A manufacturer of electronic products buys batteries from a battery manufacturer located in the same EU member state; the products including the batteries are then sold the same Member State***  
The manufacturer of batteries is the producer in this Member State as they are placing the batteries on the market for the first time.
- d) ***A manufacturer of electronic products buys batteries from a battery manufacturer located outside the EU member state; the products including the batteries are then sold the same Member State***  
The manufacturer of the products is the producer in this Member State as they are placing the batteries on the market for the first time.

In case your company would not be regarded as “producer” under legal terms in one of the EU member state, it is another party in your supply chain that has the legal obligation. Even for this situation, certain aspects must be considered, in order to define a strategy how to cope with such distribution partners in terms of Battery compliance. There are different concepts for the cooperation with distribution partners. They range from full responsibility of the manufacturer, to shared responsibility, to full responsibility of the reseller. However the selected concept shall also match with the options available from the national authorities in the respective country.

**2. Material scope: Does the legislation address my batteries?**

The Directive applies to all batteries and accumulators, regardless of their shape, volume, weight, material composition or use and whether or not they are build into a product.

There are only two exemptions:

- (a) batteries in equipment connected with the protection of Member States' essential security interests, arms, munitions and war material, with the exclusion of products that are not intended for specifically military purposes;
- (b) batteries in equipment designed to be sent into space.

In addition the Directive distinguishes between three categories:



Depending on the category of the batteries, a producer has to fulfil different obligation which includes e.g. the labelling of batteries and the financing of take back and recycling of spent batteries.

Therefore, it is important for the manufacturer/producer to understand and categorize their batteries correctly according to the legislation.

## What are the main principal and secondary obligations of the “producer”?

There are different principal and secondary obligations of the “producer”. Principal obligations such as collection, treatment, recycling and recovery as well as product design facilitating re-use, dismantling, recycling and recovery are contributing directly to environmental targets. Secondary obligations are supporting the achievement of the environmental objectives, such as registration, regular reporting of battery sales volumes, product labelling and information of end-users and recyclers.

### 1. *Collection and treatment of old batteries:*

**Collection:** One of the target of the Batteries Directive is to collect as much batteries and accumulators (portable, industrial and automotive) as possible. Therefore, the Directive has implemented the different collection requirements:

- **End-user (consumers)** should have the possibility to return spent portable batteries to a collection points in their surrounding area. The return has to be free of charge independent whether the consumer buys a new battery;
- **Distributors** are obliged to take back waste portable batteries when supplying new portable batteries (this is not required in case that an alternative solution schemes are unless it is proven that the existing alternative schemes are as capable);
- **Producers of industrial** batteries are obliged to take industrial batteries back from the end-users;
- If automotive batteries not already collected through a collection scheme under the ELV Directive, **producers of automotive batteries**, or third parties, should set up collection schemes. The return of waste automotive batteries from non-commercial vehicles has to be free for end-user independent on whether the consumer buys a new battery;

### **Recycling**

Latest on **26th of September 2009** it is all required that all batteries collected should be recycled. Under certain conditions the Member States have the possibility to landfill/store portable hazardous batteries under certain conditions (e.g. if landfill/underground storage is better solution than recycling or if no viable end-market is available).

Latest on **26th of September 2011** the processes for the recycling of batteries should meet at least the following recycling efficiencies: for lead-acid batteries 65%, for nickel-cadmium batteries 75% and for other batteries 50% with the best lead and cadmium recycling possible.

### **Financing of collection and recycling**

Producers of batteries are obliged to finance the cost of the collection, treatment and recycling of waste batteries. Producers and users of industrial and automotive batteries are able to stipulate alternative financial arrangements.

In general, companies have the choice between joining a compliance scheme that usually has to be approved by the authorities (collective producer responsibility – CPR), and to comply individually by setting up their own collection and recycling system (individual producer responsibility – IPR). The latter possibility is often not feasible from a financial point of view, as the majority of national territory or population shall be covered. There are a number of countries where only one compliance scheme exists. Collection and recycling cost in such monopolistic systems can be expected to be higher than in countries with competing systems. Only in few countries, e.g. Germany and UK, a competitive market situation exists in this field.

### 2. *Ban of certain substances for new batteries*

According to the Directive, it is not allowed to place batteries and accumulators (whether or not incorporated in appliances) on the market after 26 September 2008 if:

- The batteries and accumulators are containing more than 0.0005% by weight of mercury
- The portable batteries and accumulators are containing more than 0.002% of cadmium by weight

These restrictions

- shall not apply to button cells with mercury content of no more than 2% by weight
- Shall not apply to portable batteries intended for use in:
  - a) Emergency and alarm systems including emergency lighting
  - b) Medical equipment

c) Cordless power tool (will be reviewed by September 2010)

### 3. *Labelling requirements*

- All batteries must be labelled with the cross-out wheeled bin
- Chemical symbols (Hg, Cd, Pb), indicating the heavy metal content of batteries, apply to batteries containing more than a given amount of these substances;
- Portable and automotive batteries must be labelled with a capacity label after 26 September 2009.



### 4. *Registration, Reporting*

All member states must keep track on battery producers/importers; therefore, they have to set up a national register. The purpose of this is to control battery compliance, identify black sheep. Based on this, all producers of batteries and accumulators are obliged to register in each individual country where they are placing batteries on the market.

In general, the following data have to be provided:

- Company name
- Address
- Authorized representative
- Information on the fulfilment of the obligation to take back and recycle spent batteries

In order to control and monitor collection targets as well as monitor recycling and recovery results, producers of batteries and accumulators have to report their volumes put on the market. Depending on the country, reporting has to be done on a yearly, quarterly or monthly base and include the following data:

- Amount of batteries put on the market in kg or/and units
- Type of battery (at least categorized in portable, industrial and automotive battery)
- Chemical content

### 5. *Additional requirements are...*

There are many more requirements which include:

- The financing on public information campaigns on collection, treatment and recycling of waste portable
- Product design facilitating easy removal of batteries
- Using of registration number (e.g. on business documents, i.e. invoices, order confirmations etc.)

### **Conclusion**

EU-wide Battery compliance is a basic legal requirement to sell batteries and accumulators (whether or not they are built into a product) in the EU countries and a prerequisite for a corporate green image. As shown above, companies have to fulfil many different obligations in order to be compliant. Producers can design many different options of compliance solutions according to their individual situation, which enables them to create and implement their own Battery strategy. Smart solutions to comply with the legislation can trigger a cost advantage and can even be a differentiator in the market. With this, the Battery strategy will become a success factor for future business.

## References

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2. Directive 2006/66/EC on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/157/EEC entered into force on 26 September 2006
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6. THE WASTE BATTERIES AND ACCUMULATORS REGULATIONS 2009 Government Guidance Notes May 2009 – published by BERR Department for Business Enterprises & Regulatory Reform