

# EUROPEAN PARLIAMENT

1999



2004

---

*Committee on the Environment, Public Health and Consumer Policy*

PROVISIONAL  
2003/0282(COD)

29 January 2004

**\*\*\*I**

## **DRAFT REPORT**

on the proposal for a European Parliament and Council directive on batteries and accumulators and spent batteries and accumulators  
(COM(2003) 723 – C5-0563/2003 – 2003/0282(COD))

Committee on the Environment, Public Health and Consumer Policy

Rapporteur: Hans Blokland

### ***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.

## CONTENTS

|  | <b>Page</b> |
|--|-------------|
| PROCEDURAL PAGE.....   | 4           |
| DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION.....                              | 5           |
| EXPLANATORY STATEMENT.....   | 34          |
| OPINION OF THE COMMITTEE ON INDUSTRY, EXTERNAL TRADE,<br>RESEARCH AND ENERGY ..... |             |

## PROCEDURAL PAGE

By letter of 24 November 2003 the Commission submitted to Parliament, pursuant to Articles 251(2) and 95 and 175(1) of the EC Treaty, the proposal for a European Parliament and Council directive on batteries and accumulators and spent batteries and accumulators (COM(2003) 723 – 2003/0282(COD)).

At the sitting of 15 December 2003 the President of Parliament announced that had referred the proposal to the Committee on the Environment, Public Health and Consumer Policy as the committee responsible and the Committee on Industry, External Trade, Research and Energy for its opinion (C5-0563/2003).

The Committee on the Environment, Public Health and Consumer Policy had appointed Hans Blokland rapporteur at its meeting of 27 November 2003.

The committee considered the Commission proposal and draft report at its meetings of 16 February 2003 and ....

At the last meeting it adopted the draft legislative resolution by ... votes to ..., with ... abstention.

The following were present for the vote: Caroline F. Jackson (chairman), Mauro Nobilia (vice-chairman), Alexander de Roo (vice-chairman), Guido Sacconi (vice-chairman), Hans Blokland (rapporteur), ... (for ...), ... (for ... pursuant to Rule 153(2)), ... and ....

The opinion of the Committee on Industry, External Trade, Research and Energy is attached.

The report was tabled on ....

## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a European Parliament and Council directive on batteries and accumulators and spent batteries and accumulators  
(COM(2003) 723 – C5-0563/2003 – 2003/0282(COD))

(Codecision procedure: first reading)

*The European Parliament,*

- having regard to the Commission proposal to the European Parliament and the Council (COM(2003) 723)<sup>1</sup>,
  - having regard to Articles 251(2) and 95(1) and 175(1) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C5-0563/2003),
  - having regard to Rule 67 of its Rules of Procedure,
  - having regard to the report of the Committee on the Environment, Public Health and Consumer Policy and the opinion of the Committee on Industry, External Trade, Research and Energy (A5-0000/2004),
1. Approves the Commission proposal as amended;
  2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
  3. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission

Amendments by Parliament

Amendment 1  
Preamble, paragraph 2

Having regard to the Treaty establishing the European Community, and in particular **Articles 95 (1) and** 175 (1) thereof,

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.*

---

<sup>1</sup> OJ C ... / Not yet published in OJ.

Amendment 2  
Recital 1

(1) The different national measures concerning batteries and spent batteries should be harmonised in view of the double objective to minimise the impact of batteries and spent batteries on the environment, thus contributing to the protection, preservation and improvement of the quality of the environment **and to ensure the smooth functioning of the internal market and avoid distortions of competition in the Community.**

(1) The different national measures concerning batteries and spent batteries should be harmonised in view of the double objective to minimise the impact of batteries and spent batteries on the environment, thus contributing to the protection, preservation and improvement of the quality of the environment.

*Justification*

*Consistent with the amendment for a single legal base: environment.*

Amendment 3  
Recital 4

***(4) The objective of the provisions on minimum requirements for the collection, treatment and recycling of spent batteries and accumulators and consumer information (Chapters IV – VII) is the protection of the environment and the legal basis for those provisions is therefore Article 175(1) of the Treaty. The objective of the provisions related to product requirements, placing on the marking and labelling in Chapters II, III, VIII and Annex II is to ensure the proper functioning of the internal market and the legal basis for those provisions is therefore Article 95(1) of the Treaty.***

*deleted*

*Justification*

*Consistent with the amendment for a single legal base: environment.*

Amendment 4  
Recital 7

(7) In order to achieve a high level of protection of human and animal health and of the environment, the marketing of certain batteries and accumulators should be prohibited because of the quantity of heavy metals they contain. ***The quantities of spent nickel-cadmium batteries and accumulators disposed of in the waste stream should be monitored. The Commission should evaluate the need for an adaptation of the Directive, taking account of the results of the monitoring and of available technical and scientific evidence.***

(7) In order to achieve a high level of protection of human and animal health and of the environment, the marketing of certain batteries and accumulators should be prohibited because of the quantity of heavy metals they contain.

*Justification*

*According to the waste-hierarchy preventing the entrance of heavy metals in the waste stream is the best option. Some years after the prohibition of heavy metals the monitoring of nickel-cadmium batteries is not necessary any more.*

Amendment 5  
Recital 10

(10) In the light of the specific environmental and health concerns regarding cadmium, mercury and lead and the particular characteristics of batteries and accumulators containing cadmium, mercury and lead additional measures should be adopted. The use of mercury in batteries should be ***restricted***. Final disposal of automotive and industrial batteries should be prohibited. ***An additional collection target should be set for portable nickel-cadmium batteries.*** Moreover, specific recycling requirements should be established for cadmium and lead batteries in order to attain a high level of materials recovery throughout the Community and to prevent disparities

(10) In the light of the specific environmental and health concerns regarding cadmium, mercury and lead and the particular characteristics of batteries and accumulators containing cadmium, mercury and lead additional measures should be adopted. The use of mercury in batteries should be ***prohibited***. Final disposal of automotive and industrial batteries should be prohibited. ***The use of portable nickel-cadmium batteries and portable lead batteries should be prohibited. If no alternative exists, exemptions can be made for some essential applications.*** Moreover, specific recycling requirements should be established for ***the remaining*** cadmium and lead batteries in order to attain a high

between the Member States.

level of materials recovery throughout the Community and to prevent disparities between the Member States.

