



Compliance Blueprint

*A guidance document for setting up a
Battery Compliance Organisation*

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1. Executive summary

This blueprint is developed by the European Portable Battery Association (EPBA) and RECHARGE aisbl to provide guidance to National Battery Associations (NBAs) and to battery industry representatives where NBAs don't exist on how battery manufacturers and importers can comply with the producer responsibility related to the collection, treatment and recycling of the batteries they place on the market as required by the new Battery Directive¹. It goes without saying that the general principle of producer responsibility is based on compliance with the applicable legislation – both European and national.

This guidance document starts from this underlying principle and aims to provide an overview of the different practical considerations – internal and external – of a Compliance Organisation (hereafter “CO). Over the years EPBA has gathered a lot of experience with setting up of and working with national waste battery collection and recycling systems which are known as the Collection and Recycling Organisations (or CROs). Indeed, the producer responsibility can be covered through a *traditional* Collection and Recycling Organisation which is an entity set up by battery manufacturers to provide a suitable, effective and cost-efficient solution for fulfilling, in a collective way, the legal requirements to collect and recycle spent portable batteries both primary and rechargeable. This blueprint makes no distinction between the registration, collection, sorting, recycling, etc for primary and rechargeable portable batteries. It is recognised that OEMs may represent the majority of producers that place rechargeable batteries on to the market, consequently collection of these batteries from WEEE treatment centres will be of importance to the COs.

However, a collection and recycling organisation is one option to comply with the producer responsibility requirements. Subject to the national situation, it is also possible that the CO takes a different form. Again, the main goal should be to comply with the national legislation in the most efficient way.

A CO system should be open to all producers in the meaning of the Directive, who places batteries on the national end user market, on fair and non-discriminatory terms. The companies that will join the CO (the CO Members) are not limited to battery manufacturers only but to every company that places batteries on the national end user market. This includes distributors & importers, retailers and appliance manufacturers in which a portable battery is incorporated.

The essential principle of a CO is that it carries out all the practical elements related to the producer responsibility requirements. The CO will ensure that batteries are collected, sorted, treated and recycled according to the national implementing regulation. In order to achieve the legal requirements set by the Directive, the system will organize and manage different collection streams and will subcontract the appropriate transporters and recyclers for the end of life management of collected spent batteries. The CO will also fulfil the reporting requirements towards the government on behalf of its members.

In certain Member States, a Collection and Recycling Organisation is already in place for spent batteries. This is the case in Austria, Belgium, Czech Republic, France, Germany, Greece, Hungary, Poland, Portugal & The Netherlands. Due to the new Directive - which Member States are required to implement as of 26 September 2008 -, all the remaining Member States have to ensure that an appropriate CO system – which could be different from the *traditional CRO* established in the Member States mentioned above- is set up to collect and recycle spent portable batteries.

¹ Directive 2006/66/EC of the European Parliament and of the Council of 6 September 2006 on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/157/EEC (see annex I for all the language versions)

In each Member State where no CO is in operation, it is usually left to the local battery manufacturers and the main battery importers, whether or not organised in an NBA, to take the lead in setting up a CO system, in accordance with applicable national legislation.

A combination of different factors need to be present to ensure a well functioning CO; these include a proper and sustainable financing system to guarantee the workability and operations of the system, excellent contacts with the government, good marketing programme tailor made to the national situation to raise awareness among the end-users of portable batteries and proper mechanisms to govern the relationship between industry and the CO.

It is important to underline that the system described below is applicable for portable batteries. Due to their characteristics, automotive and industrial batteries are subject to different collection and recycling routes which are governed by specific economic and financial conditions.

The starting point for setting up the CO is the new Battery Directive which renders more stringent the producer responsibility for collecting and recycling spent batteries. Although the Directive does not specify the detailed building blocks of the system, certain requirements such as collection & recycling targets, financing, overall producer responsibility, etc will have a direct impact on how the CO will operate. This blueprint takes the new elements into account by integrating them in the experience EPBA and RECHARGE have gathered over the years in collection and recycling of waste batteries.

The practical implementation of the take-back obligations for spent portable batteries by the CO involves many different factors, such as the national policy and market situation, that influence the degree of success. Based on our experience in countries such as Belgium, The Netherlands, Germany, France and Austria EPBA and RECHARGE wants to share the gained knowledge to ensure that the newly set up COs will work effectively and efficiently.

Finally, it is essential to underline that the activities related to the operations of a CO should respect all applicable competition law rules. Active Members of a CO will have a common interest in the operation of the CO but will remain competitors on the national battery market.

2. The New European Battery Directive 2006/66/EC

2.1 Legal Framework

2.1.1 *WHAT IS THE GENERAL IMPACT OF THE BATTERY DIRECTIVE ON SETTING UP COs?*

The Battery Directive, published in the Official Journal of 26 September 2006², reiterates the principle of producer responsibility for collecting and recycling waste batteries. It does not however detail how producers should comply with this legal requirement.

The Directive only states that *Member States shall ensure that appropriate collection schemes are in place for waste portable batteries* (Art 8). This requirement has to be read together with the obligation for producers to *finance any net costs arising from the collection, treatment and recycling of all collected waste portable batteries* (Art. 16).

The Directive does not give neither information nor guidance on how a CO should be set up and how it should operate. It only specifies in an explanatory recital (18) that batteries can be collected **(1)** individually, **(2)** by way of national battery collection schemes or **(3)** together with the WEEE collection schemes.

Although not specified by the Directive, regardless which option will be taken at national level, it is important that the industry takes the initiative to ensure a workable and cost-efficient CO.

2.1.2 *WHY IS A CO REQUIRED?*

The need for a CO is a logical approach to provide a suitable, effective and cost-efficient solution for fulfilling the legal requirements for producers to collect and recycle spent portable batteries.

A CO is an entity that provides a suitable, effective and cost-efficient solution for fulfilling the legal requirements to collect and recycle spent portable batteries. It is generally accepted that it is a much more efficient way to fulfil the obligations than through a company individual system.

The key-advantages of a collective approach are:

- I. Time and cost efficiency
- II. Collective registration
- III. Economy of scale
- IV. Collective responsibility
- V. Cutting red tape: the CO fulfils the administrative and reporting requirements towards the government

² See annex 1 for all the language versions of the Directive

2.2 Timing

2.2.1 BY WHEN HAS THE CO TO BE SET UP?

The Directive does not specify by when the collection schemes should be put in place. However, producers will have to set up schemes for the treatment and recycling of waste batteries no later than 3 years after entry into force i.e. by September 2009³ (Art. 12).

The first collection target of 25% should be achieved 6 years after entry into force (i.e. by end 2012)³ according to Art.10 § 2.

Consequently, due to the timing fixed by the Battery Directive, it is recommended that the CO is ready to start its operation by the end of the transposition period (i.e. by 26 September 2008 - 24 months after entry into force).

