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### Certain labelling requirements in the Spanish batteries legislation infringe the EU Batteries Directive 2006/66

Spain is the first Member State that has transposed the new EU batteries Directive. The battery industry and operators that place equipment containing batteries on the Spanish market, welcome that a country has finalised its transposition responsibilities a significant time before the actual deadline of 26 September 2008, since this allows sufficient time to ensure full compliance with the new requirements of the national legislation.

However, the battery industry and operators that place equipment containing batteries on the Spanish market are of the opinion that some of the provisions of the Royal Spanish Decree is not fully in line with the EU Batteries Directive as it does not comply with the internal market principles included in the EC Treaty that are reiterated in the new Battery Directive.

In particular, Art. 8 of the Spanish Decree which deals with Integrated Management Systems requires in paragraph 6 that *“The identification symbol for the Integrated Management System must visibly appear on each sales unit which may be purchased by the consumer or user”*.

This requirement is not in line with the new EU Batteries directive for the following reasons:

- I. Art 8(6) Spanish Decree contains a marking requirement which exceeds what is foreseen in article 21 of the Battery Directive. The latter only contains 3 marking requirements for batteries: **(1)** crossed-out dustbin, **(2)** the chemical symbol and **(3)** capacity marking
- II. The Battery Directive explicitly states in Recital 1 that *“[...] it is also appropriate to take measures at Community level on the basis of Article 95(1) of the Treaty to harmonise requirements concerning [...] labelling*

*of batteries and accumulators and so to ensure the smooth functioning of the internal market and avoid distortion of competition within the Community*".

It is generally recognized that Member States cannot go beyond the requirements that are based on Article 95 EC Treaty.

- III. In addition the EC Treaty states in its article 28 that "*quantitative restrictions on imports and all measures having equivalent effect shall be prohibited between Member States*". The Spanish marking requirement cannot even be justified on the basis of the exemptions of article 30 EC Treaty.

Significant practical consequences of this action by the Spanish Government may be summarized as follows:

- a. The following actors will be obliged to produce product specifically for the Spanish market thereby incurring additional costs:
  - o Manufacturers and importers of batteries,
  - o Manufacturers and importers of electrical appliance with integrated batteries such as laptop computers, mobile phones, cordless tools, MP3 players, etc.,
  - o Manufacturers and importers of electrical appliances sold together with replacement batteries such as toys, TV remote controls, torches, etc.;
- b. There will be a significant cost burden on industry and in particular on SME manufacturers and importers.
- c. The additional marking requirement makes it extremely burdensome for producers to change their Integrated Management System service provider. This will therefore act as a barrier to competition between existing service providers within this market;
- d. Marking requirements will disadvantage the entry of a new service provider and act as a barrier to new entrants into this market;
- e. The regulations do not specify mechanisms for coping with circumstances in the event an Integrated Management System service provider ceases operations. What is the situation regarding product bearing their mark in the market place?

Should this marking requirement remain applicable, there is a risk that imposing non-battery related marking could spread out to other Member States. This would be in contradiction with the fundamental harmonization rules of the Internal Market. In addition, it would also contradict the principle of cutting red tape for industry – a principle which is confirmed by the recently adopted fast track procedure for administrative burden reductions.

In conclusion, we urge the Commission, to ask the Spanish government to delete Art. 8(6) of the Royal Spanish Decree. On the basis of the aforementioned reasons, it is clear that it is not in line with the applicable EU legislation.