*Justification*

*The main objective of this Directive is the prevention of heavy metals in batteries and accumulators. Cadmium, Mercury and Lead have a significant impact on the quality of the environment. In line with the ELV directive as well as the ROHS- and WEEE-directive, the metals should also be prohibited in batteries and accumulators, where possible.*

Amendment 6

Recital 11

(11) All interested parties should be able to participate in collection and recycling schemes. Those schemes should be designed to avoid discrimination against imported products, barriers to trade or distortions of competition and should guarantee the maximum possible returns of spent batteries and accumulators. ***For a transitional period, producers*** should be allowed, ***on a voluntary basis at the time of sale of new products***, to show purchasers the costs of ***managing waste in the past***. Producers making use of that provision should ensure that the costs mentioned do not exceed the actual costs incurred.

(11) All interested parties should be able to participate in collection and recycling schemes. Those schemes should be designed to avoid discrimination against imported products, barriers to trade or distortions of competition and should guarantee the maximum possible returns of spent batteries and accumulators. ***Producers*** should be allowed to show purchasers the costs of ***collection, treatment and recycling of spent portable batteries and accumulators***. Producers making use of that provision should ensure that the costs mentioned do not exceed the actual costs incurred.

*Justification*

*The Battery Directive shall allow producers to show their cost for collection and recycling to their customers. A visible fee will be the tool that will first and foremost inform the consumer that the portable battery will be treated at end of life and therefore needs to be disposed of correctly. The visible fee will also allow for making the consumer aware of the financial impact of the recycling of portable batteries. This fee would be differentiated according to the actual costs of collection and recycling of that particular battery system and would also therefore reflect the efficiency of the collection and recycling schemes ensuring a continuous drive for improvement.*

Amendment 7  
Recital 15

(15) **Consumer** information on separate collection, the collection schemes available and the **consumer's** role in the management of spent batteries and accumulators is necessary for successful collection. Detailed arrangements should be made for a marking system, which should provide the **consumer** with transparent, reliable and clear information on the collection of batteries and accumulators and the heavy metals they contain.

(15) **End-user** information on separate collection, the collection schemes available and the **end-user's** role in the management of spent batteries and accumulators is necessary for successful collection. Detailed arrangements should be made for a marking system, which should provide the **end-user** with transparent, reliable and clear information on the collection of batteries and accumulators and the heavy metals they contain.

*Justification*

*Marking systems should not be directed only at consumers but at all end end-users and ensure they can also participate in the management of spent batteries and accumulators.*

Amendment 8  
Recital 20

(20) Since the objectives of this Directive of protecting the environment **and ensuring the proper functioning of the internal market** cannot be sufficiently achieved by the 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.

(20) Since the objectives of this Directive of protecting the environment cannot be sufficiently achieved by the 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.

*Justification*

*Consistent with the amendment for a single legal base: environment.*

Amendment 9  
Article 1

This Directive *establishes rules regarding the marketing of* batteries and accumulators *as well as* the collection, treatment and recycling of spent batteries and accumulators.

*The purpose of this Directive is, as a first priority, the prevention of heavy metals in batteries and accumulators, and in addition the collection, treatment and recycling of spent batteries and accumulators in order to avoid the disposal of hazardous substances and to recover the useful substances. It also seeks to improve the environmental performance of batteries and accumulators as well as of all operators involved in the life cycle of electrical and electronic equipment, e.g. producers, distributors and consumers and in particular those operators directly involved in the treatment of waste of batteries and accumulators.*

*Justification*

*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. The prevention strategy must also focus on incentives to the battery industry to develop and produce batteries which last longer (less resources used for the same amount of battery energy) and which contain less hazardous substances. As a second priority the European Battery Directive shall promote and harmonise the collection and recycling of batteries.*

Amendment 10  
Article 2, paragraph 2

2. This Directive shall not apply to batteries and accumulators used in equipment *connected with protection of essential interests of the security of Member States, including* military material, or in arms and munitions intended for specifically military purposes.

2. This Directive shall not apply to batteries and accumulators used in equipment *for* military material, or in arms and munitions intended for specifically military purposes, *nor to batteries and accumulators used in vehicles and equipment designed to be sent into space.*

*Justification*

*More precise wording and granting an exemption for space exploration.*

Amendment 11  
Article 3, point 1

(1) “battery” means any source of electrical energy generated by direct conversion of chemical energy and consisting of one or more primary battery cells (non-rechargeable);

(1) “battery **or accumulator**” means any source of electrical energy generated by direct conversion of chemical energy and consisting of one or more primary battery cells (non-rechargeable) **or consisting of one or more secondary battery cells (rechargeable)**;

*Justification*

*There is no need to make a difference between battery and accumulator in this Directive: the same provisions apply to both.*

Amendment 12  
Article 3, point 2

(2) “**accumulator**” means any source of electrical energy generated by direct conversion of chemical energy and consisting of one or more secondary battery cells (rechargeable); **deleted**

*Justification*

*There is no need to make a difference between battery and accumulator in this Directive: the same provisions apply to both.*

Amendment 13  
Article 3, point 3

(3) “battery pack” means any set of batteries or accumulators encapsulated in an outer casing into one complete unit, not intended to be opened by the consumer;

(3) “battery pack” means any set of batteries or accumulators **connected together and may be** encapsulated in an outer casing into one complete unit, not intended to be opened by the consumer;

*Justification*

*Technical clarification.*

Amendment 14  
Article 3, point 4

(4) “portable battery or accumulator” means a battery or accumulator used in household applications, cordless power tools, emergency lighting and electrical and electronic equipment or other applications by either consumers or professional users;

(4) “portable battery or accumulator” means a battery, **battery pack** or accumulator used in household applications, cordless power tools, emergency lighting and electrical and electronic equipment or other applications by either consumers or professional users;

*Justification*

*Includes battery packs.*

Amendment 15  
Article 3, point 5

(5) “button cell **or accumulator**” means a small round battery or accumulator whose diameter is greater than its height and which is used for special purposes such as hearing aids, watches and small portable equipment;