2.2.2 WHICH ARE THE OTHER IMPORTANT DEADLINES OF THE BATTERY DIRECTIVE?

The important deadlines for issues of concerns for a CO are reported below in a chronological order.

- § By 26 September 2007, a common methodology is to be established by the Technical Adaptation Committee (TAC) for calculating annual sales for the collection targets;
- § Member States have two years to transpose the Directive into national law i.e. by 26 September 2008 (Art. 26 § 1);
- § By September 2009, producers (or third parties) have to set up schemes to provide for treatment and recycling of waste batteries (Art. 12 § 1);
- § The recycling targets have to be achieved 5 years after entry into force i.e. by 26 September 2011 (Art. 12 § 4 and corrigendum of 10 November 2006);
- § For portable batteries, the first collection target of 25% should be achieved 6 years after entry into force (i.e. by end 2012)¹ according to Art.10 § 2;
- § The second collection target of 45 % should be achieved 10 years after the entry into force or by September 2016. This target also concerns also portable batteries according to Art.10 §2.

³ See annex 2 for a detailed timeline

3. Legal aspects of the CO

3.1 Who will select the CO

In a Member State, the NBA should be the legal entity developing the most suitable solution according to the specific national situation.

It is however a reality that in some countries there is no established NBA. In such a case, a national battery industry group of interest has to be set up, which subsequently will make the decision on the opening of a CO. In countries where batteries and equipment powered by batteries are sold only by distributors, EPBA and RECHARGE will provide the appropriate support for opening a CO.

A point which has already been underlined before is the need for the national industry, whether organised in an NBA or not, to take the initiative in defining the CO's role. Furthermore, its setting up needs to ensure that the CO will assume the responsibilities of the battery manufacturers and importers in a compliant and cost-effective way. It will also ensure that the objectives of the Battery Directive are met at the lowest possible cost for the industry and ultimately for the end-users.

In particular, proper rules will have to be put in place to make sure that the CO:

- Operates at the most optimum cost possible so that the spent battery collection fee is kept as low as possible,
- Develop and maintain a trusty relationship with the authorities,
- Operates in a transparent and verifiable way, including the right to audit the CO and its sub-contractors,
- Do not act to endanger the good reputation of the battery industry,
- Extends to all users fair and non-discriminatory terms
- Defines clear service levels
- Respects competition law at all times

These points will be addressed further below.

3.2 Responsibilities

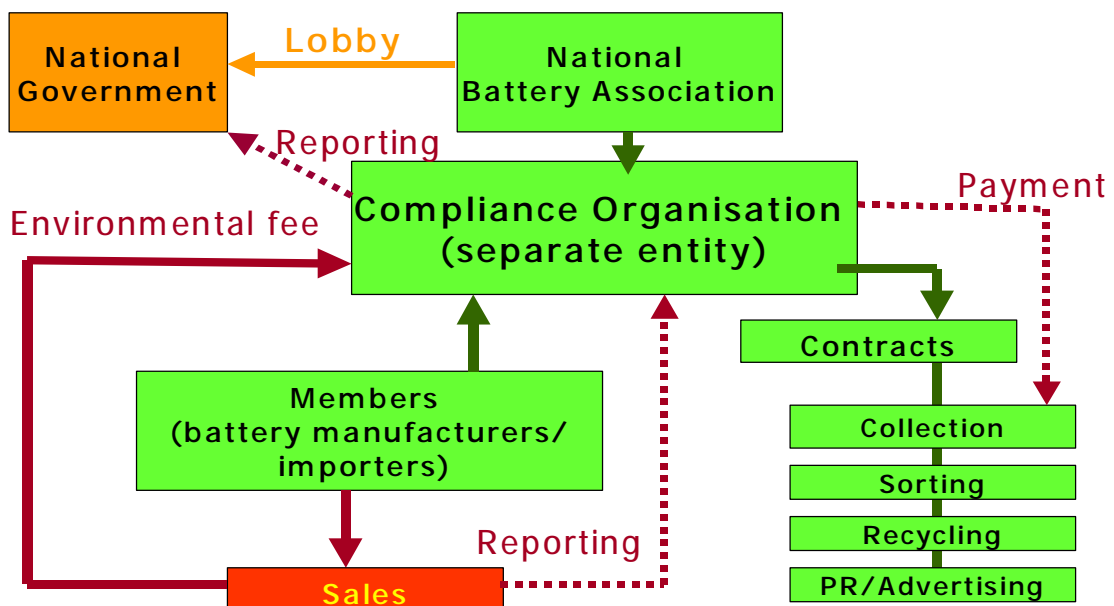
3.2.1 *WHAT IS THE OBJECTIVE OF THE CO?*

A CO is set up to provide a solution for the producer responsibility for taking back waste portable batteries. The CO will fulfil all the legal, practical and administrative requirements which the legislation places upon the producer.

In order to achieve this objective in an efficient way, the industry should be involved in supervising all practical aspects required for fulfilling its producer responsibility. As a starting point, the business plan for the opening and operating of a CO should be prepared and finalised by industry. In addition, the agreed service levels should be reviewed on a regular basis in order to ensure that they are fulfilling the required legislative objectives. This could result in auditing the CO and its sub-contractors on behalf of the industry.

The compliance system is schematically presented in SCHEME 1 and can be visualised as follows:

SCHEME 1 Model of compliance organisation



3.2.2 WHAT IS THE SCOPE OF ACTIVITIES OF THE CO?

A CO will cover all the practical issues of taking back spent portable batteries. The CO will carry out these activities on behalf of the companies that are affiliated to it. This means that the entity will take up the responsibility for:

- (1) Setting up a collection network
- (2) Collection of collected portable batteries
- (3) Transport
- (4) Sorting
- (5) Treatment and recycling
- (6) Perform mandatory registration for its Members
- (7) Marketing campaigns to raise awareness among the consumers and other end users who should bring back the spent portable batteries

(8) Collecting data from its Members and reporting to the government while respecting the confidentiality of the data and applicable competition law rules.

3.2.3 WHAT IS THE DIFFERENCE BETWEEN THE CO AND THE NATIONAL BATTERY ASSOCIATION?

Both entities have clear distinct responsibilities. As indicated above, a CO covers the practical issues of producer responsibility emanating directly from the legislation.

A National Battery Association (NBA) has a more representative function related to the promotion of the common interest of the battery industry towards the government, the market and any other stakeholders. It has no responsibility towards the practical side of the take-back obligation.

The NBA is interfacing with National Authorities to obtain the most efficient legal framework while the CO has to ensure that Producers fulfil the requirements imposed by the legal framework.

The membership of the two organisations is also different. The membership of the NBA is more centred around the battery manufacturers and importers active in the country. The users of the CO could be all entities placing batteries and batteries incorporated in equipment on the market.

