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***II
RECOMMENDATION FOR SECOND READING

on the Council common position for adopting a directive of the European Parliament and of the Council on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/157/EEC
(5694/5/2005 – C6-0268/2005 – 2003/0282(COD))

Committee on the Environment, Public Health and Food Safety

Rapporteur: Hans Blokland

PR_COD_2am

Symbols for procedures

*	Consultation procedure *majority of the votes cast*
**I	Cooperation procedure (first reading) *majority of the votes cast*
**II	Cooperation procedure (second reading) *majority of the votes cast, to approve the common position* *majority of Parliament's component Members, to reject or amend the common position*
***	Assent procedure *majority of Parliament's component Members except in cases covered by Articles 105, 107, 161 and 300 of the EC Treaty and Article 7 of the EU Treaty*
***I	Codecision procedure (first reading) *majority of the votes cast*
***II	Codecision procedure (second reading) *majority of the votes cast, to approve the common position* *majority of Parliament's component Members, to reject or amend the common position*
***III	Codecision procedure (third reading) *majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission.)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the Council common position for adopting a directive of the European Parliament and of the Council on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/157/EEC
(5694/5/2005 – C6-0268/2005 – 2003/0282(COD))

(Codecision procedure: second reading)

The European Parliament,

– having regard to the Council common position (5694/5/2005 – C6-0268/2005),

– having regard to its position at first reading[1] on the Commission proposal to Parliament and the Council (COM(2003)0723)[2],

– having regard to Article 251(2) of the EC Treaty,

– having regard to Rule 62 of its Rules of Procedure,

– having regard to the recommendation for second reading of the Committee on the Environment, Public Health and Food Safety (A6-0335/2005),

1. Approves the common position as amended;

2. Instructs its President to forward its position to the Council and Commission.

Council common position	Amendments by Parliament
	Amendment 1 Citation 1
Having regard to the Treaty establishing the European Community, and in particular Article 175(1) thereof ***and Article 95(1) thereof in relation to Articles 4, 5 and 18 of this Directive***,	Having regard to the Treaty establishing the European Community, and in particular Article 175(1) thereof,
	Justification
	The main purpose of this Directive is to minimise the negative environmental effects of discarded batteries, therefore environment should be the only legal base. This is also in line with the (non-binding) opinion of the Advocate General in Case C-178/03 delivered 26 May 2005 (Commission versus Parliament and the Council on the legal base of the PIC-

[1] OJ C 104 E, 30.4.2004, p. 355.
[2] Not yet published in OJ.

regulation) in which it is concluded that a dual legal base is excluded if the procedures laid down for them cannot be reconciled with each other and that if a piece of legislation has both environmental and internal market aspects, the act must be founded on the single legal basis required by the main or predominant purpose or component of the act.

Amendment 2
Recital 1

(1) It is desirable to harmonise national measures concerning batteries and accumulators and waste batteries and accumulators. The primary objective of this Directive is to minimise the negative impact of batteries and accumulators and waste batteries and accumulators on the environment, thus contributing to the protection, preservation and improvement of the quality of the environment. The legal base is therefore Article 175(1) of the Treaty. ***However, it is also appropriate to take measures at Community level on the basis of Article 95(1) of the Treaty to harmonise requirements concerning the heavy metal content and labelling of batteries and accumulators and so to ensure the smooth functioning of the internal market and avoid distortion of competition within the Community.***	(1) It is desirable to harmonise national measures concerning batteries and accumulators and waste batteries and accumulators. The primary objective of this Directive is to minimise the negative impact of batteries and accumulators and waste batteries and accumulators on the environment, thus contributing to the protection, preservation and improvement of the quality of the environment. The legal base is therefore Article 175(1) of the Treaty.

Justification

The main purpose of this Directive is to minimise the negative environmental effects of discarded batteries, therefore environment should be the only legal base. This is also in line with the (non-binding) opinion of the Advocate General in Case C-178/03 delivered 26 May 2005 (Commission versus Parliament and the Council on the legal base of the PIC-regulation) in which it is concluded that a dual legal base is excluded if the procedures laid down for them cannot be reconciled with each other and that if a piece of legislation has both environmental and internal market aspects, the act must be founded on the single legal basis required by the main or predominant purpose or component of the act.

Amendment 3
Recital 2 a (new)

	(2a) The Council Resolution of 25 January 1988 on a Community action programme to combat environmental pollution[1] by cadmium stressed the limitation of the uses of cadmium to cases where suitable alternatives do not exist as one of the major elements of the strategy for cadmium control in the interests of the protection of human health and the environment.
	1 OJ C 30, 4.2.1988, p. 1.

Justification

It is important to put the measures in this directive concerning cadmium into the general context of the EU policy on cadmium.

Amendment 4
Recital 5

(5) In order to prevent waste batteries and accumulators from being discarded in such a way as to pollute the environment, and to avoid end-user confusion about the different waste management requirements for different batteries and accumulators, this Directive should apply to all batteries and accumulators placed on the market within the Community. Such a wide scope should also ensure economies of scale in collection and recycling, as well as optimal resource saving.	(5) In order to prevent waste batteries and accumulators from being discarded in such a way as to pollute the environment, and to avoid end-user confusion about the different waste management requirements for different batteries and accumulators, this Directive should apply to all batteries and accumulators placed on the market within the Community. Such a wide scope should also ensure economies of scale in collection and recycling, as well as optimal resource saving ***and appropriate financing by all the economic operators involved.***

Justification

Appropriate financing by all parties involved is an essential requirement to ensure that the goals of the Battery Directive are achieved.