(5) “button cell” means a small round battery or accumulator whose diameter is greater than its height and which is used for special purposes such as hearing aids, watches, small portable equipment **and back up power**;

*Justification*

*Button cells are also in large appliances such as TVs and computers to provide back-up power.*

Amendment 16  
Article 4

1. Member States shall prohibit the marketing of all batteries or accumulators, whether or not incorporated into appliances, which contain more than **0.0005% of mercury by weight.**

1. ***Without prejudice to Directive 2000/53/EC***, Member States shall prohibit the marketing of all batteries or accumulators, whether or not incorporated into appliances, which contain more than:

***a) 5 ppm Mercury; and/or***

***b) 40 ppm Lead; and/or***

***c) 20 ppm Cadmium***

**2. Button cells, and batteries made up of button cells with a mercury content of no more than 2% by weight shall be exempt from the prohibition referred to in paragraph 1.**

**2. This prohibition shall not apply to the applications listed in Annex I.**

#### *Justification*

*In the explanatory memorandum of the Commission proposal is mentioned the following regarding the toxicity of the heavy metals mercury, cadmium and lead (page 9 to 12):*

- **Mercury:** *Mercury is known for a variety of documented, significant adverse impacts on human health and the environment. Mercury and its compounds are highly toxic, especially to the developing nervous system.<sup>1</sup>*
- **Cadmium:** *Cadmium (Cd) is a toxic and carcinogenic substance. The International Agency for Research on Cancer has identified Cd as a known human carcinogen. Epidemiological studies of Cd-exposed workers show excess lung cancer. The main non-cancer endpoint of concern is kidney damage. Bone and haematological disorders have also occurred at high level exposure. A wider range of organ toxicity has been demonstrated in animals.<sup>2</sup>*
- **Lead:** *Above certain concentrations, lead is toxic to humans. Continued or acute overexposure to lead can cause severe and cumulative health problems. Lead affects the major organs as well as the central nervous and circulatory systems. Lead exposure is most serious for young children because they absorb lead more easily than adults and are more susceptible to its harmful effects. During pregnancy, especially in the last trimester, lead can cross the placenta and affect the unborn child. Lead can have adverse effects on the ecosystem, including interference with growth and productivity of marine life, and toxicity of fish.<sup>3</sup>*

*Mercury, cadmium and lead are already prohibited in the ELV- and ROHS-directive (some exemptions granted). Mercury is also prohibited in the existing batteries directive (button cells excluded).*

*This Article applies without prejudice to the ELV Directive. This means that for automotive lead-acid batteries and NiCd batteries for electrical vehicles the heavy metal ban of Article 4 (2) (a) of the ELV Directive applies. Automotive lead-acid batteries are exempted from the lead-ban of the ELV-directive, because the use of lead in lead-acid batteries is unavoidable (see Article 4 (2) (b) (ii) of the ELV Directive)..*

---

<sup>1</sup> See Global Mercury Assessment, United Nations Environmental Programme, Chemicals; Geneva, Switzerland, December 2002.

<sup>2</sup> See Risk Assessment, Cadmium oxide / Cadmium metal; Final Draft, July 2003 [http://ecb.jrc.it/php-pgm/open\\_file.php?ITEM=Draft\\_RAR&CASNO=7440439&FICHER=DOCUMENTS/Existing-Chemicals/RISK\\_ASSESSMENT/DRAFT/R303\\_0307\\_env\\_hh.pdf](http://ecb.jrc.it/php-pgm/open_file.php?ITEM=Draft_RAR&CASNO=7440439&FICHER=DOCUMENTS/Existing-Chemicals/RISK_ASSESSMENT/DRAFT/R303_0307_env_hh.pdf) and Results of the 2<sup>nd</sup> SCOPE Environmental Cadmium workshop, University of Ghent, Belgium, September 2003 <http://www.icsu-scope.org/cdmeeting/2003meeting/cdindex.htm>.

<sup>3</sup> See report "Risks to Health and the Environment related to the Use of Lead in Products"; TNO report STB-01-39 (Finals) <http://europa.eu.int/comm/enterprise/chemicals/legislation/markrestr/studies/lead.pdf>.

*Commission Decision 2002/525/EC, amending Annex II of the ELV Directive,<sup>1</sup> grants an exemption for the use of cadmium in batteries for electric vehicles until 31 December 2005. However, Article 2(2) of Commission Decision 2002/525/EC stipulates: “in the framework of the overall environmental assessment already undertaking, the Commission shall continue to analyse the progressive substitution of cadmium, taking into account the need to maintain the availability of electrical vehicles. The Commission shall finalise and make public its findings by 31 December 2004 at the latest and may make, if proven justified by the results of the analysis, a proposal to extend the deadline in accordance with Article 4(2)(b) of Directive 2000/53/EC”.*

*As all batteries and accumulators are used in electrical appliances the prevention of heavy metals in the use of electrical appliances must be consistent with the measures of the ROHS Directive. It seems to be absurd, that manufacturers of electrical and electronic appliances are forced to reduce the level of cadmium, lead and mercury at a ppm level, while batteries used in such appliances still contain high levels of the heavy metals. From the battery industry it is known, that for the not rechargeable batteries (Alkaline, Zinc-Carbon batteries), which represent more than 85% of the total portable battery market these limits can be achieved today. On page 31 of the explanatory memorandum of the Commission proposal COM(2003)723 is mentioned that “For household appliances, the trend now seems to be towards substitution of NiCd batteries by other types (e.g. NiMH and Li-Ion)”.*

*A list of exemptions shall be provided for those applications where the use of the heavy metals is unavoidable; in other words, where no substitutes exist. . This list of exemptions shall be reviewed to ensure that always the latest development on technology is reflected in this list. It is the objective of the Battery Directive that the use of cadmium, lead and mercury is prohibited in case the use is avoidable.*

*Whereas for portable NiCd batteries for electronic equipment, the existence of substitutes is undisputed, (see also COM(2003)723 final, at page 27) for Industrial NiCd batteries the existence of reliable substitutes is disputed (see also COM(2003) 723 final, at page 26). Therefore, for those applications an exemption is granted. However, this does not apply to NiCd batteries used in electrical vehicles, since this application falls under the scope of the ELV Directive.*

*As a consequence of this amendment, Article 6 can be deleted.*

Amendment 17  
Article 4, paragraph 2 a (new)

***2a. On the basis of a proposal from the Commission, the European Parliament and the Council shall amend Annex I according to technical progress, in order to further restrict the list of exemptions of***

---

<sup>1</sup> OJ, L 170/81, 29.6.2002.