All Producers may not be represented within an NBA. Nevertheless, it is important that all Producers active on a National Market in accordance to Battery Directive 2006/66/EC are fulfilling their responsibilities either by participating to the CO or into any other Compliance Scheme.

3.3 Legal Structure

3.3.1 WHAT IS THE IMPACT OF THE BATTERY DIRECTIVE ON THE LEGAL STRUCTURE OF THE CO?

The Battery Directive does not specify anything regarding the legal structure of the CO. It is therefore important to check the national legislation before setting up legal entities such as COs and their subsequent requirements.

3.3.2 SHOULD THE CO BE SET UP AS A PROFIT OR NOT-FOR-PROFIT ORGANISATION?

As a preliminary step it is important to check which requirement the national legislation foresees. As an example, Table 1 below shows the legal structure of existing CROs already established in a certain number of EU Member States.

TABLE 1 List of COs currently operating in various EU Member States and their type of legal structure.

BEBAT (B)	Not-for-profit
ECOBAT (CZ)	No legal requirements for creating a CRO. All CROs have a form of business company. However, in the CROs' Articles of Association the principle of not-for-profit is included
AFIS (GR)	The CRO should operate as break-even organisation; profits can not be redistributed; any profits made remain booked as a reserve
HPBA (HU)	Not-for-profit
STIBAT (NL)	The CRO operates since 1995 as non-profit organisation.
REBA (PL)	CRO could operate both as profit or not-for-profit company
GRS (D)	Not-for-profit since 1998
TAP (TU)	For-profit
UFB (AU)	Not-for-profit

3.3.3 TRANSFER OF LEGAL LIABILITY

The transfer of legal liability between the producer and the CO should be handled in accordance with the relevant national rules. The situation in existing CROs is as follows:

Czech Republic:

Responsibility is primarily on individual producers. they are allowed to fulfil their obligations through CO. Failure to fulfil requirements will make producers responsible individually.

Poland:

1. All producers and importers of batteries are responsible for reaching a mandatory collection and recycling targets of spent batteries; targets are calculated as a fixed % of a 3 years average of annual sales quantities.;
2. That obligation may be legally transferred to a CO, by means of a civil contract;
3. Should the CO cease to operate (bankruptcy, liquidation, etc...) the obligation mentioned above shall automatically return to each individual company - Member of the CO.

Hungary:

The liability remains with the producer but it is allowed to transfer the fulfilment of it to a CO. It means in practice that in case of failure both the producer and the CO will be fined.

Greece:

As long as the producer has signed the agreement with the CO, the obligations are passed to the CO.

Portugal:

Liability is contracted to Ecopilhas by the Members, but if Ecopilhas fails the liability falls back onto each individual Member. Ecopilhas accepts responsibility neither for the payment of the visible fee that producers declare on their invoices to trading partners nor for the registration data provided by the Members to the Government.

Netherlands:

The individual company is obliged to issue a so called notification, in which he must declare what measures he has taken for implementing collection and recycling of batteries he has produced / imported in The Netherlands.

A company has also the opportunity to issue a collective notification (via a CRO). Therefore, it must notify the National Authority that he asked a CRO to take care of the notification AND that he will comply with the obligations of Art. 5 of the Dutch Battery Decree (Besluit Beheer Batterijen).

France:

As long as a producer joins a CO, the liability is transferred to the CO. It is the CO's responsibility to interface with the National Authority and set the agreement for achieving a specific collection rate. If a fine was set to the CO, then CO would revert to its members to fund the fine.

Germany:

As long as a producer participates in the common collection system there is no liability for the individual producer regards collection and subsequent recycling/disposal and also not for proper reporting. All these responsibilities are supported by the common collection system.

Belgium:

Liability remains with the producer - but he can transfer the fulfilment of his legal obligation to a CO. In case of failure of the CO, the producer could be fined (at least at Federal level) according to market share. At regional level, the same principle applies: the liability also remains with the producer. At this level, there is no penalty defined but in such a case, producers need to come up with a proposal for a "recovery plan" in order to achieve the missed objective.

4. Internal Structure of the CO

4.1 Battery Directive

4.1.1 *WHAT IS THE IMPACT OF THE BATTERY DIRECTIVE ON THE INTERNAL STRUCTURE OF THE CO?*

The Battery Directive does not contain specific requirements related to the structure of the CO. Any specific requirements shall be regulated by the relevant national legislation e.g. on voting rights, financials, etc.

4.2 Setting up of the CO

4.2.1 *WHO SHOULD SET UP THE CO?*

The main battery manufacturers and importers in a national market, whether organised in an NBA or not, will usually take the initiative to set up or outsource via a contract a CO

It is essential that the CO and its member companies respect all applicable competition law rules.

4.2.2 *WHAT ARE THE KEY-ELEMENTS FOR SETTING UP A CO?*

The legal structure of the CO has to comply with the national legislation (see also 3.3).

4.2.3 *WHAT IS THE COST STRUCTURE OF THE CO?*

Regardless of the format of the CO, its cost structure can broadly be split up in the following items.

- (1) Collection & Transport
- (2) Sorting & Recycling
- (3) Administration
- (4) Management
- (5) Marketing
- (6) Public Relation/advertisement

4.3 Management structure

4.3.1 *WHAT WILL BE THE MOST APPROPRIATE STRUCTURE FOR THE CO?*

The internal structure of the CO should be kept simple and transparent. A first requirement is to check the national legislation whether other specific elements should be included in the system.

Looking to the existing Collection and Recycling Organisations, the structure in general consists of the management which works with and supervises sections dealing with marketing, administration and the operational side of the CRO. The CRO Board, which consists of representatives of the founding members i.e. company representatives, supervises the work of the CRO and its management.

4.3.2 WHO SHOULD LEAD THE CO?

This is of relevance for the CO which is set up by the industry, i.e. the Collection and Recycling Organisation. The CRO should be lead by a Director who has a solid management experience.

Experience in dealing with the authorities and a good knowledge of the waste sector regarding the operations side but also regarding environmental, safety and legal affairs is another essential experience needed to manage he CO. The CO's Director should also have a good understanding and experience in marketing and PR. The commercial side of the activities may not be underestimated especially regarding the negotiation of contracts with collectors, transporters and recyclers.

For other COs, it is important to ensure that the appropriate contractual terms are negotiated to ensure that proper control mechanisms are foreseen for the industry.

4.3.3 HOW MANY STAFF IS NEEDED?

This question only concerns the collection and recycling organisations set up by industry. A limited number of FTE's (Full Time Equivalent) is sufficient to have an efficient operating CRO. The operating structure broadly described under 4.2.3 reflects the tasks that have to be carried out by the CRO. As an indication Stibat has 9 employees, GRS has 6 employees and Corepile has 3 employees. Obviously, the number of employees is also subject to the level of outsourced activities.

