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Comments by the European Portable Battery Association on the waste package

1. Introduction: EPBA and sustainability

The European Portable Battery Association (EPBA) supports the overall objectives of the circular economy action plan and its legislative waste package. Waste management is one of the central elements in the overall discussions on circular economy and gets the full commitment of EPBA and its members. This is reflected in the expertise we have gathered over the past decades during which we have set up various portable battery collection schemes across the EU.

In view of the discussions on the legislative waste package, EPBA raises the below comments which with the aim of improving the workability and efficiency of the legislative framework.

2. Need to clarify the overlap with the Battery Directive 2006/66/EC

For the sake of legal certainty and clear implementation of legislation it is important that definitions allow for a clear and unambiguous understanding. The description used to define municipal waste as set out in the new proposed paragraph 1(a) under article 3 lacks clarity and can therefore raise concerns from an implementation point of view.

Among the products which fall under the new definition for municipal waste, the category of waste batteries and accumulators is included. It is however unclear how the overlap with the product specific directive 2006/66/EC on batteries and accumulators and waste batteries and accumulators (hereafter 'batteries directive') will be dealt with which sets already specific collection targets for spent portable batteries and recycling targets for all waste batteries. As explained in article 3 of the Commission's proposal, the origin of municipal waste is coming from households but it is not clear which type of waste batteries and accumulators (portable, industrial, automotive) would be accounted for in the recycling target for municipal waste.

In addition, the proposal gives an exemption to seven Member States for achieving by 2025 the municipal waste recycling target of 60% by weight, while on the other hand the Battery Directive already requires these Member States to achieve the binding collection and recycling targets as stipulated in the batteries directive.

In order to avoid difficulties when implementing the legislation, the overlap and inconsistencies with the batteries directive need to be clarified.

3. Producer responsibility schemes

EPBA welcomes the general requirements for the extended producer responsibility schemes which are proposed in the new article 8a. These requirements will support a more coherent and effective implementation on national level of the extended producer responsibility concept especially in member states in which multiple schemes are active.

- These general rules should still be completed with requirements which are more product specific – e.g. waste portable batteries - as well as taking into account the specific national context in which the schemes are active. It is indeed important that the roles and responsibilities of the various actors involved – producers, distributors, authorities, consumers, etc... - are clearly stipulated.
- In relation to defining the waste management targets (art. 8a(1) second indent), it is of the utmost importance that the setting of targets does not only take into account whether these are measurable. In relation to collection targets, the level should be ambitious but realistic and achievable in a given timeframe.

This has been consistently advocated by EPBA in relation to the collection targets of waste portable batteries as set out in the batteries directive for which we have conducted a study. This report and subsequent annual updates confirms the earlier position of EPBA that, especially, for the 45% collection objective, it will be impossible that all member states will achieve this target by September 2016¹.

- Although in general, incentives can be used in waste management processes, EPBA would advocate for a cautious approach (art. 8a(2)). If a member state were to use incentives, it should avoid doing this unilaterally without the involvement of the EPR schemes. It is important that the expertise of these schemes is taken into account to when setting the incentives which, in the end, should be the most efficient in obtaining the identified objectives.
- In member states where multiple collection schemes are active, the authorities should ensure that the principle of fair competition applies when setting the geographical, product and material coverage (art. 8a(3)(a)). This should avoid that collection schemes will do ‘cherry picking’ and only limit their operations to the area and waste products which are the easiest to collect.
- As a general principle, we welcome the requirement for transparency of the activities of EPR schemes (art. 8a(3)(d)) . Caution, however, should be needed in relation to transparency on the financial contributions paid by the producers which are affiliated to a given scheme. The market data on which the financial contributions are based is to be treated with the highest level of confidentiality and should not be subject to any transparency requirement.
- We welcome the Commission’s proposal to include the net cost principle (art. 8a(4)) in determining the financial responsibility of producers; a principle which is already included in the Batteries Directive. It is however important to specify that the net cost principle applies also to the recycling stage, as is the case for the Batteries Directive, in addition to collection, sorting and treatment.
- EPBA supports the explicit reference to the need of enforcement by the Member States (art. 8a(5)). Current practice with the batteries legislation shows that hardly any enforcement is being done by the national authorities, often due to lack of resources. An efficient and effective framework of enforcement by the competent authorities is therefore an absolute pre-requisite for ensuring that the objectives of legislation can be attained.

¹ Perchards/Sagis EPR on behalf of the European Portable Battery Association (EPBA), *The collection of waste portable batteries in Europe in view of the achievability of the collection targets set by Batteries Directive 2006/66/EC*, 2014 update. <http://epbaeurope.net/documents/Reportontheportablebatterycollectionrates-UpdateDec-15-fullversion-final.pdf>