***Annex I, if the use of mercury, cadmium or lead in those applications has become avoidable because alternatives exist on the market.***

*Justification*

*The annex should be reviewed as a result of technical and scientific development in order to prevent heavy metals in all appliances if possible (= alternatives exists). It is the objective of the Battery Directive to reduce the use of cadmium, lead and mercury as much as possible.*

Amendment 18  
Article 5

Member States shall ***promote research into the possibility of increasing*** the overall environmental performance of batteries and accumulators throughout their entire life-cycle, and the 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 ***increase*** the overall environmental performance of batteries and accumulators throughout their entire life-cycle, and the 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.

*Justification*

*More precise wording.*

Amendment 19  
Article 6

***Article 6***

***Delete***

***Monitoring of the waste stream***

***1. Member States shall ensure the monitoring of the quantities of spent portable nickel-cadmium batteries and accumulators disposed of in the municipal solid waste stream. A report on the results of the monitoring shall be drawn up on the basis of Table 1 in Annex I.***

***2. Without prejudice to Regulation (EC)***

*2150/2002 on waste statistics<sup>1</sup>, Member States shall establish the report every year, starting one year after the date referred to in Article 32(1) of this Directive and covering the whole of each calendar year. It shall be transmitted to the Commission no later than six months after the end of the year concerned.*

*3. The Commission shall establish detailed rules for the monitoring of the municipal solid waste stream as referred to in the previous paragraph, in accordance with the procedure referred to in Article 30.*

<sup>1</sup> OJ L, 322 of 9.11.2002.

#### *Justification*

*The Commission correctly has emphasised in its proposal the objective to get as few NiCd-batteries as possible disposed of in landfills or incinerators. As there are alternatives available to substitute these NiCd batteries it is justified to phase out this type of battery technology.*

*On the other hand it is unjustifiable to ask the Member States to search for few hundred tons of NiCd batteries in several hundred thousand tons of household waste. Also from the statistical point of view, this is just impractical, as the representative probe to prove the objective would be very large. The amounts of portable batteries and accumulators marketed in the EU in 2002 were of 158.000 tons, of which 10.994 tons were NiCd batteries. The monitoring requirement should be evaluated in the light of the volume of the municipal waste stream, which in 2000 was of 200.000.000 tons. In other words, portable NiCd batteries and accumulators represent around 0,0055% of the total MSW. To be reliable, the quantification of such a restricted fraction has to be based on the sampling of very substantial amounts. This is a very expensive process, which costs are not accounted for in the "Extended Impact Assessment" that has been carried out. The proposal doesn't give any indication on whose responsibility it will be to bear these costs.*

*Monitoring of the waste-stream has from itself no environmental benefit. According to the waste-hierarchy preventing the entrance of heavy metals in the waste stream is the best option. Some years after the prohibition of heavy metals the monitoring of nickel-cadmium batteries is not necessary any more.*

#### Amendment 20 Article 7, paragraph 1

1. Member States ***shall not impede, prohibit or restrict*** the placing on the market in their territory of batteries or

1. Member States ***can take additional measures, such as prohibiting or restricting*** the placing on the market in

accumulators ***that meet the requirements of this Directive.***

their territory of batteries or accumulators, ***if these measures are justified for the protection of the environment and/or public health.***

*Justification*

*According to Article 175 of the Treaty, Member States should be allowed to take additional measures in order to protect the environment.*

Amendment 21

Article 9, paragraph 1, point (a)

(a) schemes are set up under which spent portable batteries and accumulators can be returned free of charge and collection facilities are available and accessible, ***having regard to population density;***

(a) schemes are set up under which spent portable batteries and accumulators can be returned free of charge and collection facilities are available and accessible, ***unless they are collected through the schemes referred to in Article 5(1) of Directive 2002/96/EC;***

*Justification*

*With the WEEE Directive 2002/96/EC Member States and industry will set up collection schemes for electrical and electronic equipment. In the collection of WEEE also batteries will be collected. This is especially important for those appliances, which have batteries as an integrated product part such as mobile phones, laptops, toothbrushes and others. This amendment will ensure, that producers of electrical and electronic appliances, who set up or participate in collection schemes for waste of electrical and electronic equipment, do not have to operate a second administration of their batteries and do not have to participate and contribute into battery collection systems. This will increase the efficiency and will reduce bureaucratic burden from industry.*

Amendment 22

Article 9, paragraph 1, point (a a) (new)

***(aa) End-users deliver their used batteries and accumulators to the collection facilities mention in point a);***

*Justification*

*The collection starts with the delivery of the end-users.*

Amendment 23  
Article 10

Without prejudice to Article 9, Member States shall allow producers to set up individual or collective take-back schemes for spent batteries and accumulators, provided that those schemes are in conformity with this Directive.

*1.* Without prejudice to Article 9, Member States shall allow producers to set up individual or collective take-back schemes for spent batteries and accumulators, provided that those schemes are in conformity with this Directive.

*2. Producers shall be allowed to show purchasers the costs of collection, treatment and recycling of spent portable batteries and accumulators. The costs mentioned shall not exceed the actual costs incurred.*

*Justification*

*The Battery Directive shall allow producers to show their cost for collection and recycling to their customers. A visible fee will be the tool that will first and foremost inform the consumer that the portable battery will be treated at end of life and therefore needs to be disposed of correctly. The visible fee will also allow for making the consumer aware of the financial impact of the recycling of portable batteries. This fee would be differentiated according to the actual costs of collection and recycling of that particular battery system and would also therefore reflect the efficiency of the collection and recycling schemes ensuring a continuous drive for improvement.*

*A visible fee is a necessary condition for producers to be able economically to shoulder their responsibility. Portable battery producers do not have a direct link with consumers who buy through retail outlets. The visible fee is also a means through which producers may succinctly inform the consumer of the need for collection of portable batteries.*

*On the other hand the directive should not oblige producer to show their cost, as each producer should be free in its decision on pricing and their negotiations with their customers.*

*As a consequence of this amendment, Article 23, paragraph 4, can be deleted.*

Amendment 24  
Article 13, paragraph 1, subparagraph 1

1. No later than **four** years after the date referred to in Article 32(1), Member States shall achieve a minimum average collection rate equivalent to 160 grams per inhabitant per year for all spent portable batteries and accumulators including

1. No later than **two** years after the date referred to in Article 32(1), Member States shall achieve a minimum average collection rate equivalent to 160 grams per inhabitant per year for all spent portable batteries and accumulators including

portable nickel-cadmium batteries.

portable nickel-cadmium batteries.