4.3.4 WHAT SHOULD BE THE ROLE OF THE FOUNDING MEMBERS?

Regardless the type of CO that is used, it is important for the industry to make sure that the CO will operate in a compliant and cost-effective manner. In order for the CO to fulfil its objectives at all time; the main battery producers and importers should either be represented on the CO's Board of Directors or provide support on a contractual basis (for detailed service levels via a contract).

4.3.5 HOW ARE DECISIONS BEING MADE?

For a CRO, the Board of Directors should decide by voting (as defined by the statutes of the CRO).

To ensure an efficient decision making process, the Board representatives have to have a senior position within their company and should have a real decision making authority.

To fully understand and respect the (political) culture of the country, it is highly recommended that the Board of Directors representatives come from the National branches of the corporation.

4.4 Membership structure

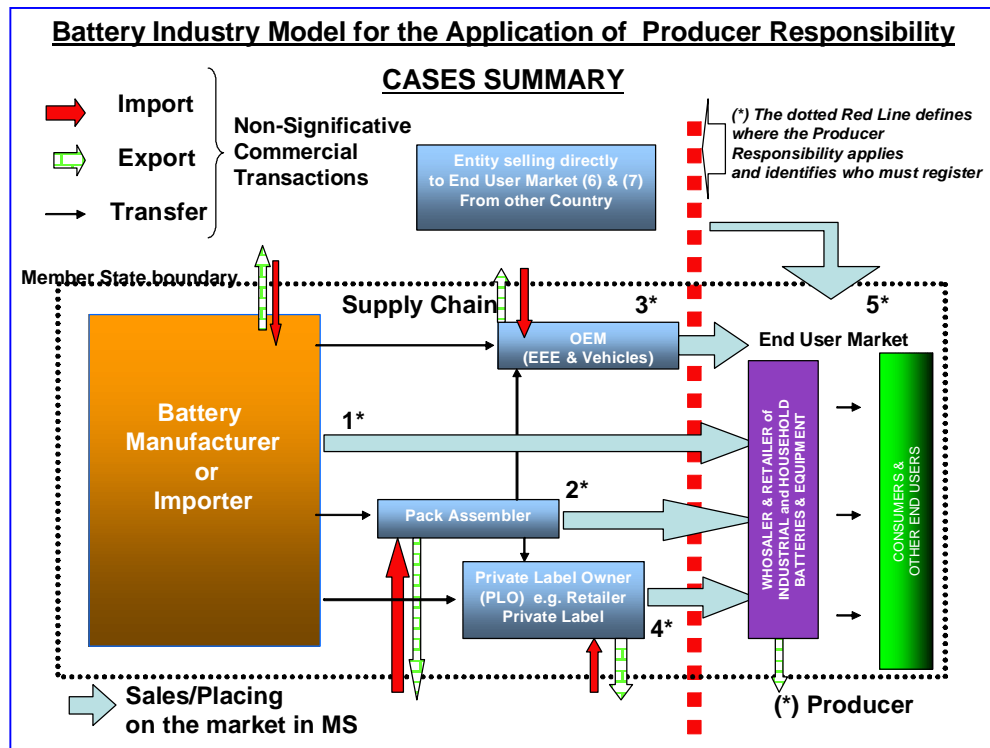
4.4.1 WHO CAN BE A MEMBER OF THE CO?

All entities which fall under the definition of a producer as foreseen in the Battery Directive and in particular according to the Definition proposed in Article 3 § 12, can register by the CO.

Any person in a Member State that, irrespective of the selling technique used, including means of distance communication [...], places batteries or accumulators, including those incorporated into appliances or vehicles, on the market for the first time within the territory of that Member State on a professional basis.

Typically these are: manufacturers & importers of batteries, OEMs and equipment importers, battery pack assemblers and retailers as well as Private Label Owners.. The schematic representation of the various “Producers” options is supplied in Figure 2.

Figure 2 Schematic Representation of the various options for becoming a “Producer” according to Battery Directive 2006/66EC.



4.4.2 WHAT ARE THE GENERAL CONDITIONS OF MEMBERSHIP?

Producers that wants to join a CO will have to fulfil specific conditions accompanied by submitting additional documents:

In particular, the Contractual agreement between the Producer’s legal entity and the CO will include:

- § All essential identification data (address, contact details, contact person, invoice data),
- § Regular submissions of quantity of batteries placed on the national market (specific time intervals to be decided by the CO)
- § Timely declaration of total quantity batteries placed on the national market and yearly reporting

4.4.3 SHOULD DIFFERENT LEVELS OF MEMBERSHIP BE FORESEEN I.E. BETWEEN FOUNDERS AND USERS?

It is common practice that a CO is set up or contracted by a small group of companies which are also the main battery manufacturers and importers in the given national battery market. They become the Founding Members of the CO. They have the required expertise on all

aspects of the battery industry. In addition, their main business activity relates to the battery industry.

These companies will provide the starting capital for the CO, which may be returned to the respective companies once the CO is fully operational and obtains sufficient contributions from its members.

The Founding Members will in principle join the Board of Directors or the main contractual party of the CO and will have a supervisory role on the management of the CO. The other companies that will participate to the CO and uses the CO's services will be considered as Regular Members. The CO will offer its services to all Regular Members on fair and non-discriminatory terms.

4.4.4. WHAT HAPPENS TO COMPANIES NOT JOINING A CO AND NOT FULFILLING THEIR “PRODUCER RESPONSIBILITY” OBLIGATIONS?

If a company decides not to become a Member of a CO, it will need to demonstrate to the authorities that it fulfils its producer responsibility requirements in an individual way. If a company is not affiliated to a CO and has no individual take-back scheme, it should be considered as a free rider acting in violation of the national legislation.

4.5 Registration requirements

4.5.1 WHAT ARE THE REGISTRATION REQUIREMENTS FOR PRODUCERS?

Registration should be done by a government agency i.e. the registrar (Registration Office). This is a different requirement than the registration and declaration duty towards the CO (§ 4.4.2 above).

The Directive foresees that registration shall be subject to the same procedural requirements in each Member State (Art. 17). These requirements are to be established by the Comitology procedure.

EPBA and RECHARGE are of the opinion that a strict and unambiguous procedure needs to be put in place to prevent free riders. This system should also include clauses for an efficient control mechanism through audit of the CO. The support from the national authorities is needed to reach the objective of “no free riders”.

EPBA and RECHARGE propose that the registration should at least contain the following data:

- Name and address of the producer (legal entity)
- Nature and commercial activity in the Member State
- Branches and other offices in the Member State
- Identification of a producer representative in the Member State (if not located in the Member State)
- Sales declaration on a yearly basis

4.5.2 WHO SHOULD FULFIL THE REGISTRATION REQUIREMENTS?

All producers within the meaning of the Battery Directive (including producers supplying batteries on a professional basis via internet sales to consumers located in that given Member

State) should be registered. However, end-users importing batteries for private use do not need to be registered.