Amendment 5
Recital 8

(8) Examples of industrial batteries and accumulators include batteries and accumulators used for emergency or back-up power supply in hospitals, airports or offices, batteries and accumulators used in trains or aircraft and batteries and accumulators used on offshore oil rigs or in lighthouses. Examples also include batteries and accumulators designed exclusively for hand-held payment terminals in shops and restaurants, bar code readers in shops, professional video equipment for TV channels and professional studios, miners' lamps and diving lamps attached to mining and diving helmets for professionals, back up batteries and accumulators for electric doors to prevent them from blocking or crushing people, batteries and accumulators used for instrumentation or in various types of measurement and instrumentation equipment and batteries and accumulators used in connection with solar panel, photo-voltaic, and other renewable energy applications. Industrial batteries and accumulators also include batteries and accumulators used in electrical vehicles, such as electric cars, wheelchairs, bicycles, airport vehicles and automatic transport vehicles. In addition to this non exhaustive list of examples, any battery or accumulator that is not sealed and not automotive should be considered industrial.	***deleted***

Justification

It is not helpful to list examples of applications of batteries in order to define those batteries as industrial batteries. The definition of industrial batteries must make this clear, not a recital. Above this, many of the listed examples do not fit with the definition in article 3. This recital is misleading and should therefore be deleted.

Amendment 6
Recital 9

(9) Examples of portable batteries and accumulators, which are all-sealed batteries and accumulators that an average person could carry by hand without difficulty and that are neither automotive batteries or accumulators nor industrial batteries or accumulators, include single cell batteries (such as AA and AAA batteries) and batteries and accumulators used by consumers or professionals in mobile telephones, portable computers, cordless power tools, toys and household appliances such as electric toothbrushes, razors and hand-held vacuum cleaners (including similar equipment used in schools, shops, restaurants, airports, offices or hospitals) and any battery that consumers may use for normal household applications.	***deleted***

Justification

It is not helpful to list examples of applications of batteries in order to define those batteries as portable batteries. The definition of portable batteries must make this clear, not a recital. Above this, many of the listed examples do not fit with the definition in article 3. This recital is misleading and should therefore be deleted.

Amendment 7
Recital 10

(10) The Commission should evaluate the need for adaptation of this Directive, taking account of available technical and scientific evidence. In particular, ***the Commission should carry out a review of the exemption from the cadmium ban provided for portable batteries and accumulators intended for use in cordless power tools. Examples of cordless power tools are tools that consumers and professionals use for turning, milling, sanding, grinding, sawing, cutting, shearing, drilling, making holes,***	(10) The Commission should evaluate the need for adaptation of this Directive, taking account of available technical and scientific evidence. In particular, ***any decision to modify any prohibition on placing certain batteries on the market should be taken on the basis of a risk assessment that takes into account all the proper scientific evidence indicating the need to ban the substance concerned.***

punching, hammering, riveting, screwing, polishing or similar processing of wood, metal and other materials, as well as for mowing, cutting and other gardening activities.

Justification

It is important to emphasise that any substance ban should only be introduced and justified on the basis of a risk assessment taking into account all the proper scientific evidence indicating the need to ban a given substance.

Amendment 8
Recital 13

(13) ***It is desirable for*** Member States to achieve a high collection and recycling rate for waste batteries and accumulators so as to achieve a high level of environmental protection and material ***recovery*** throughout the Community. This Directive should therefore set minimum collection and recycling targets for Member States. It is appropriate to calculate the collection rate on the basis of average annual sales in preceding years, so as to have comparable targets for all Member States that are proportionate to the national level of battery consumption.	(13) Member States ***should be required*** to achieve a high collection and recycling rate for waste batteries and accumulators so as to achieve a high level of environmental protection and material ***recycling*** throughout the Community. This Directive should therefore set minimum collection and recycling targets for Member States. It is appropriate to calculate the collection rate on the basis of average annual sales in preceding years, so as to have comparable targets for all Member States that are proportionate to the national level of battery consumption.

Justification

Re-introduces the Commission text and amendment 2 from first reading.

The directive establishes clear obligations on collection and recycling. Achieving these obligations is therefore not just desirable, but a clear requirement on Member States.

The directive does not include any recovery targets, but recycling targets, so the wording should be corrected accordingly.

Amendment 9
Recital 17

(17) Basic principles for financing the management of waste batteries and accumulators should be set at Community level. Financing schemes should help to achieve high collection and recycling rates and to give effect to the principle of producer responsibility. Producers should ***therefore*** finance the costs of collecting, treating and recycling all collected batteries and accumulators minus the profit made by selling the materials recovered. ***However, under certain circumstances, the application of de minimis rules to small producers could be justified.***	(17) Basic principles for financing the management of waste batteries and accumulators should be set at Community level. Financing schemes should help to achieve high collection and recycling rates and to give effect to the principle of producer responsibility. ***All producers as defined by this Directive should be registered.*** Producers should finance the costs of collecting, treating and recycling all collected batteries and accumulators minus the profit made by selling the materials recovered.

Justification

In order to be in line with the goal of the Directive, it is important that all the producers, as defined by the Directive, should be registered. The registration requirement is an important instrument to prevent free riders.

This recital should also mention that producers are allowed to recover the costs of collecting, treatment and recycling. This addition will clarify article 13(3) which states that the costs shall not be shown separately to end-users. This article foresees that a visible fee cannot be shown to the end-user level, but it would be incorrect to interpret this as stating that producers cannot recover the waste management costs.

The 'de minimis' rule should be deleted since it goes against the principle of producer responsibility. It will only create more possibilities for producers to escape their responsibilities.