#### *Justification*

*A collection target in the range of 160 to 200 g per inhabitant is most cost-effective according to the Extended impact assessment (SEC(2003)134, page 78). Consequently the value of 200 g per inhabitant can be chosen.*

*160 g per inhabitant means a collection rate of 40% and 200 g per inhabitant means a collection rate of 50% of the yearly sale of consumer batteries. The extra reason for a collection target of 200g is that the battery consumption will increase in the future (see figures of 2002).*

*An additional collection target for portable Nickel-Cadmium batteries together with an expensive and impractical monitoring scheme is not necessary since substitutes for those applications exist and their use could thus be prohibited.*

#### Amendment 25

#### Article 13, paragraph 1, subparagraph 2

***By the same date***, Member States shall achieve a ***specific*** minimum collection rate equivalent to ***80% of total quantity of*** spent portable nickel-cadmium batteries and accumulators ***per year***. ***The total quantity shall comprise*** portable nickel-cadmium batteries ***and accumulators collected annually through collection schemes as well as those disposed of annually in the municipal solid waste stream***.

***No later than four years after the date referred to in Article 32(1)***, Member States shall achieve a minimum ***average*** collection rate equivalent to ***200 grams per inhabitant per year for all*** spent portable batteries and accumulators ***including*** portable nickel-cadmium batteries.

#### *Justification*

*A collection target in the range of 160 to 200 g per inhabitant is most cost-effective according to the Extended impact assessment (SEC(2003)134, page 78). Consequently the value of 200 g per inhabitant can be chosen.*

*160 g per inhabitant means a collection rate of 40% and 200 g per inhabitant means a collection rate of 50% of the yearly sale of consumer batteries. The extra reason for a collection target of 200g is that the battery consumption will increase in the future (see figures of 2002).*

*An additional collection target for portable Nickel-Cadmium batteries together with an expensive and impractical monitoring scheme is not necessary since substitutes for those applications exist and their use could thus be prohibited.*

Amendment 26  
Article 13, paragraph 2

**2. A report on the results of the monitoring shall be drawn up on the basis of Table 2 in Annex I. Without prejudice to Regulation (EC) 2150/2002 on waste statistics, Member States shall establish the report every year, starting one year after the date referred to in Article 32(1) and covering the whole of each calendar year. It shall be transmitted to the Commission no later than six months after the end of the year concerned.** *deleted*

*Justification*

*A collection target in the range of 160 to 200 g per inhabitant is most cost-effective according to the Extended impact assessment (SEC(2003)134, page 78). Consequently the value of 200 g per inhabitant can be chosen.*

*160 g per inhabitant means a collection rate of 40% and 200 g per inhabitant means a collection rate of 50% of the yearly sale of consumer batteries. The extra reason for a collection target of 200g is that the battery consumption will increase in the future (see figures of 2002).*

*An additional collection target for portable Nickel-Cadmium batteries together with an expensive and impractical monitoring scheme is not necessary since substitutes for those applications exist and their use could thus be prohibited.*

Amendment 27  
Article 16, paragraph 1

1. **Treatment** may also be undertaken outside the Member State concerned or the Community provided that the shipment of spent batteries and accumulators is in compliance with Council Regulation (EEC) No **293/93**.<sup>1</sup>

Spent batteries and accumulators exported out of the Community in accordance with Council Regulation (EEC) No 259/93, Council Regulation (EC) No 1420/1999<sup>2</sup> and Commission Regulation (EC) No 1547/1999/EC<sup>3</sup> shall count towards the fulfilment of the obligations and targets in

1. **Recycling** may also be undertaken outside the Member State concerned or the Community provided that the shipment of spent batteries and accumulators is in compliance with Council Regulation (EEC) No **259/93**.<sup>1</sup>

Spent batteries and accumulators exported out of the Community in accordance with Council Regulation (EEC) No 259/93, Council Regulation (EC) No 1420/1999<sup>2</sup> and Commission Regulation (EC) No 1547/1999/EC<sup>3</sup> shall count towards the fulfilment of the obligations and targets in

Articles 18 and 19 of this Directive, only if the exporter declares that the recycling operation took place under conditions equivalent to the requirements of this Directive.

Articles **11**, 18 and 19 of this Directive, only if the exporter declares that the recycling operation took place under conditions equivalent to the requirements of this Directive.

***Member States shall ensure that, when exporting spent batteries for recycling, the negative external impacts of transport are taken into account.***

*Justification*

*It should be clear spent batteries only can be exported for recycling.*

*In line with Article 9, paragraph 2, the negative aspects of exporting spent batteries should be taken into account.*

Amendment 28  
Article 18, point (b)

***(b) Member States may allow to exempt up to a maximum of 10% of the collected portable batteries and accumulators from the obligation referred to in point (a) for technical reasons;*** *deleted*

*Justification*

*All used batteries collected have to be sent for recycling: there is no technical reason to divert 10% of the collected batteries. Whatever the conditions of used batteries are after collection, the recycling operations are possible.*

Amendment 29  
Article 19, paragraph 1, subparagraph 4 a (new)

***The proposed minimum recycling efficiencies are to be evaluated regularly and adapted to scientific and technical progress under the procedure laid down in Article 30.***

*Justification*

*This paragraph should be added, as mentioned in the explanatory memorandum (page 28) of the*

Amendment 30  
Article 20, paragraph 1

1. Member States shall ensure that producers, or third parties acting on their behalf, arrange the financing for at least the treatment, recycling and sound disposal of all spent portable batteries and accumulators deposited at collection facilities set up under Article 9(1)(a).

