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Towards a workable legislative framework for batteries and accumulators

The European Portable Battery Association (EPBA) represents more than 90% of the manufacturers and importers of portable batteries in Europe. The mission of the EPBA is to ensure that the ideal conditions are created for responsible development of the portable battery industry in Europe. The EPBA aims to balance the sector's strive for competitiveness with the requirements of a sustainable development.

Over the past decade, EPBA members have established collection and recycling systems in 12 European countries, developed sorting and recycling technology, and successfully invested in increasing the performance of existing battery systems and in developing new high performance technologies to power portable applications resulting in an increase in duration and decrease in waste. In addition to eliminating mercury added in household batteries, several years before required by legislation EPBA members also voluntarily phased out mercury in oxide batteries through the development of alternative technologies such as zinc air for hearing aids and lithium for photo applications.

As part of EPBA's commitment to continuously enhance the sustainability of batteries, the EPBA supports the aim of the Commission proposal amending the Batteries Directive (91/157/EEC) to reduce the environmental impact of spent batteries and harmonize the national legislation on batteries and accumulators.

Key recommendations for the Second Reading

The EPBA regards the proposed Directive, as amended by the Council in its Common Position of 18 July 2005 as an ambitious and yet workable compromise that successfully balances the need for increased environmental protection with considerations of competitiveness. The EPBA welcomes:

- The extension of the scope of the Directive to all batteries
- The introduction of the principle of producer responsibility for the take-back, treatment and recycling of collected waste batteries from designated collection points
- The introduction of workable collection and recycling targets leading to the reduction of the uncontrolled disposal of waste batteries

However, as practitioners who are already today closely involved in the collection and recycling of batteries and key stakeholders in the practical implementation of the future Directive, EPBA is highly concerned about certain aspects of the current debate in the European Parliament, which, if prevailing, would seriously undermine the workability, and thus the effectiveness of the revised Directive, and cause unjustified market restrictions and distortions.

Against this background, and in view of the upcoming parliamentary debate, EPBA would make the following recommendations:

The Batteries Directive should be based on both Articles 95 and 175 of the Treaty

The proposal for a dual legal basis as laid out in the Common Position presents an effective and workable compromise between the constant tension to achieve ambitious environmental objectives, on the one hand, and to ensure the proper functioning of the Internal Market, on the other hand.

By putting all provisions regarding product specific requirements on the basis of Article 95, as proposed by the Commission and supported by the European Parliament and the Council in first reading, divergence in national measures will be prevented and the functioning of an Internal Market for batteries and accumulators secured.

Establishing Article 175 as sole legal basis, as proposed in Mr. Blokland's amendments 1, 2 and 8 would result in differing national provisions regarding marking requirements and substance limits, leading to a fragmentation of the Internal Market and restrictions to the free movement of goods.

EPBA however understands the rationale for choosing Article 175 as a basis for the provisions relating to the collection and recycling of waste portable batteries to take account of different levels of collection and recycling infrastructure and experience among the EU 25.

Substance bans to be based on sound risk assessment

While measures aiming at a controlled use of substance are to be embraced, as a key principle a ban or substitution of certain substances should only be accepted if based on a scientifically sound risk assessment. A complete risk assessment should take into account all scientific evidence as well as all three pillars of sustainable development (social, economic and environment) and give consideration to practical opportunities available for the management of identified risks. The marketing restrictions proposed in amendments 15, 16, 17 and 18 would result in a ban of more than 30% of the current total battery market in the old and 60% in the new Member States without proper scientific justification. In addition, a ban on lead would impact applications, such as hearing aids, where no adequate alternatives to the use of lead in button cells currently exist.

At the same time the environmental benefits of restricting the marketing of portable primary batteries with more than 0,004% of lead are minimal as such a ban would apply to only 0,0015% of the total lead used annually in Europe (30,2 out of 2 million tones of lead placed on the EU market per year). The EPBA supports the Council which has taken this into consideration and decided against a ban on lead in the Common Position.

Ambitious but achievable collection and recycling efficiency targets

The level of collection targets should be ambitious but realistic and achievable in the given timeframe. Targets should therefore take into account the experiences gained in those Member States that have already been collecting spent batteries for years (e.g. Austria, The Netherlands, Belgium, France and Germany). Based on these experiences, a collection target of 25% six years after the entry into force of the Directive seems ambitious but achievable. A target of 45% ten years after entry into force, as suggested in the Common Position, or even 60% as proposed in amendment 24, however, is not feasible for those Member States without a history of battery collection as they lack the appropriate infrastructures and consumer awareness. To guarantee the workability of the Directive in a an enlarged Europe, the ten-year targets should be set on the actual experiences of the 25 Member States during the first years after implementation. The introduction of a review mechanism is therefore recommendable.

As collection targets, recycling targets need to be ambitious but feasible and well founded in order to ensure the smooth operation of the Directive in the future. A target of 55% by average weight for waste batteries and accumulators five years after the entry into force as proposed in Amendment 34 is not achievable because the market mix in certain Member States will not have sufficient recyclable material in the waste batteries.

Shared responsibility among all actors

To ensure an effective implementation of the collection and recycling requirements of the future Directive responsibilities and costs should be distributed among all parties involved in the battery waste management chain: Whereas battery producers should be responsible for the take-back and recycling of collected waste batteries, municipalities and retailers should be responsible for the collection from end-users and end-users for the disposal of waste batteries at identified collection points.

In addition, a transparent financing mechanism which allows producers to recover their costs from the distribution chain is a pre-requisite for a sustainable and efficient collection and recycling scheme for portable batteries.

It should also be ensured that small producers are not exempted from the financing responsibility to prevent free-riders. The EPBA therefore welcomes amendment 15 deleting the possibility of a De minimis rule for small producers.

The EPBA is confident that the Members of the European Parliament will give consideration to the portable battery industry's concerns and will successfully work towards achieving a balance between the interests of the consumers, the environment and industry. The Common Position is a first step towards this direction, providing an excellent basis for the elaboration of a workable and effective Directive.