Amendment 10
Recital 18 a (new)

	(18a) End-users should also be informed of the capacity of the batteries they buy so that they are able to make an informed choice.

Justification

Re-introduces amendment 5 of EP first reading, which was accepted by the European Commission (COM(2005)378).

Non-rechargeable batteries vary largely in price, which is partially due to their different capacity. All sorts of qualitative claims are made about the performance of non-rechargeable batteries. While information about the capacity is already given for rechargeable batteries, this is not yet the case of non-rechargeable ones. In order to ensure clear and transparent information, consumers should be informed about the capacity of all batteries.

Amendment 11
Article 1

Subject-matter	***Objective***
This Directive ***establishes:***	
1) rules regarding the placing on the market of batteries and accumulators; and	***The purpose of*** this Directive ***is, as a first priority, the prevention of the use of heavy metals in*** batteries and accumulators***,*** and ***in addition*** the collection, treatment, recycling and disposal of ***all*** waste batteries and accumulators ***in order to avoid the disposal of batteries containing hazardous substances and to recycle the useful substances therein.***
	It also seeks to improve the environmental performance of batteries and accumulators and of the activities of all operators involved in the life cycle of electrical and electronic equipment, i.e. producers, distributors and consumers and in particular those operators directly involved in the treatment of waste batteries and accumulators.
2) specific rules for the collection, treatment, recycling and disposal of waste batteries and accumulators ***to supplement relevant Community legislation on waste***.	

Justification

Re-introduces amendments 7 and 8 of EP first reading.

The objective of the Battery Directive shall be first the prevention of heavy metals in batteries and accumulators. Cadmium, Mercury and Lead have a significant impact on the quality of

the environment. As a second priority this Directive shall promote and harmonise the collection and recycling of batteries.

Amendment 12
Article 3, point 3

3) "portable battery or accumulator" means any battery or accumulator that:	3) “portable battery or accumulator” means any battery, ***button cell, battery pack*** or accumulator that:
(a) is sealed, and	(a) is sealed, and
(b) ***can be hand-carried,*** and	(b) ***has a weight of less than 1 kilogramme***, and
(c) is ***neither an industrial battery or accumulator nor an automotive battery or accumulator***;	(c) is ***used or intended for use in the appliances listed in Annex IA and IB to Directive 2002/96/EC or in other appliances by either consumers or professional users;***

Justification

Battery packs and button cells need to be explicitly included in the definition of portable batteries to ensure that they are covered by collection and treatment requirements. This definition gives more clarity if it refers to the existing WEEE-directive. The weight normally used to distinguish portable batteries from other batteries should be given as part of the definition to avoid lack of clarity.

Amendment 13
Article 3, point 6

6) "industrial battery or accumulator" means any battery or accumulator ***designed for*** exclusively industrial ***or professional uses or used in any type of electric vehicle***;	6) “industrial battery or accumulator” means any battery or accumulator exclusively ***used for or intended to be used for*** industrial ***purposes, for instance as standby or motive power, which is not a portable battery or accumulator as defined in point 3***;

Justification

Re-introduces amendment 85 of EP first reading.
In order to avoid a gap between definitions, or an overlap of definitions, it should be made clear that an industrial battery is not a portable battery.

Amendment 14
Article 3, point 8

8) "recycling" means the reprocessing in a production process of waste materials for their original purpose or for other purposes, but excluding energy recovery;	8) “recycling” means the reprocessing in a production process of the waste materials for the original purpose or for other purposes, but excluding energy recovery***, which means the use of combustible waste as a means of generating energy through direct incineration with or without other waste but with recovery of the heat****;*

Justification

This definition should be fully consistent with the definition of recycling in article 3(e) of the WEEE and ELV directives.

Amendment 15
Article 3, point 16 a (new)

	16a) “collection rate” means, for a given Member State in a given calendar year, the percentage obtained by dividing the weight of waste portable batteries and accumulators collected in accordance with Article 7(1) in that calendar year by the average annual sales of portable batteries and accumulators placed on the market by weight in that Member State during that calendar year and the preceding two calendar years.

Justification

The wording “placed on the market” rather than "sold to the end user" avoids placing an additional administrative burden on small business.

Amendment 16
Article 3, point 16 b (new)

16b) "closed loop" means that the metal content of a waste battery or accumulator will be re-used as far as possible in the manufacturing of new products.

Justification

Not all the metal recovered in the recycling process will be suitable for manufacturing into new products.

Amendment 17
Article 4 a (new)

Article 4a

Increased environmental performance

Member States shall promote research and encourage producers to improve the overall environmental performance of batteries and accumulators throughout their entire life-cycle, and shall encourage the development and marketing of batteries and accumulators which contain smaller quantities of dangerous substances or which contain less polluting substances, in particular as substitutes for mercury, cadmium and lead.

Member States shall promote research and development in these fields in support of these objectives.

Justification

Re-introduces amendment 24 of EP first reading in order to reach the objective of better environmental performance of the batteries.

Amendment 18
Article 5, paragraph 2 a (new)

2a. Member States shall ensure that batteries and accumulators cannot be incorporated into appliances unless they

	can be readily removed, when spent, by the consumer. This provision shall not apply to the categories of appliance included in Annex IIa. All appliances into which batteries and accumulators are incorporated shall be accompanied by instructions showing how they can be removed safely and, where appropriate, informing the user of the content of the incorporated batteries and accumulators.

Justification

Small appliances containing batteries or accumulators that are difficult for the consumer to remove have a high probability of ending up in household waste, still containing the batteries; whereas, in a number of cases, it is possible to manufacture small appliances in such a way that no tools are needed to remove the batteries.