1. Member States shall ensure that producers, or third parties acting on their behalf, arrange the financing for at least the **collection**, treatment, recycling and sound disposal of all spent portable batteries and accumulators deposited at collection facilities set up under Article 9(1)(a).

*Justification*

*In line with the provisions of Article 21 of this Directive, the producer responsibility should also apply to the collection of spent portable batteries.*

Amendment 31  
Article 21, paragraph 2

**2. Member States shall allow producers and users of industrial and automotive batteries and accumulators to conclude agreements under which other financing methods than the ones referred to in paragraph 1 can be used.**

**deleted**

*Justification*

*According to paragraph 1 of this Article producers can already choose for individual or collective systems. Other financing methods in this area are not known.*

Amendment 32  
Article 22, paragraph 1

Member States shall take the necessary measures to ensure that, when placing a product on the market, each producer is registered and provides a guarantee, that the **management** of spent batteries and accumulators will be financed. The

**I.** Member States shall take the necessary measures to ensure that, when placing a product on the market, each producer is registered and provides a guarantee, that the **collection, treatment and recycling** of spent batteries and accumulators will be

producer may provide a guarantee in the form of its participation in appropriate schemes for financing the management of spent batteries and accumulators, or of a recycling insurance, or of a blocked bank account.

financed. The producer may provide a guarantee in the form of its participation in appropriate schemes for financing the management of spent batteries and accumulators, or of a recycling insurance, or of a blocked bank account.

*Justification*

*As the rate of free-riders increases with the shrinking of size of products it is to be expected that this number is higher than in the WEEE sector. The systematic approach of the national register, be developed and implemented under WEEE in the Member States is an excellent tool to reduce the number of free riders Similar to the WEEE Directive the national registers can be used to monitor the sales, collection, recycling and recovery of historic waste from batteries and accumulators.*

Amendment 33

Article 22, paragraph 1 a (new)

***1a. Producers of portable batteries and accumulators shall notify the method, whether individually or jointly, of meeting their collection, treatment, recycling and disposal obligations of the spent batteries and accumulators deposited at collection facilities set up under Article 9(1)(a).***

*Justification*

*Although the systematic approach of historical and future waste as defined in the WEEE Directive is not completely applicable to the battery industry, the obligation of the financial guarantee is an appropriate guarantee, that all battery producers provide the financial resources for the collection of batteries. This is even more important in the battery-sector, as many importers or low-cost batteries might disappear in a shorter period of time.*

*As the rate of free-riders increases with the shrinking of size of products it is to be expected that this number is higher than in the WEEE sector. The systematic approach of the national register, be developed and implemented under WEEE in the Member States is an excellent tool to reduce the number of free riders Similar to the WEEE Directive the national registers can be used to monitor the sales, collection, recycling and recovery of historic waste from batteries and accumulators.*

Amendment 34  
Article 22, paragraph 1 b (new)

***1b. Member States shall draw up a register of producers and collect information, including substantiated estimates, on an annual basis on the quantities and categories of batteries and accumulators put on their market, collected, treated and recycled within the Member States, and on collected waste exported, by weight or, if this is not possible, by numbers.***

*Justification*

*As the rate of free-riders increases with the shrinking of size of products it is to be expected that this number is higher than in the WEEE sector. The systematic approach of the national register, be developed and implemented under WEEE in the Member States is an excellent tool to reduce the number of free riders Similar to the WEEE Directive the national registers can be used to monitor the sales, collection, recycling and recovery of historic waste from batteries and accumulators.*

Amendment 35  
Article 22, paragraph 1 c (new)

***1c. Member States shall ensure that producers supplying batteries and accumulators by means of distance communication provide information on the compliance with the requirements of this Directive and on the quantities and categories of batteries and accumulators put on the market of the Member State.***

*Justification*

*As the rate of free-riders increases with the shrinking of size of products it is to be expected that this number is higher than in the WEEE sector. The systematic approach of the national register, be developed and implemented under WEEE in the Member States is an excellent tool to reduce the number of free riders Similar to the WEEE Directive the national registers can be used to monitor the sales, collection, recycling and recovery of historic waste from batteries and accumulators.*

*Although the systematic approach of historical and future waste as defined in the WEEE Directive is not completely applicable to the battery industry, the obligation of the financial guarantee is an appropriate guarantee, that all battery producers provide the financial resources for the collection of batteries. This is even more important in the battery-sector, as many importers or low-cost batteries might disappear in a shorter period of time.*

Amendment 36  
Article 22, paragraph 1 d (new)

***1d. Member States shall ensure that the information required is transmitted to the Commission on a two-yearly basis within 18 months after the end of the period covered. The first set of information shall cover the years 2007 and 2008. The information shall be provided in a format which shall be established within one year after the entry into force of this Directive in accordance with the procedure referred to in Article 30 of this Directive.***

*Justification*

*As the rate of free-riders increases with the shrinking of size of products it is to be expected that this number is higher than in the WEEE sector. The systematic approach of the national register, be developed and implemented under WEEE in the Member States is an excellent tool to reduce the number of free riders. Similar to the WEEE Directive the national registers can be used to monitor the sales, collection, recycling and recovery of historic waste from batteries and accumulators.*

*Although the systematic approach of historical and future waste as defined in the WEEE Directive is not completely applicable to the battery industry, the obligation of the financial guarantee is an appropriate guarantee, that all battery producers provide the financial resources for the collection of batteries. This is even more important in the battery-sector, as many importers or low-cost batteries might disappear in a shorter period of time.*

Amendment 37  
Article 23, paragraph 1

1. Responsibility for meeting the costs of **managing** the spent batteries and accumulators put on the market before entry into force of this Directive, historic

1. Responsibility for meeting the costs of **treatment, recycling and sound disposal of** the spent batteries and accumulators put on the market before entry into force of this

waste, shall lie with producers.

Directive, historic waste, shall lie with producers.

