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NOTE

from: General Secretariat
to: Working Party on the Environment

No. prev. doc.: 16303/04 ENV 712 ENT 165 CODEC 1373
No. Cion prop.: 15494/03 ENV 655 ENT 221 CODEC 1704 - COM(2003) 723 final

Subject: Proposal for a Directive of the European Parliament and of the Council on
batteries and accumulators and waste batteries and accumulators
– Recitals

On 20 December 2004, the Council reached political agreement on the above-mentioned proposal. The Annex to document 16303/04 contains the agreed Articles of, and Annexes to, the Directive.

The Annex to this note contains Presidency suggestions for the recitals to the Directive. These:

- are based on the Commission's original proposal;
- incorporate amendment 4 from the European Parliament's first-reading opinion (recital 15), which is the only amendment to the recitals that the Commission accepted and is relevant to the text on which the Council reached political agreement; and
- comprise other modifications necessary to ensure consistency with the agreed Articles and Annexes (in particular, the inclusion of new recitals specified in the footnotes to document 15995/04 ADD 1 and deletions to avoid duplication).

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on batteries and accumulators and waste batteries and accumulators
(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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,

Having regard to the proposal from the Commission,¹

Having regard to the opinion of the European Economic and Social Committee,²

Having regard to the opinion of the Committee of Regions,³

Acting in accordance with the procedure laid down in Article 251 of the Treaty,⁴

Whereas:

- (1) It is desirable to harmonise national measures concerning batteries and accumulators and waste batteries and accumulators. The primary objective of the Directive is to minimise the 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 on 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 OJ C 96, 21.4.2004, p. 29.

² Adopted on 3 May 2004 (not yet published in the Official Journal).

³ Adopted on 22 April 2004 (not yet published in the Official Journal).

⁴ Opinion of the European Parliament of 20 April 2004 (not yet published in the Official Journal), common position of the Council of (OJ C) and Decision of the European Parliament of (OJ C).

- (2) The Commission's Communication on the Review of the Community Strategy for Waste Management of 30 July 1996 established guidelines for future Community waste policy. That Communication stressed the need to reduce the quantities of hazardous substances in waste and points out the potential benefits of Community-wide rules limiting the presence of such substances in products and in production processes. It further states that, where the generation of waste cannot be avoided, that waste should be reused or recovered for its material or energy.
- (3) Council Directive 91/157/EEC of 18 March 1991 on batteries and accumulators containing certain dangerous substances⁵ has brought about an approximation of Member States' laws in this field. However, the objectives of that Directive have not been fully attained. The Sixth Community Environment Action Programme and Directive 2002/96/EC on waste electrical and electronic equipment⁶ also underlined the need to revise it. Directive 91/157/EEC should therefore be revised and replaced in the interests of clarity.
- (3a) In order to achieve its environmental aims, this Directive prohibits the placing on the market of certain batteries and accumulators containing mercury or cadmium. It also promotes a high level of collection and recycling of waste batteries and accumulators and improved environmental performance of all operators involved in the life cycle of batteries and accumulators, e.g. producers, distributors and end-users and, in particular, those operators directly involved in the treatment and recycling of waste batteries and accumulators. The specific rules needed to do this supplement existing Community legislation on waste, in particular Directive 75/442/EEC on waste⁷, Directive 1999/31/EC on the landfill of waste⁸ and Directive 2000/76/EC on the incineration of waste⁹.

⁵ OJ L 78, 26.3.1991, p. 38. Directive as last amended by Commission Directive 98/101/EC (OJ L 1, 5.1.1999, p. 1).

⁶ OJ L 37, 13.2.2003, p.24.

⁷ OJ L 194, 25.7.1975, p. 39. Directive as last amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).

⁸ OJ L 182, 16.7.1999, p. 1. Directive as last amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).

⁹ OJ L 332, 28.12.2000, p. 91.

[...]

- (5) In order to prevent batteries and accumulators from ending up in the environment, and to avoid consumer 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.
- (6) Reliable batteries and accumulators are fundamental for the safety of many products, appliances and services and are an essential energy source in our society.
- (6a) It is appropriate to distinguish between portable batteries and accumulators on the one hand and industrial and automotive batteries and accumulators on the other. The disposal of untreated automotive and industrial batteries and accumulators in landfill sites or by incineration should be prohibited. For portable batteries, collection systems achieving a high collection rate should be established. Different collection systems and financing arrangements are also appropriate for the different battery types.

- (6b) Industrial batteries and accumulators should be all batteries and accumulators designed for exclusively industrial or professional purposes. This includes 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. It also includes 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 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. The definition of industrial batteries and accumulators also includes 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 is to be considered to be industrial.
- (6c) Portable batteries and accumulators should be 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. This includes 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.