Amendment 19
Article 6

Member States shall ***endeavour*** to maximise the separate collection of waste batteries and accumulators, ***having regard to the environmental impact of transport***, and to ***minimise*** the disposal of batteries and accumulators ***as unsorted municipal waste***.	Member States shall ***take the necessary measures, having regard to the environmental impact of transport***, to maximise the separate collection of waste batteries and accumulators and to ***prevent*** the ***final*** disposal of batteries and accumulators ***in order to achieve maximum recycling for all waste batteries and accumulators whose use is not prohibited by Article 4.***

Justification

It is very important to stress the need for local availability of battery recycling capacity, which member States may need to encourage.

Amendment 20
Article 7, paragraph 1, point (a) and (a a) (new)

(a) shall enable end-users to discard waste	(a) shall enable end-users to discard waste

portable batteries or accumulators at an accessible collection point in their vicinity***,*** ***having regard to population density***;	portable batteries or accumulators at an accessible collection point in their vicinity; ***Such collection points shall not need to be registered or licensed individually under Directive 75/442/EEC or Council Directive 91/689/EEC of 12 December 1991 on hazardous waste[1];***
	_____
	[1] OJ L 377, 31.12.1991, p. 20. Directive as amended by Directive 94/31/EC (OJ L 168, 2.7.1994, p. 28).

Justification

Re-introduces amendment 28 and 29 of EP first reading.

The collection starts with the delivery of the batteries and accumulators by the end-users. Excessive bureaucracy in some Member States means that those organising such collection points (for example in schools) may be required to apply for a hazardous waste licence under the EU waste framework legislation. It must be made quite clear that such "red tape" is the result of over- interpretation of the law. The need to satisfy bureaucratic requirements for a special waste licence could discourage some establishments from providing collection points.

Amendment 21
Article 7, paragraph 3

3. Member States shall ensure that producers of industrial batteries and accumulators, or third parties acting on their behalf, shall not refuse to take back waste industrial batteries and accumulators from end-users, regardless of ***chemical composition and*** origin. Independent third parties may also collect industrial batteries and accumulators.	3. Member States shall ensure that ***individual*** producers of industrial batteries and accumulators, or third parties acting on their behalf, shall not refuse to take back waste industrial batteries and accumulators from end-users, regardless of origin, ***provided that such batteries and accumulators have a similar chemical composition to those placed on the market by the producer concerned***. Independent third parties may also collect industrial batteries and accumulators.

Justification

The Council wording implies that producers of batteries, including SMEs, will have to take back waste batteries of a chemical composition they do not place on the market regardless of

whether they have the expertise, resources and legal permits to take back such batteries. This could be a source of risk and should not be encouraged.

This amendment ensures that companies shall not refuse to take back from end users, batteries of a similar chemical composition as the ones they placed on the market, whether these originate from their own facility or that of producers of batteries of the same composition.

There should not be any limitation on the origin of the spent battery.

Amendment 22
Article 7, paragraph 4 a (new)

4a. Member States shall ensure that end-users are obliged to return their waste industrial and automotive batteries and accumulators to collection systems.

Justification

Re-introduces amendment 47 of EP first reading, which was accepted by the European Commission (COM(2005)378).

In order to achieve as high a collection rate as possible consumers should be required to return their waste industrial and automotive batteries. This should be achieved through information campaigns, and could be co-ordinated with local authorities' policies on fly-tipping in order to achieve high collection rates. This requirement completes the take-back obligation imposed on producers.

Amendment 23
Article 7, paragraph 4 b (new)

4b. Member States shall ensure that, when supplying portable batteries, distributors are obliged to take back spent portable batteries from end-users at no charge.

Justification

This proposal requires the participation of commercial networks in the take back process for spent portable batteries. Basically it will mean that any end user can return a spent portable battery to a portable battery sales point. It offers the possibility to reach higher return rates for spent portable batteries.

This provision does not concern industrial and automotive batteries.

Amendment 24
Article 8

Member States may use economic instruments to promote the collection of waste batteries and accumulators or to promote the use of batteries containing less polluting substances, for instance by adopting differential tax rates ***or deposit systems***. If they do so, they shall notify the measures related to the implementation of those instruments to the Commission.	**1.** Member States may use economic instruments to promote the collection of waste batteries and accumulators or to promote the use of batteries containing less polluting substances, for instance by adopting differential tax rates. If they do so, they shall notify the measures related to the implementation of those instruments to the Commission. ***Member States shall ensure that such measures:***
	(a) do not infringe internal market rules or distort competition, and do not serve as a revenue raising measure for issues unconnected with the objectives of this Directive,
	(b) are introduced after consultation with all the parties concerned,
	(c) are subject to justification on economic, social and environmental grounds.
	2. Member States shall communicate to the Commission, pursuant to Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations[1], the draft measures which they intend to adopt in accordance with paragraph 1.
	[1] OJ L 204, 21.7.1998, p. 37. Directive as last amended by the 2003 Act of Accession.

Justification

1) A deposit scheme will not be workable for batteries. It is a given fact that consumers keep batteries for many years before they are finally returned to a collection point. This would create a very high administrative burden which is disproportionate with the environmental benefit.
1a) seeks to avoid unilateral action by Member States to raise revenues from the battery consumer as well as adoption of fiscal measures that distort the price of batteries must not be allowed in view of the interests of the internal market and free and fair competition in the market place
1b) and c) are reproduced from Directive 91/157/EEC and are essential for ensuring a sustainable and effective scheme for the management of waste batteries.

2) Specifies the procedure under which the draft measures should be communicated to the Commission.

