

MINISTRY OF THE ENVIRONMENT AND TERRITORIAL ORGANIZATION

Lays down the legal regime governing management of batteries and accumulators and management of used batteries and accumulators and transposes to internal Portuguese law Directives no. 91/157/EEC of 18th March from the Council, 93/86/EC of 4th October from the Commission and 98/101/EC of 22nd December from the Commission, relative to batteries and accumulators containing determined dangerous materials. Revokes Decree-Law Nr. 219/94 of 20th August.

MINISTRY OF THE ENVIRONMENT AND TERRITORIAL ORGANIZATION

Decree-Law Nr. 62/2001
of February 19th

The main purpose of an integrated policy of residual management is expressed in the reduction of its quantities and potential danger, and in maximizing the amounts recovered for valorization, in order to minimize the amounts of residues intended for elimination.

These objectives are valid for residues in general and in particular for used batteries and accumulators, since the correct management of these residues is an essential condition for a sustainable development.

The regulations for the management of used batteries and accumulators, containing dangerous substances were set by Decree-Law Nr.219/94 of August 20th and further regulatory legislation which transposed to the internal judicial order Directives Nos. 91/157/EEC of the Council, of March 18th, and 93/86/EC, of the Commission October 4th.

After approximately six years since that initiative, it is considered that the moment has come to revise strategies and introduce into the legislation such improvements as experience has deemed convenient – nonetheless ensuring the transposition of the referred community normative directive.

Thus, the present decree-law confers priority to the reduction of the potential danger of used batteries and accumulators, prohibiting the commercialization of certain batteries and accumulators that contain dangerous substances, in conformity with Directive Nr. 98/101/CE of the Commission, of December 22nd.

In parallel, it stimulates procedures which address the creation of channels of selective collection and, where technically possible, the recycling or other forms of valorization of used batteries and accumulators, discouraging their simple disposal in landfills.

The pursuit of these objectives inevitably implies the co-responsibility of the economic operators, duly combined with the duties and powers of the local authorities. In effect, the responsibility for the public service of the collection of most solid urban residues has been entrusted to local authorities, following the responsibilities defined by laws nos. 169/99 of September 18th and 42/98 of August 6th.

On the other hand, and in order to attain the referred aims, it is necessary to improve the environmental performance of all those involved in the life cycle of batteries and accumulators.

The National Association of Portuguese Municipalities and the governing bodies of the Autonomous Regions were heard on the matter.

Thus:

In accordance with the terms of item a) of Nr. 1 of article 198 of the Constitution, the Government decrees, to be instituted as general law of the Republic, the following:

Article 1 Purpose and Scope

1 – The present diploma establishes the juridical system that will govern the management of batteries and accumulators, and the management of used batteries and accumulators, undertaking as first priority the prevention of the production of such residues, followed by recycling or other forms of valorization, in order to reduce the amount of residues to be eliminated.

2 – The present diploma is applicable to the management of all batteries and accumulators placed on the national market, and the management of all used batteries and accumulators, that are susceptible of collection and processing by existing systems or systems to be created for that purpose.

Article 2 Definition

For purposes of the present diploma, it is to be understood by:

- a) “Battery” any source of electrical energy obtained by the direct transformation of chemical energy, constituted by one or more primary, non-rechargeable, elements;
- b) “Accumulator” any source of electrical energy obtained by direct transformation of chemical energy, constituted by one or more rechargeable secondary elements;
- c) “Used battery and accumulator” any battery and accumulator that is not reusable, covered by the definition of residue adopted by existing legislation applicable to this matter;
- d) “Vehicle accumulators, industrial and similar” any accumulator used in vehicles or for industrial or similar purposes, namely as source of energy for traction, reserve and emergency lighting;
- e) “Other accumulators” accumulators not included in the definition of vehicle, industrial and similar accumulators;
- f) “Recycling” reprocessing of batteries and accumulators used in a production process, for the original purpose or other purposes, excluding energy valorizations;
- g) “Valorization” any of the operations applicable to used batteries and accumulators, contemplated in the Commission Decision Nr.96/350/EC of May 24th;