4.5.3 WHAT IS THE RELATION BETWEEN THE CO AND THE REGISTRAR?

EPBA recommends that the CO can register its Regular Members (producers) by the registrar (Registration Office). This means that producers should either go through a collective system – the CO – or ensure that they set up their own individual system in which case they will be considered as a company individual CO.

Registration via a CO ensures a simple and workable format while ensuring that the national authorities have all the necessary data from the producers.

4.5.4 WHAT IS THE RELATION BETWEEN THE BATTERY DIRECTIVE AND THE WEEE DIRECTIVE?

Both the WEEE and Battery Directive are legislations dealing with the end-of-life of products. The WEEE legislation targets waste from electrical and electronic equipment (EEE). Since batteries are also used in EEE, spent batteries will also be collected through the WEEE schemes.

The WEEE Directive takes this possibility into account and explicitly foresees that batteries should be removed from the waste EEE before it is recycled (Annex II of Directive 2002/96/EC). After the selective removal from collected WEEE, the batteries are subject to the requirements of the Battery Directive and should be included in the collection results and are subject to the recycling requirements.

In particular, there are several major sources of spent batteries collected from WEEE that should be declared to the Reporting Authority, such as:

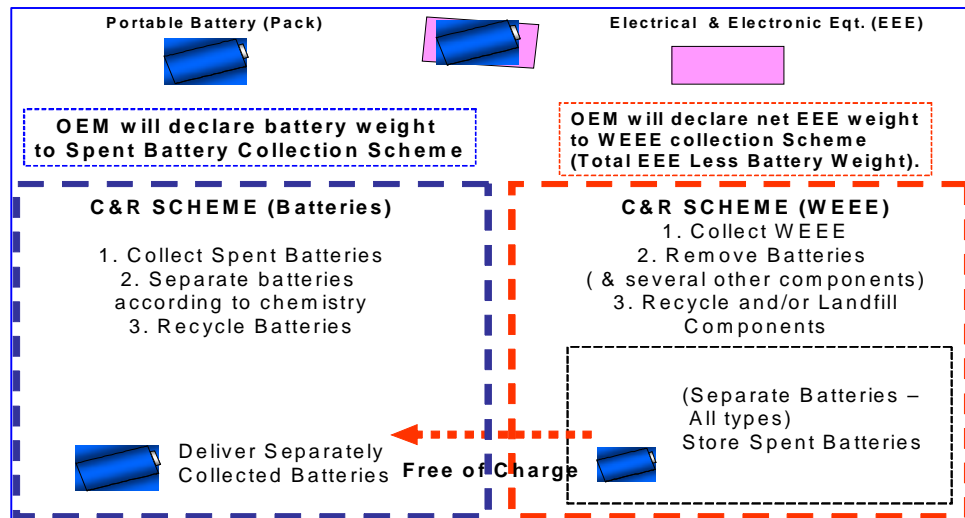
- Batteries from waste household appliances (WEEE collection schemes),
- Batteries from waste industrial equipment (B2B – Business to Business contracts),
- Refurbishing equipment (B2B – Business to Business contracts),
- Dedicated collection schemes for targeted equipment such as computers and mobile phones, etc...(Charity, voluntary or professional collection schemes).

A company which places on the market EEE in which batteries are incorporated will be considered as a producer both under the WEEE and the Battery Directive. This implies that this Company must fulfil the registration requirements of both systems. However, the Battery Directive clearly stipulates that double charging between both systems should be avoided.

EPBA and RECHARGE recommends that Producers contribute to each scheme (the Battery and the WEEE compliance schemes) proportionally to the weight of the battery and of the Equipment.

Figure 3 gives a representation of the way both systems could be operated in parallel without imposing a double charging on producers.

Figure 3 Schematic presentation of the distribution of the Participation Fees between the Spent Battery and the WEEE Collection Schemes.



4.6 Declaration / reporting

4.6.1 WHAT DATA SHOULD BE DECLARED, HOW, BY WHOM, TO WHOM AND WHEN?

The activities of the CO are funded by the users of the system who pay a contribution proportionally to the quantity of batteries they place on the market.

For this reason, CO's Members should declare on a regular basis the total number of batteries placed on the market. Current practice shows that the time interval when this is to be done can differ from one CO to another. It can be done on a monthly or bi-monthly basis or another time scale as long as it fits in order to reach the necessary cash flow for the efficient functioning of the CO. To maintain an efficient system the date by which the data is to be provided should be agreed in advance within the Members contract. An appropriate and balanced penalty system should be foreseen in case where the Members fee payment deadlines are not respected

Members and users will not have access to the data related to sales quantities submitted by individual Members of the CO. The confidentiality of the data submitted to the CO should be respected at all times. The data can either be submitted to an external trustee or a special system could be set up within the CO which foresees specific safeguarding rules which ensure full confidentiality.

EPBA and RECHARGE propose that the Members submit to the CO data on their portable battery sales at the minimum according to the details of Table 2 presented below.

TABLE II REPORTING FORMAT FOR YEARLY SALES OF PORTABLE BATTERIES (Directive 2006/66/EC).

PORTABLE PRIMARY BATTERIES, PACKS AND BUTTON CELLS	WEIGHT (KG)
Total Zinc - Manganese	
Total Lithium Primary	
Total Primary Button cells	
Total Other Primary Batteries	
Total Portable Primary Batteries Placed on the End User Market	
PORTABLE RECHARGEABLE BATTERIES, PACKS AND BUTTON CELLS	WEIGHT KG
Total Nickel Cadmium	
Total Nickel Metal Hydride	
Total Lithium-Ion	
Total Lead-acid	
Total Other Rechargeable Batteries	
Total Portable Rechargeable Batteries Placed on the End User Market	
TOTAL PORTABLE PRIMARY AND RECHARGEABLE BATTERIES PLACED ON THE END USER MARKET (IN KILOGRAMS PER YEAR)	

EPBA and RECHARGE propose that the CO reports to the National Authority a simplified overview on portable battery sales according to Table II above.

4.6.2 WHAT SHOULD BE DONE WITH THE DECLARED DATA?

The data declared by CO's Members will serve to calculate the annual financial contributions of Members to the CO. On the other hand, the data will also be used by the CO to fulfil the reporting requirements to the government foreseen by the legislation. Should the submitted data be checked and by whom?

It is recommended that the CO work with an external auditor to control the accuracy of the submitted data and to check regularly the governance of the CO.

4.6.3 SHOULD THERE BE SIMPLIFIED OBLIGATIONS FOR PRODUCERS PLACING SMALL QUANTITIES OF BATTERIES ON THE MARKET?

4.6.3.1. The Registration

According to Article 17 of Battery Directive 2006/66/EC Member States shall ensure that each producer is registered.

For practical reasons, several COs have simplified requirements in place for Members that place small quantities of batteries on the market in order to minimise the administrative burden. BEBAT foresees the possibility for producers placing less than 1,500 batteries on the market, to submit a simplified annual declaration. Such an approach is in the benefit of both parties: the CO and its Members.