- (7) [...] The Commission should evaluate the need for adaptation of the Directive, taking account of [...] available technical and scientific evidence. In particular, the Commission should carry out an early review of the exemption from the cadmium ban granted to portable batteries and accumulators intended for use in cordless power tools. Cordless power tools include tools that consumers and professionals use for turning, milling, sanding, grinding, sawing, cutting, shearing, drilling, making holes, punching, hammering, riveting, screwing, polishing or similar processing of wood, metal and other materials, as well as for mowing, cutting and other gardening activities.
- (7a) The Commission should also monitor, and Member States should encourage, technological developments that improve the environmental performance of batteries and accumulators throughout their entire lifecycle, including through participation in a Community eco-management and audit scheme (EMAS).
- (8) In order to protect the environment, waste batteries and accumulators should be collected. This means setting up collection schemes so that end-users can discard all waste portable batteries and accumulators conveniently and free of charge.
- (9) It is desirable for Member States to achieve a high collection and recycling rates for waste batteries and accumulators so as to achieve a high level of environmental protection and material recovery throughout the Community. It is appropriate to calculate the collection rate on the basis of average annual sales in preceding years, so as to have uniform targets for all Member States that are proportionate to the national level of battery consumption.
- (10) [...] Specific recycling requirements should be established for cadmium and lead batteries and accumulators in order to attain a high level of material recovery throughout the Community and to prevent disparities between Member States.
- (11) All interested parties should be able to participate in collection, treatment and recycling schemes. Those schemes should be designed to avoid discrimination against imported products, barriers to trade or distortions of competition [...].

- (12) Collection and recycling schemes should be optimised, in particular in order to minimise overall costs and the negative environmental impact of transport. Treatment and recycling schemes should use best available techniques, as defined in Article 2(11) of Directive 96/61/EC concerning integrated pollution prevention and control.¹⁰
- (13) 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, for instance if the administrative costs were disproportionate compared to the size of small producers' potential contribution, the application of *de minimis* rules could be justified. It is therefore appropriate to provide for the adoption of relevant rules on the basis of the comitology procedure.
- [...]
- (15) The provision of information to end-users on the desirability of separate collection, the collection schemes available and end-users' role in the management of waste batteries and accumulators is necessary for successful collection. Detailed arrangements should be made for a labelling system, which should provide end-users with transparent, reliable and clear information on batteries and accumulators and the heavy metals they contain.
- (16) If, in order to achieve the objectives of this Directive, and, in particular, to achieve high separate collection and recycling rates, Member States use economic instruments, such as differentiated tax rates, they should inform the Commission accordingly.
- (17) Reliable and comparable data on the quantities of batteries and accumulators placed on the market collected and recycled are necessary for the monitoring of whether the objectives of this Directive have been achieved.

¹⁰ OJ L 257, 10.10.1996. p. 26. Directive as last amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).

- (18) Member States should lay down rules on the penalties applicable to infringements of the provisions of this Directive and ensure that they are implemented. Those penalties must be effective, proportionate and dissuasive.
- (19) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission.
- (20) Since the objectives of this Directive - protecting the environment and ensuring the proper functioning of the internal market - cannot be sufficiently achieved by Member States and can therefore, by reasons of the scale or effects of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (21) This Directive applies without prejudice to Community legislation on safety, quality and health requirements and specific Community waste management legislation, in particular Directive 2000/53/EC on end-of life vehicles¹¹ and Directive 2002/96/EC on waste electrical and electronic equipment.
- (22) As regards producer responsibility, producers of individual batteries and accumulators and producers of other products incorporating a battery or accumulator are responsible for the waste management of batteries and accumulators that they place on the market. A flexible approach is appropriate to enable financing schemes to reflect differing national circumstances and to take account of existing schemes, particularly those set up to comply with Directives 2000/53/EC and 2002/96/EC, while avoiding double charging.

¹¹ OJ L 269, 21.10.2000, p. 34.

- (23) Directive 2002/95/EC on the restriction of hazardous substances in electrical and electronic equipment¹² does not apply to batteries and accumulators used in electrical and electronic equipment.
- (24) Automotive and industrial batteries and accumulators used in vehicles should meet the requirements of Directive 2000/53/EC, in particular Article 4 thereof. Therefore the use of cadmium in industrial batteries and accumulators for electrical vehicles is prohibited, unless they can benefit from an exemption on the basis of Annex II to that Directive [...].

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¹² OJ L 37, 13.2.2003, p. 19.