- h) "Elimination" any of the operations applicable to used batteries and accumulators, contemplated in the Commission Decision Nr.96/350/EC of May 24th;
- i) "Collection" any operation of collection, selection and of regrouping of batteries and accumulators;
- j) "Manufacturer" any entity that manufactures and commercializes batteries or accumulators under its own brand or that sells, under its own brand, equipment manufactured by other suppliers;
- l) "Importer" any entity that imports, on a professional basis, batteries and accumulators or equipment that comprises them;
- m) "Economic operators" the manufacturers and importers, tradesmen and authorities and public organisms with powers in this matter, namely municipal councils;
- n) "Retailer" an economic agent who pursues retail commerce as its principal activity;
- o) "Wholesaler" an economic agent who pursues wholesale commerce as its principal activity;
- p) "Supermarket" an establishment for retail sales, with an exhibition and sales area equal to or above 400 m² and less than 2500 m², that sells, namely batteries and accumulators by using the self-service method of sales;
- q) "Hypermarket", an establishment for retail sales, with a minimum sales area of 2500 m², that sells, namely batteries and accumulators by using the self-service method of sales.

Article 3

Management Objectives and Principles

The main principles of battery and accumulator management and of used battery and accumulator management, are the prevention of the production and danger potential of these residues, as well as the creation of recycling systems or other forms of valorization, or elimination of used batteries and accumulators, namely through the implementation of specific action programs which are set forth in the administrative regulations comprised in article 8.

Article 4

Management responsibility

1 – Economic operators are co-responsible for the management of batteries and accumulators and for the management of used batteries and accumulators, in accordance with the terms of the provisions of the present diploma and otherwise applicable legislation.

2 – Municipal councils are responsible, under the terms of applicable legislation, for the collection of urban residues/waste, and should profit from the financial compensations resulting from the selective collection of used batteries and other accumulators. In situations contemplated by law where that responsibility is transferred to a third party, the aforementioned financial compensations will be due to whomsoever ensures the selective collection of batteries and accumulators.

3- Manufacturers and importers are responsible for the payment of the financial compensations foreseen in the previous number, which are intended to cover the increased costs of selective collection of used batteries and accumulators.

4 – Economic operators must collect used batteries and accumulators without any burden to the final consumer or holder.

5 – Manufacturers and importers are responsible for the valorization, if technically feasible, or the disposal of used batteries and accumulators in units legalized for this purpose.

6 – Only batteries and accumulators that fulfil all the requirements defined in the present diploma and otherwise applicable legislation, can be commercialized.

Article 5 Action Programs

- 1- To comply with the obligations established in the previous article, manufacturers and importers are required to submit the management of their batteries and accumulators, and the management of used batteries and accumulators to one of the two action programs, related to vehicle, industrial and similar accumulators, and batteries and other accumulators. Their operating rules and regulations are included in the present diploma and in the administrative rules mentioned in article 8.
- 2- Within the scope of the action program related to batteries and accumulators, the manufacturers' and importers' responsibility in the management of used batteries and accumulators may be transferred to a managing entity that is duly licensed to carry out that activity, in accordance with the terms of the present diploma and the administrative rules mentioned in article 8.
- 3- The managing entity referred to in the previous number must be constituted by the manufacturers and importers, as well as licensed and operational, at the time the referred program, i.e. July 1st 2001 comes into effect.

Article 6 Restrictions to commercialization

- 1- The commercialization of batteries and accumulators that contain more than 0.0005% of mercury in weight, including those cases in which they are incorporated in equipment.
- 2- The provisions of the previous number do not apply to the “button” type batteries as well as batteries composed of elements of the “button” type with a content in mercury not in excess of 2% in weight.
- 3- Manufacturers and importers may not commercialize any battery or accumulator included in attachment I to this diploma, of which it is an integral part, that is not marked with one of the specific symbols defined in attachment II of this diploma, of which it is an integral part.
- 4- The markings are done by the manufacturer or by his recognized mandated agent in national territory, or in his absence, by the party responsible for the commercialization of the batteries and accumulators on the national market.
- 5- The batteries and accumulators may only be incorporated in equipment on the condition that the consumer may easily remove them after utilization. This

provision does not apply to the categories of apparatuses/devices referred to in attachment III of this diploma, of which it is an integral part.