Amendment 25
Article 9, paragraph 1

1. ***For the purposes of this Article***, ***the "collection rate" for a given Member State in a given calendar year shall mean the percentage obtained by dividing the weight of waste portable batteries and accumulators collected in accordance with Article 7(1) in that calendar year by the average annual sales of portable batteries and accumulators to the end-user by weight in that Member State during that calendar year and the preceding two calendar years.*** Member States shall calculate the collection rate for the first time in respect of the ***sixth*** full calendar year following the entry into force of this Directive.	1. Member States shall calculate the collection rate ***as defined in point 16a of Article 3*** for the first time in respect of the ***fourth*** full calendar year following the entry into force of this Directive.

Justification

Re-introduces amendment 34 of EP first reading.
Collection rate should not be defined in this Article and should therefore be transferred as definition in Article 3.

Amendment 26
Article 9, paragraph 2, points a) and b)

a) ***25***% by six years after entry into force of this Directive;	a) ***40***% by six years after entry into force of this Directive;
b) ***45***% by ten years after entry into force of this Directive.	b) ***60***% by ten years after entry into force of this Directive.

Justification

More ambitious collection targets must be set. During the second phase, after 6 years, an impulse is needed.

Amendment 27
Article 9, paragraph 4

4. In accordance with the procedure referred to in Article 21(2)***:***	4. In accordance with the procedure referred to in Article 21(2) a common methodology shall be established for the calculation of annual sales of portable batteries and accumulators to end-users by ...*.
(a) transitional arrangements may be laid down to address difficulties faced by a Member State in satisfying the requirements of paragraph 2 as a result of specific national circumstances;	
(b) a common methodology shall be established for the calculation of annual sales of portable batteries and accumulators to end-users by ...*.	
____	____
* One year after entry into force of this Directive	* One year after entry into force of this Directive.

Justification

Re-introduces amendment 34 of EP first reading. Unjustified exemption of the Council should be deleted. Because of a percentage target in stead of a weight target, Member states cannot use the argument of specific national circumstances any more.

Amendment 28
Article 9, paragraph 4 a (new)

	4a. No later than...* , the Commission shall put forward a proposal to increase the collection targets, in accordance with Article 251 of the Treaty .
	___
	**** Seven years after entry into force of this Directive***

Justification

Re-introduces amendment 34 of EP first reading. Collection targets should be improved in order to further avoid the uncontrolled disposal of batteries in the environment.

Amendment 29
Article 10, paragraph 1

1. Member States shall ensure that, no later than ...*:	1. Member States shall ensure that, no later than ...*:
(a) producers or third parties set up schemes using best available techniques to provide for the treatment and recycling of waste batteries and accumulators; and	(a) producers or third parties set up schemes using best available techniques***, in terms of the protection of health and the environment,*** to provide for the treatment and recycling of waste batteries and accumulators; and
(b) all identifiable batteries and accumulators collected in accordance with Article 7 undergo treatment and recycling through ***such*** schemes.	(b) all identifiable batteries and accumulators collected in accordance with Article 7 undergo treatment and recycling through schemes ***that comply, as a minimum, with Community legislation, in particular as regards health, safety and waste management***.
However, Member States may, in accordance with the Treaty, dispose of collected portable batteries or accumulators containing cadmium, mercury or lead in landfills or by underground storage as part of a strategy to phase out heavy metals ***or*** when no viable end market is available. Member States shall notify draft measures to the Commission in accordance with Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations.	However, Member States may, in accordance with the Treaty, dispose of collected portable batteries or accumulators containing cadmium, mercury or lead in landfills or by underground storage as part of a strategy to phase out heavy metals when no viable end market is available. Member States shall notify draft measures to the Commission in accordance with Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations.

Justification

Re-introduces amendment 120 of EP first reading.

It is essential that the requirements for treatment and recycling operations are distinguishable and separate. Since technologies for treatment operation are numerous and well established it will be difficult to provide a legal definition for 'best available techniques' in this case. It is therefore recommended that the minimum standard of treatment operations should be in accordance with the Community legislation on safety, health and waste management.

Amendment 30
Article 10, paragraph 3

3. Recycling processes shall, no later than …*, meet the recycling ***targets*** and associated provisions set out in Annex III, Part B.	3. Recycling processes shall, no later than …*, meet the recycling ***efficiencies*** and associated provisions set out in Annex III, Part B. *[Horizontal amendment - if adopted the expression "recycling targets" will be changed to "recycling efficiencies" throughout the text of, and all the amendments to, the Directive.]*

Justification

Re-introduces Article 18 of the original Commission proposal.

Amendment 31
Article 10 a (new)

	Article 10a
	New recycling technologies
	1. Member States shall promote the development of new recycling and treatment technologies, and research into environmentally friendly and cost-effective recycling methods for all types of

	batteries and accumulators.
	2. Member States shall encourage treatment facilities to introduce certified environmental management schemes in accordance with Regulation (EC) No 761/2001 of the European parliament and of the council of 19 March 2001 allowing voluntary participation by organisations in a Community eco-management and audit scheme (EMAS)[1]
	OJ L 114 , 24.4.2001, p. 1. Regulation as amended by the 2003 Act of Accession.

Justification

Re-introduces the text of Article 17 from the original Commission Proposal.