4.6.3.2. The financing of collection and recycling.

However, the Battery Directive foresees the possibility for Member States to exempt producers placing very small quantities of batteries on the market from participating in the financing of the CO system. It is not defined in the Directive what should be seen as “very small quantities”. this should be decided on a case-by-case basis subject to the national market characteristics.

EPBA and RECHARGE have always opposed the use of a *de minimis* rule since it would allow that certain “small producers” to escape their financial responsibility which, in turn, has to be taken up by the other producers Members of the CO. This weakens the application of the principle of producer responsibility. This is primarily an issue that should be addressed with the competent national authorities in the course of defining the relevant national implementing regulations.

4.6.4 HOW IS THE CONFIDENTIALITY OF THE SUBMITTED DATA GUARANTEED?

It is important to stress that the confidentiality requirements are an essential element for the good functioning of the CO. Although the Members have parallel interests in participating in the system, they continue to be competitors on the national battery market, which should remain confidential

The gathering of competitors in one system is always considered as a sensitive issue from a competition law perspective.

For this reason the CO will have a contractual liability to guarantee the confidentiality of all the data provided by its users. This however does not preclude the system’s responsibility to report to the government in conformity with applicable national legislation.

5. Operational Aspects of the CO

5.1 Battery Directive

5.1.1 WHAT IS THE IMPACT OF THE BATTERY DIRECTIVE ON THE OPERATIONAL ASPECTS OF THE CO?

The Battery Directive foresees specific requirements regarding:

(1) Collection targets

The Directive foresees that Member States have to achieve minimum collection rates of:

(a) 25% of sales six years after entry into force (26 September 2012)

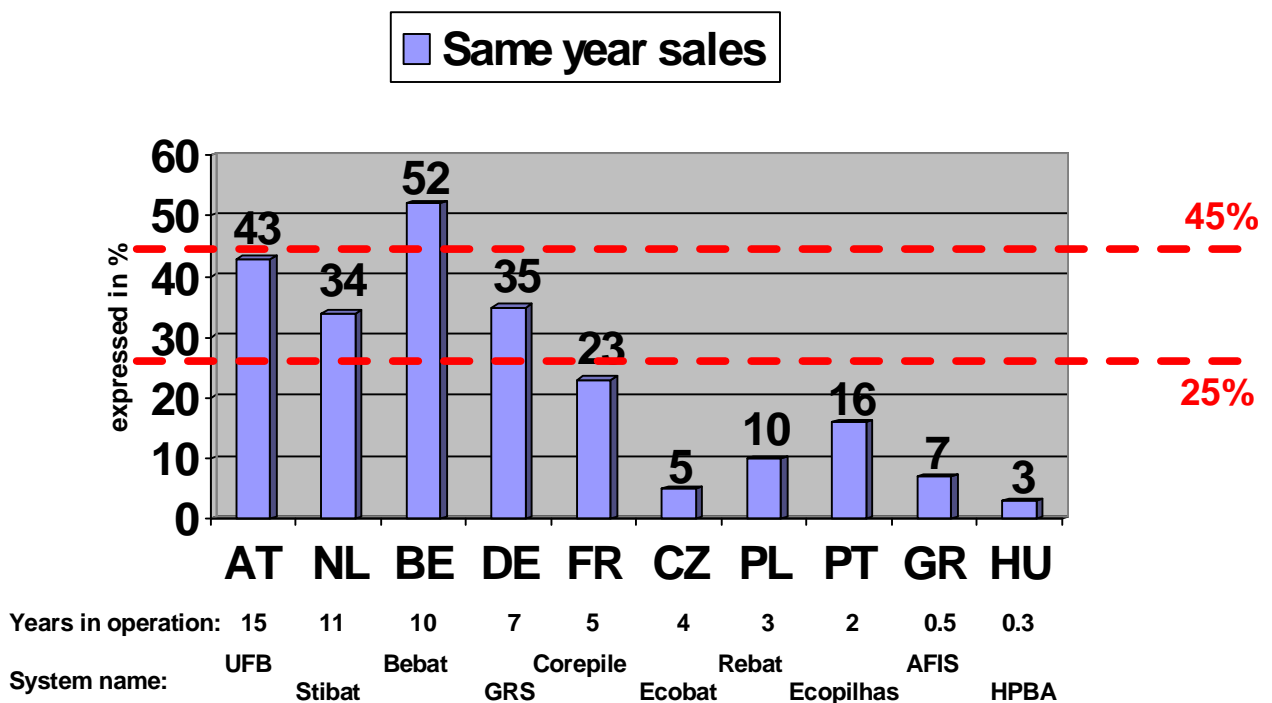
(b) 45% of sales ten years after entry into force (26 September 2016)

As experienced in Member States with a Collection and Recycling Organisation in place, the National Authority will shift this responsibility to the producers. The CO has to take into account two important elements in relation to the collection targets:

(1) those are minimum targets and,

(2) Member States could impose penalties when the collection targets are not achieved

2005 collection rates of existing CROs



(2) Collection schemes

The Directive foresees that Member States “*shall ensure that appropriate collection schemes are in place for waste portable batteries*”. The Directive gives Member States the possibility to assess what the most appropriate scheme is and could, as a consequence:

- (a) Require producers to set up such schemes;
- (b) Require other economic operators to participate in such schemes;
- (c) Maintain existing schemes.

Although it is a policy decision from the national authority, at the end, producers will have to ensure that the collection schemes are set up and operate successfully.

The battery collection systems can be run in conjunction with the WEEE schemes as regards the batteries discarded together with waste appliances.

The CO will have to identify and organize collection points to ensure an efficient collection network. It requires also that the CO provide suitable collection containers to be placed at the collection points and arrange for a regular pick-up of these containers when they are filled with spent batteries. (See § 5.2.2. below).

(3) Treatment and recycling

Within three years after entry into force (26 September 2009) producers or third parties have to set up schemes to provide for the treatment and recycling of waste batteries and accumulators.

All identifiable batteries and accumulators collected should undergo treatment and recycling.

The Directive foresees the possibility for Member States to dispose of portable batteries when no viable end market is available or when it is part of a strategy to phase out heavy metals. However, these options require a detailed socio-economic and environmental assessment. The Technical Adaptation Committee is also discussing how “viable market should be defined”

The Directive also foresees in Annex III, Part A minimum treatment requirements for the spent portable batteries.

(4) Recycling targets

Recycling processes shall achieve the following minimum recycling efficiencies:

- (a) Recycling of 65% by average weight of lead-acid batteries and accumulators
- (b) Recycling of 75% by average weight of nickel-cadmium batteries and accumulators
- (c) Recycling of 50% by average weight of other waste batteries and accumulators.

It is important to note that at this moment no calculation method for the recycling efficiencies is available. The methodology has to be decided through comitology within 42 months after entry into force (beginning of 2010).