*Justification*

*Clearer description of “managing” which is consistent with Article 20.*

Amendment 38  
Article 23, paragraph 1, subparagraph 1 a (new)

***Member States shall take the necessary measures to ensure that all producers of portable batteries put on the market before entry into force of this Directive, or third parties acting on their behalf, have met their obligations in proportion to their weight related market share per type of battery and accumulator.***

*Justification*

*With regards to the producer responsibility to collect and recycle portable batteries, placed on the market before the entry into force of this Directive, this shall, in line with Article 8 (3) of the WEEE Directive, be based on their weight related market share per type of batteries and accumulator to ensure a fair situation in the market place.*

Amendment 39  
Article 23, paragraph 4

***4. With regard to historic waste, Member States shall ensure that for a transitional period of four years after the date referred to in Article 32(1) producers are allowed, at the time of sale of new products, to show purchasers the costs of collection, treatment and recycling of all spent batteries and accumulators. The costs mentioned shall not exceed the actual costs incurred.*** ***deleted***

*Justification*

*As a consequence of the amendment on Article 10 regarding a visible fee, this paragraph can be*

*deleted.*

Amendment 40  
Article 24, paragraph 1

Member States shall ensure that all economic operators in the sectors concerned and all the competent public authorities may participate in the collection, treatment and recycling schemes referred to in Articles 9 and 15.

Member States shall ensure that all economic operators in the sectors concerned and all the competent public authorities may participate in the collection treatment and recycling schemes referred to in Articles 9, **10** and 15.

*Justification*

*This wording is consistent with the changes carried out in Art. 10.*

Amendment 41  
Article 25, paragraph 1

1. Member States shall ensure, in particular through information campaigns, that **consumers** are fully informed of:

1. Member States shall ensure, in particular through information campaigns, that **end-users** are fully informed of:

*Justification*

*Information should not be directed solely at “consumers” but at all “end-users” of batteries and accumulators.*

Amendment 42  
Article 27, paragraph 1

1. Member States shall ensure that all batteries, accumulators and battery packs are appropriately marked with the symbol shown in Annex II **in accordance with the technical specifications laid down in that Annex.**

1. Member States shall ensure that all batteries, accumulators and battery packs are appropriately marked with the symbol shown in Annex II.

***In exceptional cases, where this is necessary because of the size or function of the battery or accumulators, the symbol may be printed on the packaging.***

*Justification*

*It is not necessary to change the labelling provision in the future. Consequently, these provisions can be put in this article and not in the Annex.*

Amendment 43  
Article 27, paragraph 2

***2. The Commission shall amend Annex II in order to adapt to technical progress, in accordance with the procedure referred to in Article 30***

***2. Batteries, accumulators and button cell containing more than 5 ppm mercury, more than 20 ppm cadmium or more than 40 ppm lead, shall be marked with the chemical symbol for the metal concerned: Hg, Cd or Pb. The symbol indicating the heavy metal content shall be printed beneath the symbol in paragraph 1 of Annex II and shall cover an area of at least one quarter the size of that symbol.***

*Justification*

*It is not necessary to change the labelling provision in the future. Consequently, these provisions can be put in this article and not in the Annex.*

Amendment 44  
Article 27, paragraph 2 a (new)

***2a. The symbol in paragraph 1 of Annex II shall cover 3% of the area of the largest side of the battery, accumulator or battery pack, up to a maximum size of 5 x 5 cm. In the case of cylindrical cells, the symbol shall cover 1.5% of the surface area of the battery or accumulator and shall have a maximum size of 5 x 5 cm.***

*Justification*

*It is not necessary to change the labelling provision in the future. Consequently, these provisions can be put in this article and not in the Annex.*

Amendment 45  
Article 27, paragraph 2 b (new)

***2b. Where the size of the battery, accumulator or battery pack is such that the symbol would be smaller than 0.5 x 0.5 cm, the battery, accumulator or battery pack need not be marked but a symbol measuring 1 x 1 cm shall be printed on the packaging.***

*Justification*

*It is not necessary to change the labelling provision in the future. Consequently, these provisions can be put in this article and not in the Annex.*

Amendment 46  
Article 27, paragraph 2 c (new)

***2c. The symbols shall be printed visibly, legibly and indelibly.***

*Justification*

*It is not necessary to change the labelling provision in the future. Consequently, these provisions can be put in this article and not in the Annex.*

Amendment 47  
Article 27, paragraph 2 d (new)

***2d. Member States shall not require additional marking on batteries and accumulators relating to matters regulated by this Directive***

*Justification*

*It is not necessary to change the labelling provision in the future. Consequently, these provisions can be put in this article and not in the Annex.*

Amendment 48  
Article 29, paragraph 1, point (b)

(b) The appropriateness of the minimum collection target for all spent portable batteries and accumulators **and the additional collection target for spent portable nickel-cadmium batteries and accumulators set out in Article 13**, taking into account the information provided by the Member States on the basis of Article 6, technical progress and practical experience gained in the Member States.

(b) The appropriateness of the minimum collection target for all spent portable batteries and accumulators, taking into account the information provided by the Member States on the basis of Article 6, technical progress and practical experience gained in the Member States.

*Justification*

*As a consequence of the prohibition of the use of cadmium in batteries, where substitutes are available, a reference to an additional collection target for portable NiCd batteries is not necessary any more.*

Amendment 49  
Annex I

Commission proposal

***Table 1 Monitoring the quantity of spent portable nickel-cadmium batteries and accumulators in the municipal solid waste stream in accordance with Article 6***

|  |  |
|--|--|
| <b><i>Year</i></b>   |  |
| <b><i>Country</i></b>  |  |
| <b><i>Total quantity in tonnes of municipal solid waste arising in the year</i></b>  |  |
| <b><i>Monitoring method used</i></b>   |  |
| <b><i>Contact details of the independent expert body approving the monitoring method</i></b>   |  |
| <b><i>Quantity in tonnes of municipal solid waste monitored in the year</i></b>  |  |
| <b><i>Quantity in tonnes of spent portable nickel-cadmium batteries and accumulators found in the waste monitored in the year</i></b>                        |  |
| <b><i>Total quantity in tonnes of spent portable nickel-cadmium batteries and accumulators discarded in the municipal solid waste stream in the year</i></b> |  |