Amendment 32
Article 12, paragraph 2

2. Waste batteries and accumulators exported out of the Community in accordance with Regulation (EEC) No 259/93, Council Regulation (EC) No 1420/1999 of 29 April 1999 establishing common rules and procedures to apply to shipments to certain non-OECD countries of certain types of waste and Commission Regulation (EC) No 1547/1999 of 12 July 1999 determining the control procedures under Council Regulation (EEC) No 259/93 to apply to shipments of certain types of waste to certain countries to which OECD Decision C(92)39 final does not apply shall count towards the fulfilment of the obligations and targets laid down in Annex III to this Directive only if there is sound evidence that the recycling operation took place under conditions ***broadly*** equivalent to the requirements of this Directive.	2. Waste batteries and accumulators exported out of the Community in accordance with Regulation (EEC) No 259/93, Council Regulation (EC) No 1420/1999 of 29 April 1999 establishing common rules and procedures to apply to shipments to certain non-OECD countries of certain types of waste and Commission Regulation (EC) No 1547/1999 of 12 July 1999 determining the control procedures under Council Regulation (EEC) No 259/93 to apply to shipments of certain types of waste to certain countries to which OECD Decision C(92)39 final does not apply shall count towards the fulfilment of the obligations and targets laid down in Annex III to this Directive only if there is sound evidence that the recycling operation took place under conditions equivalent to the requirements of this Directive.

Justification

Re-introduces the Commission text.

Exports of hazardous waste are a very problematic area. Exports are often motivated by economic concerns, exploiting different treatment standards. To avoid such economically motivated exports at the expense of the environment, the recycling operation in the receiving country must take place under equivalent conditions. The term "broadly" is far too vague, and would open the door to all kind of disputes.

Amendment 33
Article 13, paragraph 1, point (a)

(a) the collection, treatment and recycling of all waste portable batteries and accumulators collected in accordance with Article 7(1) and (2); ***and***	(a) the collection, treatment and recycling of all waste portable batteries and accumulators collected in accordance with Article 7(1) and (2);
	(aa) public information campaigns on the collection, treatment and recycling of all waste portable batteries and accumulators; and

Justification

Public information campaigns are needed to ensure the success of collection and recycling schemes to avoid that end-users discard batteries with the general municipal waste. It should be clarified that producers should pay for such public information campaigns.

Amendment 34
Article 13, paragraph 2 a (new)

	2a. Responsibility for meeting the costs of collection, treatment, recycling and environmentally sound disposal of waste batteries and accumulators placed on the market before entry into force of this Directive ("historic waste"), shall lie with producers.

Justification

Re-introduces amendment 49 of EP first reading.

It must be made clear that producers are also responsible for the costs of collection, treatment, recycling and environmentally sound disposal of historic waste. This was already part of the original commission proposal (Article 23(1) of COM (2003)0723).

Amendment 35
Article 13, paragraph 3

3. ***The costs of*** collection, treatment and recycling ***shall*** not ***be*** shown separately ***to end-users*** at the time of sale of new portable batteries ***and accumulators***.	3. ***Member States shall ensure that producers are allowed to recover their costs for*** collection, treatment and recycling, ***but that these costs are*** not shown separately at the time of sale of new portable batteries ***to the end-user.***

Justification

An effective and transparent financing mechanism that enables an environmentally sound, cost-effective and financially equitable realization of the Directives objectives should be included within the new Battery Directive. Failure to do so will result in: (1) low return efficiency leading to higher burdens on the environment since more batteries will be landfilled; (2) higher environmental impacts resulting from inefficiencies in the battery collection infrastructure (e.g. energy consumption and emissions from the transport of batteries and lack of economies of scale to control them).

Amendment 36
Article 15

Article 15	***deleted***
Small producers	
De minimis rules for the application of Articles 13(1) and 14 shall, if appropriate, be established in accordance with the procedure referred to in Article 21(2) no later than ...*.	

**** 42 months after entry into force of this Directive***

Justification

The possibility of a de minimis for small producers will provide a loophole for free-riders and will jeopardise the credibility of each national system. All the actors in the chain need to take up their part of the responsibilities. This addition of the Council should therefore be deleted.

Amendment 37
Article 17, paragraph 2 a (new)

2a. Member States shall ensure that distributors of portable batteries or accumulators inform end-users about the possibility of discarding waste portable batteries or accumulators at their sales points.

Amendment 38
Article 18, paragraph 1, subparagraph 1a (new)

Member States shall ensure that the capacity of all batteries, accumulators and battery packs is indicated on them in a visible, legible and indelible form.

Justification

Re-introduces amendment 58 of EP first reading, which was accepted by the European Commission (COM(2005)0378).

Non-rechargeable batteries vary largely in price, which is partially due to their different capacity. All sorts of qualitative claims are made about the performance of non-rechargeable batteries. While information about the capacity is already given for rechargeable batteries, this is not yet the case of non-rechargeable ones. In order to ensure clear and transparent information, consumers should be informed about the capacity of all batteries.

Amendment 39
Article 23, paragraph 1

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ... ***at the latest.***	1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by .....**.**

Justification

The transposition date in Member States should be fixed and not left open in order to ensure harmonization of the implementation of this Directive within 25 Member States.

Amendment 40
Annex II a (new)

	ANNEX IIa
	LIST OF CATEGORIES OF APPLIANCE EXCLUDED FROM THE SCOPE OF ARTICLE 5
	1. Those appliances whose batteries are soldered, welded or otherwise permanently attached to terminals to ensure continuity of power supply in demanding industrial usage and to preserve the memory and data functions of information technology and business equipment, where use of the batteries and accumulators referred to in Annex I is technically necessary.
	2. Reference cells in scientific and professional equipment, and batteries and accumulators placed in medical devices designed to maintain vital functions and in heart pacemakers, where uninterrupted functioning is essential and the batteries and accumulators can be removed only by qualified personnel.
	3. Portable appliances, where replacement of the batteries by unqualified personnel could present safety hazards to the user or

	could affect the operation of the appliance, and professional equipment intended for use in highly sensitive surroundings, for example in the presence of volatile substances.