Article 7

Follow-up Commission on the Battery and Accumulator Management

1 – A Commission to Follow Up Battery and Accumulator Management, hereinafter referred to as CAPA is created, and it is presided by a representative of the Ministry of the Environment and Territorial Organization, who has the responsibility for ensuring that the provisions of the present diploma are being complied with.

2 – CAPA is a technical consulting entity, working in liaison with the government members responsible for the licensing of the entities referred to in article 5, with powers to prepare its internal regulations, prepare decisions to be adopted at higher level, follow up on the execution of the action programs referred to in article 5, as well as to give its opinion on all the applicable areas of the present diploma, on which it may be called upon to make a pronouncement, ensuring the liaison between public authorities and the several economic agents encompassed by the present provisions.

3 – CAPA is comprised of the following members:

- a) a representative of the Ministry of the Economy;
- b) a representative of the Ministry of Finance;
- c) a representative of the Ministry of the Environment and Territorial Organization;
- d) a representative of the National Association of Portuguese Municipalities;
- e) a representative of each association that represents the economic sectors involved;
- f) a representative of each managing entity foreseen in Nr. 2 of article 5;
- g) a representative of each Regional government.

4 - The representatives of the Ministries foreseen in paragraphs a) and c) will be appointed by dispatch of the proper minister.

Article 8

Regulation

The regulating norms of technical implementation contemplated in the present diploma relating to the licensing of the management entity and the action programs foreseen in article 5 and the system of data transmission to the Institute for Residues are defined by administrative rules, jointly issued by the Ministries of Economy and of the Environment and Territorial Organization.

Article 9

Inspection and process infractions

1 – The inspection on the compliance of the provisions contained in the present diploma is of the responsibility of the Inspeção Geral das Actividades Económicas (General Inspection of Economic Activities), the Direcção-Geral das Alfândegas e dos Impostos Especiais sobre o Consumo (Directorate General of Customs and Special Duties on Consumption), the Inspeção-Geral do Ambiente (Inspection-General for the Environment), the Instituto dos Resíduos (Institute for Residues) the regional directions for the environment and territorial organization), the regional delegations of the Ministry

of Economy and other bodies of relevant competence in the matter, in the terms of the law.

2 – The entity that has carried out the applicable notice of sanction has the powers to initiate proceedings.

Article 10 Infractions

1 – The following constitute infractions, punishable with fines of 10,000\$ to 750,000\$, in the case of individuals and 100,000\$ to 9,000.000\$ in the case of corporate bodies:

- a) Commercialization by the manufacturer or importer, of batteries and accumulators without ensuring that the management of same and respective residues has been provided for in accordance with the terms of nr.1 of article 5 and the administrative rules contemplated in article 8;
- b) Commercialization of batteries and accumulators in violation of the provisions of article 6;
- c) The refusal to collect used batteries and accumulators in violation of the provisions of nr. 4 of article 4;
- d) Non-compliance with the obligations comprised in the administrative rules included in article nr. 8
- e) Omission in the obligation to supply data to the Instituto dos Resíduos (Institute for Residues) or erroneous transmission of same data, in accordance with the terms of the administrative rules comprised in article 8.

2 – Attempt and negligence are punishable.

Article 11 Accessory sanctions

The entity with powers to apply the fines comprised in the previous article may also determine the application of the following accessory sanctions, in accordance with the terms of general law:

- a) Suspension from exercising a profession or activity;
- b) Withdrawal of the right to subsidy or benefit granted by public entities or services;
- c) Suspension of authorizations, licenses and permits.