Member States shall report on the levels of recycling achieved according to Article 12 § 5.

5.2 Collection

5.2.1 WHICH BATTERIES SHOULD BE COLLECTED?

The CO is responsible for collecting portable batteries which are defined by the Directive as “any battery, button cell, battery pack or accumulator that:

(a) is sealed; and

(b) can be hand-carried; and

(c) is neither an industrial battery or accumulator nor an automotive battery or accumulator” as defined in Art. 3(3).

The CO will have a list of batteries which falls within its scope of activities. A similar list will also be the basis for the declarations that have to be made.

5.2.2 WHICH COLLECTION POINTS ARE REQUIRED FOR A SUCCESSFUL COLLECTION CAMPAIGN?

The success of the CO depends for a large part on the quantities of batteries that are collected. Experience demonstrates that many number and types of collection points are needed to ensure that a high amount of spent portable batteries will be collected. An important preliminary consideration is to understand the need for making it easy for the end-user to bring back his spent batteries. Therefore the accessibility of the collection points is an essential aspect in the entire set-up of the collection points.

In principle, the distributors have to take back waste portable batteries. Also, end-users may not be charged when discarding waste portable batteries or accumulators, nor any obligation to buy a new battery or accumulator.

The traditional collection points for spent batteries are (1) municipalities, (2) retail stores and (3) industrial activities. Based on the available data, approx. 34% is collected through municipalities and 38% via retail. In addition to these collection points, some countries also developed supplementary collection streams via schools and container parks.

The advantage of collecting through schools is that children are made aware of the need to collect batteries. The collection is often rewarded by providing educational material to the schools with the best collection results.

However, it is important to note that in some Member States collection via schools is not permitted. A compliance check with the national legislation is needed.

5.2.3 FROM WHICH POINT ONWARDS SHOULD THE BATTERIES BE COLLECTED BY THE CO?

The Directive states that *producers finance any net costs arising from the collection, treatment and recycling of all waste portable batteries collected in accordance with Art. 8(1) and (2) (Art. 16(1)).*

This could be interpreted that producers are only responsible for the collection of portable batteries from the collection points onwards. This is a point of interpretation which is not confirmed by the Commission. It could be a point of negotiation with the national governments.

The ideal situation is that the batteries are collected by the municipalities and the trade sector. The COs then have to start collecting the batteries as of those point sources.

5.2.4 WHO SHOULD COLLECT THE BATTERIES FROM COLLECTION POINTS (TENDER PROCEDURE)?

The experience of the industry should be used to set clear and unambiguous criteria that will define the sub-contractors to carry out this operation at optimum logistic costs.

5.2.5 CAN OTHER WASTE COLLECTION CHANNELS (E.G. WEEE, PACKAGING) BE USED?

Additional collection via the WEEE schemes is a logical way to collect spent portable batteries (Art. 8 § 1. (d)). This is also underlined by the Directive itself which confirms the link between the WEEE and Battery Directive (Art. 12 § 3.).

5.2.6 WHAT IS NEEDED TO ACHIEVE THE 25% BY 2012?

The first collection target of the Battery Directive (25% by 2012) is an ambitious but achievable target. For achieving this target, a sustainable system managed by the CO is a prerequisite. Achieving the collection targets is a combination of several factors:

- Efficient collection system (high number of collection points)
- Effective and cost-efficient marketing system

5.2.7 ARE THERE SPECIFIC REQUIREMENTS FOR THE COLLECTION POINTS?

The Battery Directive foresees that collection points should not have to fulfil the specific requirements for registration and permits of the applicable Directives on waste and hazardous waste (2006/12 & 91/689) – Art. 8 § 1.

5.3 Sorting

5.3.1 WHAT IS THE DIFFERENCE BETWEEN PRE-SORTING AND SORTING?

Batteries received from public collection points are often mixed with other non-battery wastes. It is therefore necessary to remove these materials (the pre-sorting stage) before the batteries themselves are sorted by size and chemistry.

The take-back of spent batteries leads also to the collection of specific types of batteries that will undergo dedicated recycling processes.

5.3.2 WHO SHOULD SORT THE BATTERIES (TENDER PROCEDURE)?

The experience of the industry should be used to set clear and unambiguous criteria that will define the sub-contractors to carry out this operation.

5.3.3 ARE THERE MINIMUM SORTING REQUIREMENTS?

The minimum sorting requirements are generally defined by the recycling options.

5.3.4 WHAT NEEDS TO BE DONE WITH NON-IDENTIFIABLE PORTABLE BATTERIES?

The Battery Directive allows unidentifiable batteries to be disposed of in landfill rather than to be sent for recycling.

5.4 Recycling

5.4.1 WHERE SHOULD THE COLLECTED BATTERIES BE RECYCLED (TENDER PROCEDURE)?

The experience of the industry should be used to set clear and unambiguous criteria that will define the sub-contractors to carry out this operation.

5.4.2 WHO IS RESPONSIBLE TO ACHIEVE THE RECYCLING EFFICIENCY TARGETS?

The Directive places the responsibility of achieving the recycling targets on Member States and the producers (Art. 12 § 1): a responsibility which is generally transferred to the CO.

The Directive however does not exclude the contractual relations between the CO and the recyclers. The CO needs to ensure that in tendering recycling companies, the responsibility of achieving the recycling targets is included in the contracts.

5.4.3 IS THE RECYCLING EFFICIENCY ALREADY DEFINED?

The way to calculate the Recycling Efficiency is not yet established and is part of the Comitology procedure of the Directive.

EPBA and RECHARGE are concerned that a given calculation method might be too restrictive and hence, restrict competition. EPBA and RECHARGE therefore commissioned an external consultant to come up with a suitable efficiency measuring method which can be applied to all battery systems and all recycling processes. The results of this research is expected by Spring 2007 and which will also be presented to the Commission and Comitology committee.

5.4.4 WHAT IS EXPECTED FROM THE RECYCLERS?

Business with recycling companies should be defined by contract. Apart from quantity and price, other details that should be covered are:

- § Method of packaging and transport,
- § Limits on the amount of emissions to the environment,
- § Insurance and liability,
- § Compliance with national and international laws on the transportation and treatment of wastes,
- § Rights of audit,
- § Emergency plan,
- § Evidences and audit for meeting the recycling efficiency target.

6. Financial Aspects of the CO

6.1 Battery Directive

6.1.1 WHAT IS THE IMPACT OF THE BATTERY DIRECTIVE ON THE FINANCIAL ASPECTS OF THE CO

The Directive requires that producers or third parties acting on their behalf, finance any net costs arising from the collection, treatment and recycling of all waste portable batteries and accumulators (Art. 16 §1). The Battery Directive supplies little information regarding the financial organisation of a CO.

When the collection and recycling of spent batteries are considered the Net Costs should be evaluated on the basis of the costs of collecting, treating and recycling of the collected batteries minus the profit made by selling the materials recovered (Recital 19).