Justification

This amendment introduces the concept that removeability should be facilitated.

Provisions are in line with Article 4 of the WEEE directive and carry over Article 5 of the 1991/157 batteries directive.

It re-instates Parliament's First Reading Amendment 92 to Article 5. paragraph 1 a (new).

Amendment 41
Annex III, Part B

3. *Recycling* processes ***shall*** achieve the following minimum recycling ***targets***:	3. ***Member States shall ensure that*** *recycling* processes achieve the following minimum recycling ***efficiencies***:
(a) recycling of 65% by average weight of lead-acid batteries and accumulators, ***including recycling of*** the lead ***content to the highest degree that is technically feasible while avoiding excessive costs***;	(a) recycling of 65% by average weight of lead-acid batteries and accumulators, ***and a closed loop for all*** the lead ***contained***;
(b) recycling of 75% by average weight of nickel-cadmium batteries and accumulators, ***including recycling of*** the cadmium ***content to the highest degree that is technically feasible while avoiding excessive costs***; and	(b) recycling of 75% by average weight of nickel-cadmium batteries and accumulators, ***and a closed loop for all*** the cadmium ***contained***; and
(c) recycling of ***50%*** by average weight of other waste batteries and accumulators.	(c) recycling of ***55%*** by average weight of other waste batteries and accumulators.
	The proposed minimum recycling efficiencies are to be evaluated regularly and adapted to best available technology and scientific and technical progress in accordance with the procedure referred to in Article 21.

Justification

Re-introduces amendment 43 of EP first reading.

EXPLANATORY STATEMENT

Introduction and background

The main problem with batteries and accumulators is the presence of the heavy metals mercury, lead and cadmium. The damaging effects of the heavy metals mercury, cadmium and lead on the environment and health are clearly described in the original Commission proposal (COM(2003)723).

Already in its resolution of 25 January 1998, the Council asked the Commission to submit as soon as possible a proposal for a Community action programme to combat pollution of the environment with cadmium.

In accordance with Article 8 of Decision No 1600/2002/EC of the European Parliament and of the Council of 22 July 2002 laying down the Sixth Community Environment Action Programme, the objective of the proposed Directive is:
• to restrict the disposal of waste batteries and accumulators;
• to reduce the volumes of hazardous batteries and accumulators produced; and
• to increase the level of collection and recycling of waste batteries and accumulators.

The Commission adopted its proposal for a new Directive on batteries and accumulators on 24 November 2003. The European Parliament adopted its first-reading on 20 April 2004. The Council adopted its common position on 18 July 2005.

The main objectives, as adopted by the European Parliament in first reading, are:

1. the prevention of the use of heavy metals in batteries and accumulators
2. the collection, treatment, recycling and disposal of all waste batteries and accumulators in order to avoid the disposal of batteries containing hazardous substances
3. recycling the useful substances in batteries and accumulators
4. improving the environmental performance of batteries and accumulators

Analysis of the Common Position

The common position incorporates many of the European Parliament's first-reading amendments, either verbatim, in part or in spirit. However, it does not reflect a number of amendments. The European Commission can support the common position taken as a package, provided that the level of environmental ambition is at least equivalent to the Commission's proposal, in particular with respect to collection and recycling objectives. The 4 main items of the first reading are discussed below:

1. Prevention of heavy metals
The main problem with batteries and accumulators is the presence of the heavy metals mercury, lead and cadmium. In 1998 mercury-containing (= more than 5 ppm mercury)

batteries are prohibited for that reason, with an exemption for button cells in hearing aids and watches. The damaging effects of the heavy metals mercury, cadmium and lead on the environment and health are clearly described in the original Commission proposal. In the meantime, related EU legislation has banned the use of the heavy metals mercury, lead and cadmium in components and materials in vehicles placed on the market after 1 July 2003 and in new electrical and electronic equipment placed on the market after 1 July 2006.

The Parliament adopted a ban on mercury, cadmium and lead for all batteries, added with a list of exemptions. The Council, however adopted only a ban on mercury and cadmium for portable batteries, added with exemptions for emergency and alarm systems (including emergency lighting), medical equipment and cordless power tools. This means no ban on Nickel-Cadmium (NiCd) batteries for medical equipment and cordless power tools and no prevention measures for lead at all.

This is strange, because cadmium and lead are being removed from existing products (scrap vehicles, WEEE, PVC, plastics, etc.). As this directive incorporates measures restricting various damaging substances, it would also be logical to take similar measures with regard to the hazardous substances contained in batteries. Moreover, there is a clear trend towards nickel-metal hydride (NiMH) and lithium ion (Li-ion) batteries as replacements for NiCd batteries in electronic equipment.

Nickel Metal Hydride batteries are used already for 15 years and can offer up to three times the capacity of the same size standard Nickel Cadmium batteries. Due to their increased capacity and energy density features, users can expect a longer time between charges and longer running time. NiMH batteries can rapidly be charged and do not have memory effects. NiMH batteries are for example applied in cameras, cellular mobile telecom products, Notebook PC's, portable VCRs, TVs, portable stereos and CD players, cordless vacuum cleaners and cordless Power Tools.

Rechargeable Lithium ion Batteries are even more promising because of the high energy density, high capacity, light weight and high power.

Almost all battery producers produce the NiMH and Li-ion batteries as alternative for NiCd batteries for a large range of applications. NiMH and Li-ion batteries are promoted on many websites of battery producers, including for medical applications, emergency lightning and cordless power tools. A ban on NiCd batteries is justified. Such a ban will prevent the damaging and polluting effects of cadmium.