Article 12 Revenues from Fines

The revenues from fines foreseen in article 10 are to be applied in the following manner:

- a) 40% for the inspecting entity that decided to apply the fine;
- b) 60% to the State treasury.

Article 13

Revocation

Decree-Law Nr. 219/94 of August 20th and the Administrative Rules Nos. 281/95, of April 7th and 1081/95 of September 1st are hereby revoked.

Article 14 Effective Date

The present diploma will become effective on the day following its publication.

Seen and approved at the Council of Ministers of December 14th 2000 – António Manuel de Oliveira Guterres – Joaquim Augusto Nunes Pina Moura – António Luís Santos Costa – Vítor Manuel da Silva Santos – José Sócrates Carvalho Pinto de Sousa.

Promulgated on January 31st 2001

Let it be published.

The President of the Republic, JORGE SAMPAIO.

Referended on February 7th 2001

The Prime-Minister, António Manuel de Oliveira Guterres.

ATTACHMENT I

Batteries and accumulators containing dangerous substances:

- 1) Batteries and accumulators placed on the market from January 1st 1999 and that contain more than 0,0005% of mercury in weight:
- 2) Batteries and accumulators placed on the market after September 18th 1992 and that contain:
 - More than 25 mg of mercury per element with the exception of alkali manganese batteries;
 - More than 0,025% in weight of cadmium;
 - More than 0,4% of weight in lead;
- 3) Alkali manganese batteries with more than 0,025% in weight of mercury, placed on the market after September 18th 1992.

ATTACHMENT II Marking System

In accordance with Nr. 3 of article 6, the manufacturers and importers may not commercialize any battery or accumulator referred to in attachment I that is not marked with one of the symbols illustrated below:

(Figure)

2 – The size of the symbol established in the previous number will be equivalent to 3% of the largest surface of the battery or accumulator, and not exceeding a maximum of 5 cm x 5 cm. In the case of cylindrical batteries, the size of the symbol must be equivalent to 3% of half of the cylinder's surface, and should not exceed a maximum of 5 cm x 5 cm.

If due to the size of the battery or accumulator, the area to be occupied by the symbol is less than 0.5 cm x 0.5 cm, the marking of the battery or accumulator is not required; however a symbol with the size of 1 cm x 1 cm must be printed on the package.

3 – Also in accordance with Nr. 3 of article 6, manufacturers and importers may not commercialize any battery or accumulator referred to in attachment I that is not marked with a symbol indicating its content of heavy metals. This symbol is constituted by the chemical symbol of the metal content, i.e. *Hg*, *Cd*, or *Pb*, in accordance with the category of batteries or accumulators described in attachment I.

4 – The symbol referred to in Nr. 3 shall be printed under the symbol referred in Nr. 1. Its size shall be equivalent to at least one quarter of the surface of the symbol described in Nr. 1.

5 – The printing of any and all of the symbols mentioned must be visible, legible, and indelible.

ATTACHMENT III

List of categories of equipment excluded within the scope of Nr. 5 of article 6

1 – Equipment with batteries that are welded or otherwise permanently fixed to points of contact, in order to ensure a continuous electrical power supply for intensive industrial use and to preserve memory and data in information and buretic equipment, whenever the use of the batteries and accumulators referred to in attachment I is technically necessary.

2 – Reference batteries on scientific and professional apparatuses/equipment, as well as batteries and accumulators placed in medical equipment designed to support life functions and cardiac stimulators, whenever their permanent functioning is essential and the removal of batteries and accumulators can only be carried out by qualified personnel.

3 – Portable equipment, when the replacement of batteries by non-qualified personnel could submit the user to safety risks or could affect the operation of the professional apparatuses and equipment used in highly sensitive environments, such as, for example, in the presence of volatile substances.

Equipment in which batteries and accumulators cannot be easily replaced by the user, under the terms of the present attachment, must be accompanied by user instructions informing the user that the contents of the batteries or accumulators represents danger to the environment and indicating the means by which they can be removed safely.