In addition, it is important to note that any double charging in relation with the WEEE Directive should be avoided (Art. 16 §2).

In addition, producers, or third parties acting on their behalf, will have to finance any net costs arising from public information campaigns on the collection, treatment and recycling of all waste portable batteries and accumulators (Art. 16 §3). There is a need for further clarification of this Article of the Battery Directive. For this requirement, it is important to note that it is not clear what the net costs in relation to the public information campaigns are.

Finally, a visible fee to the end-users is not allowed. This however, does not mean that a visible fee on invoice level between commercial actors is prohibited (Art. 16 §4). The extent to which the battery fee may be made visible will depend on national implementing regulations and/or applicable national competition rules.

6.2 Finances

6.2.1 HOW WILL THE OPERATING COSTS BE FUNDED?

The CO will be funded by the contributions paid by the Members of the Organisation. The contributions are based on the volume of batteries that are placed on the market.

6.2.2 HOW TO DETERMINE THE BATTERY FEE?

The Battery Directive does not foresee requirements on how the battery fee should be determined.

Two systems can be identified among the existing Collection and Recycling Organisations

- (1) A battery fee proportional to the weight of batteries placed on the National market (e.g. GRS - D and Stibat - NL)
- (2) A fixed fee per unit regardless of the type and weight (Bebat – B)

Belgium has a particular system in the sense that the fee is fixed in the law and agreed upon by the government.

A variable battery fee proportional to the weight of the battery has been more commonly adopted through Europe. This is also in line with other take-back legislations such as WEEE. For the latter legislation it is explicitly required that the fee should reflect the actual costs of collection, sorting, treatment and recycling.

How to determine the fee is an important element of the functioning of the CO and for which the industry should be clearly involved. Many discussions can be avoided by determining beforehand the mechanisms to set the battery fee.

6.2.3 CAN THE BATTERY FEE BE MADE VISIBLE IN THE DIFFERENT STEPS OF THE CHAIN?

The Battery Directive explicitly excludes the use of a visible fee to the end-user. However, the Directive does not mention anything on using a visible fee on invoices between commercial actors, e.g. between a supplier and a distributor. The collection and recycling fee could be made visible on the invoice between commercial intermediates until the retailer.

Making the collection and recycling fee visible on the invoice of batteries deliveries gives an important tool to the authorities to check whether a producer is registered. In addition, it prevents the different intermediates of the supply chain to add a profit and cumulate VAT on the battery collection and recycling fee.

6.2.4 HOW SHOULD ACCRUALS BE DEALT WITH?

It is essential that COs be operated in a business like way and, as a principle of prudent management, accruals equating to 6-12 months of operating expenses, is necessary to build up sufficient provisions to face the producer responsibility requirements. However, surplus funds exceeding 12 months must be avoided. This may be obtained in one of two ways:

1. Return the surplus back to the Members in proportion to their payments,
2. Reduce the annual collection and recycling fee charged to the Members in subsequent years.

6.2.5 WHAT ARE THE ESSENTIAL CONTRACTUAL AND PAYMENT REQUIREMENTS FOR THE TENDERS?

Granting of contracts to service providers by the CO is often governed by the permitting rules under which a CO operates. This is therefore a national matter and CO must conduct their business in full accordance with all such requirements.

6.2.6 WHAT ARE THE BASIC PROFIT & LOSS ELEMENTS OF A CO?

The costing system must be relatively simple, cost-effective and transparent. The necessity for the mechanism chosen to be simple is particularly important in order to avoid excessive administration costs. As a minimum, this should cover:

1. Advertising & PR
2. Administration
3. Collection & transport
4. Pre-sorting
5. Sorting
6. Recycling
7. Landfill
8. R&D
9. Miscellaneous costs

7. Special Considerations

7.1 Export

The battery Directive allows (Art.15) allows the export for treatment and recycling of the collected waste batteries outside the Member State concerned or outside the EU, provided that the shipment is in accordance with Regulation 259/93 on the transboundary shipment of waste. Further rules on this will be defined by the TAC.

7.2 Relations with the government

It is often necessary for COs to respond to enquiries from the government and other interested parties. The CO should only address these where they are related to its area of expertise, i.e. issues related to the collection and recycling of spent batteries. Other matters should be passed on to the NBA that is representing the interests of the National Battery Industry (where they exist) or the individual battery producers or importers who set up the CO.

Annex 1

LANGUAGE VERSIONS – BATTERY DIRECTIVE
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CS

DA

DE

ET

EN

FI

FR

GR

HU



IT

LV

LT

MT

NL

PL

PT

SK

SL



SP

SW

Annex 2

YEAR	ISSUE	Period	Article
Comitology issues			
2006	Publication in Official Journal. All deadlines are to be calculated from the date of publication	26/sep/06	
2007	Comitology: common methodology for calculation of annual sales for collection targets	26/sep/07	10(4)(b)
2008	Member States to lay down rules on penalties	26/sep/08	25
	End transposition period	26/sep/08	26
	Repeal Directive 91/157	26/sep/08	28
2009	Q1 - Comitology: detailed rules for implementation of capacity marking & harmonized methods for determination of capacity and appropriate use	26/mar/2009	21(2)
	Capacity on batteries (industry has minimum 6 months to adapt processes)	26/sep/09	21(2)
	Producers or third parties to set up schemes to provide for treatment and recycling of waste batteries	26/sep/09	12(1)(a)
	All identifiable collected batteries to undergo treatment and recycling	26/sep/09	12(1)(b)
2010	Comitology: detailed rules for calculation of recycling targets	26/mar/2010	12(6)
	Review Cadmium exemption portable power tools	26/sep/10	4(4)
2011	Recycling targets to be achieved	26/sep/11	12(4)
2012	1st minimum collection target to be achieved: 25% of sales	26/sep/12	10(2)(a)
2013	Q2 - MS to inform Commission on implementation of the Directive (covering first 6 years)	26/jun/13	22(4)
2014	Q1 - Commission report on implementation and impact on environment & internal market i.e. 9 months after MS 1st report sent to Commission	90 months	22(5)
2015			
2016	2nd minimum collection target to be achieved: 45% of sales	26/sep/16	10(2)(b)
2017	Q1 - Commission's second report on implementation and impact on environment & internal market. This will also include evaluation on substance ban, collection and recycling targets	11 years	23(2)

Note that not all comitology procedures have a precise timing by which they should be finalised

- (1) setting transitional arrangements for collection targets (art. 10(4)(b))
- (2) any proposal to change Annex III on recycling should be preceded by a stakeholder consultation of which the results shall be passed on to comitology (art. 12(7))
- (3) setting detailed rules for the implementation of the rules on export of waste batteries (art. 15(3))
- (4) setting the same procedural registration requirements (art 17)
- (5) exemptions for general labelling requirements (art 21(7))