Different arguments are used for not banning NiCd batteries for cordless power tools. Fact is that NiMH batteries cannot be recharged as many times as NiCd batteries, but the capacity of NiMH is higher, so the lifetime capacity is similar to that of NiCd batteries. Above this NiMH batteries do not discharge during no-use, as NiCd batteries do. Another fact is that the performance of NiMH batteries in low temperature areas is similar to the performance of NiCd batteries. Also in the case of power tools, a NiMH battery is a good alternative for a NiCd battery. This is also stressed by the fact that there are many producers of NiMH batteries for cordless power tools[1].

[1] http://www.batteryprice.com/index.asp?PageAction=VIEWCATS&Category=109

A recent technological breakthrough from Milwaukee Electric Tool Company has resulted in the market introduction of Li-ion batteries for cordless power tools since July 2005. This battery now provides 28 volts of power at a weight that is slightly less than the current (NiMH and NiCd) 18 volt battery. The benefit of that added voltage lies in the fact that the new battery delivers significantly more power, up to twice the run time, and fade-free, consistent power throughout each usage cycle. In addition, unlike NiCd and NiMH battery platforms, the new Li-ion battery performs significantly better in extreme conditions such as hot or cold temperatures[1].

Recently, also alternatives for industrial NiCd batteries are produced with a new Nickel-Zinc technology. The energy performance of these batteries is 50% higher and has lower costs. This battery can in the future possibly also be used in hybrid or completely electric vehicles.

In brief, if one wishes to make progress from the point of view of the environment by means of this directive, one should at least, where possible, limit the use of the heavy metals mercury, cadmium and lead in batteries. Because of widely available alternatives, this applies also for cadmium in emergency lightning, medical application and cordless power tools.

2. Collection
The European parliament decides in its first reading to collect 50% after six years and to collect 60% of the sealed portable batteries after ten years. The Council changed this is less ambitious target of 25% and 45% respectively.

3. Recycling
These provisions are accepted by the Council in general. The recycling-efficiencies in Annex IIIB are similar to the position of the European Parliament in first reading. The Council however did not accept the Parliament's proposal for a closed loop of the lead or cadmium contained in a battery.

4. Environmental Performance
In the first reading the Parliament adopted provisions on the performance of batteries. This is not accepted in the Common position. It is however important that Member States promote research and encourage the producers to improve the overall environmental performance of batteries and accumulators throughout their entire life-cycle. Also the development and marketing of batteries and accumulators which contain smaller quantities of dangerous substances or which contain less polluting substances, in particular as substitutes for mercury, cadmium and lead is important.

Regarding labelling, the capacity of all batteries, accumulators and battery packs has to be indicated on them in a visible, legible and indelible form. On the basis of this information, consumers are able to choose for batteries with a higher performance and lifetime. Some batteries are cheap, but have a much shorter lifetime. For example the capacity of Alkaline batteries is about four times higher than the capacity of the Zinc-Carbon batteries. Allthough the price of the Zinc-Carbon batteries is half of the price of Alkaline batteries, buying Alkaline batteries is about two times more economic considering the capacity. Above this,

[1] http://www.mytoolstore.com/milwauke/v28_01.html

Zinc-Carbon batteries contain much more lead: this is an important environmental reason not preferring Zinc-Carbon batteries.

PROCEDURE

Title	Council common position for adopting a directive of the European Parliament and of the Council on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/157/EEC
References	5694/5/2005 – C6-0268/2005 – 2003/0282(COD))
Date of Parliament's first reading – P number	20.4.2004 P5_TA(2004)0304
Commission proposal	COM(2003)0723 – C5-0563/2006
Amended Commission proposal	
Date receipt of common position announced in plenary	8.9.2005
Committee responsible Date announced in plenary	ENVI 8.9.2005
Rapporteur(s) Date appointed	Hans Blokland 14.9.2005
Previous rapporteur(s)	
Discussed in committee	14.9.2005
Date adopted	22.11.2005
Result of final vote	+: 45 –: 10 0: 0
Members present for the final vote	Adamos Adamou, Georgs Andrejevs, Irena Belohorská, Johannes Blokland, Frederika Brepoels, Hiltrud Breyer, Dorette Corbey, Chris Davies, Avril Doyle, Mojca Drčar Murko, Edite Estrela, Françoise Grossetête, Cristina Gutiérrez-Cortines, Matthias Groote, Satu Hassi, Mary Honeyball, Marie Anne Isler Béguin, Caroline Jackson, Dan Jørgensen, Christa Klaß, Eija-Riitta Korhola, Holger Krahmer, Urszula Krupa, Aldis Kušķis, Marie-Noëlle Lienemann, Peter Liese, Roberto Musacchio, Riitta Myller, Péter Olajos, Dimitrios Papadimoulis, Vittorio Prodi, Frédérique Ries, Dagmar Roth-Behrendt, Guido Sacconi, Carl Schlyter, Richard Seeber, Kathy Sinnott, Jonas Sjöstedt, Bogusław Sonik, María Sornosa Martínez, Evangelia Tzampazi, Thomas Ulmer, Marcello Vernola, Anja Weisgerber, Åsa Westlund
Substitute(s) present for the final vote	Margrete Auken, David Casa, Christofer Fjellner, Milan Gaľa, Vasco Graça Moura, Erna Hennicot-Schoepges, Anne Laperrouze, Robert Sturdy, Andres Tarand
Substitute(s) under Rule 178(2) present for the final vote	Christopher Heaton-Harris
Date tabled	24.11.2005
Comments (available in one language only)	...