**Table 2: Monitoring of compliance with the collection targets in accordance with Article 13**

|   |  |
|---|--|
| <b>Year</b>   |  |
| <b>Country</b>  |  |
| <b>Number of inhabitants</b>  |  |
| <b>Total quantity in tonnes of spent portable batteries and accumulators collected separately in the year</b>   |  |
| <b>Collection rate achieved for the total quantity of spent portable batteries and accumulators in grams/inhabitant</b>                                   |  |
| <b>Total quantity in tonnes of spent portable nickel-cadmium batteries and accumulators collected separately in the year (A)</b>                          |  |
| <b>Total quantity in tonnes of spent portable nickel-cadmium batteries and accumulators discarded in the municipal solid waste stream in the year (B)</b> |  |
| <b>Collection rate achieved for the portable nickel-cadmium batteries and accumulators expressed as a % of A+B (<math>\% = A/(A+B) \times 100</math>)</b> |  |

Parliament proposal

***In accordance with Article 4, paragraph 2, batteries and accumulators, whether or not incorporated into appliances, in the following applications are exempted from the prohibition mentioned in Article 4, paragraph 1:***

- Mercury in button cells for hearing aid applications***
- Cadmium in batteries or accumulators for Emergency lighting***
- Cadmium in batteries and accumulators for industrial applications***
- Cadmium in batteries and accumulators for aeroplanes and trains***
- Lead in automotive batteries and accumulators***

*Justification*

*It is the objective of the Battery Directive to reduce the use of cadmium, lead and mercury as much as possible. Only for those applications where no substitutes exist, an exemption will be granted. At this moment, no reliable substitutes exist for the use of mercury in button cells for*

*hearing aid applications, for cadmium in batteries for emergency lighting and for cadmium in batteries for industrial applications.*

*The restriction of the use of lead in automotive batteries and of cadmium in electrical vehicles is regulated by Directive 2000/53/EC on end-of life vehicles*

Amendment 50  
Annex II, paragraph 2

***2. Batteries, accumulators and button cell containing more than 0.0005% mercury, more than 0.025% cadmium or more than 0.4% lead by weight, shall be marked with the chemical symbol for the metal concerned: Hg, Cd or Pb. The symbol indicating the heavy metal content shall be printed beneath the symbol in paragraph 1 of this Annex and shall cover an area of at least one quarter the size of that symbol.*** ***deleted***

*Justification*

*It is not necessary to change the labelling provision in the future. Consequently, these provision can be put in an article and not in the Annex.*

Amendment 51  
Annex II, paragraph 3

***3. The symbol in paragraph 1 of this Annex shall cover 3% of the area of the largest side of the battery, accumulator or battery pack, up to a maximum size of 5 x 5 cm. In the case of cylindrical cells, the symbol shall cover 1.5% of the surface area of the battery or accumulator and shall have a maximum size of 5 x 5 cm.*** ***deleted***

*Justification*

*It is not necessary to change the labelling provision in the future. Consequently, these provision can be put in an article and not in the Annex.*

Amendment 52  
Annex II, paragraph 4

**4. Where the size of the battery, accumulator or battery pack is such that the symbol would be smaller than 0.5 x 0.5 cm, the battery, accumulator or battery pack need not be marked but a symbol measuring 1 x 1 cm shall be printed on the packaging.** *deleted*

*Justification*

*It is not necessary to change the labelling provision in the future. Consequently, these provision can be put in an article and not in the Annex.*

Amendment 53  
Annex II, paragraph 5

**5. The symbols shall be printed visibly, legibly and indelibly.** *deleted*

*Justification*

*It is not necessary to change the labelling provision in the future. Consequently, these provision can be put in an article and not in the Annex.*

## EXPLANATORY STATEMENT

### Introduction

The biggest problem with batteries and accumulators is that they contain heavy metals: mercury, lead and cadmium. Directive 98/101/EC (amending Directive 91/157/EEC) therefore prohibited batteries containing mercury (i.e. more than 5 ppm mercury), with the exception of button cells for hearing aids and watches. Such button cells, like batteries containing more than 0.025% cadmium or 0.4% lead, must be collected separately pursuant to Directive 91/157/EEC. In practice, the collection only of batteries containing mercury, lead or cadmium did not work, because consumers did not distinguish between batteries along these lines. This is one of the reasons why the Commission decided to opt for the collection of all batteries, the other reason being that valuable material from all batteries can be recycled.

### Background

This amendment of the directive on batteries has been awaited for years. 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 the second half of 2000, amendment of the 1991 directive on batteries was on the official agenda of the French Presidency, but this did not lead to any proposal. Since then, the Commission has on several occasions promised to submit a proposal. The need to do so was also urged in connection with the adoption of the directive on waste electrical and electronic equipment (WEEE) (Directive 2002/96/EC), Recital 11 of which states, 'Directive 91/157/EEC needs to be revised as soon as possible, particularly in the light of this Directive.' At the Environment Committee's meetings of 11 September 2001 and 19 February 2003, Mr Blokland and Mr Lund tabled written questions urging the Commission to revise the directive on batteries without delay. Nearly six years after the Council's resolution on cadmium, a proposal has finally been received from the Commission. 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 directive on end-of-life vehicles (2000/53/EC) bans the use of cadmium in vehicles, while permitting the use of NiCd batteries in electric vehicles until 31 January 2005. This period may be extended.

The Directive on the restriction of the use of certain hazardous substances in electrical and electronic equipment (2002/95/EC) restricts the use of heavy metals. In principle, cadmium is banned, with a limited exception for surface treatment. Other restrictions on the use of heavy metals in batteries were left to this directive.

### Substance of the Commission proposal

Important new elements in the Commission proposal in comparison with Directive 91/157/EEC are:

1. the scope of the directive is extended to all batteries, all of which must now be collected;

2. binding collection rates (at least 160 g per inhabitant per annum for portable batteries with effect from 5½ years after the publication of the new directive);
3. binding recycling rates and recycling efficiencies;
4. financing mechanism under which producer responsibility plays a large role.

There are no other significant changes in comparison with 1991.

As regards heavy metals, the quantitative proposals are as follows:

- Portable batteries must not contain more than 5 ppm mercury (except in the case of button cells).
- 100% of lead batteries for motor vehicles and industrial use must be collected (due to the ban on final disposal) and recycled with a minimum efficiency of 65%.
- 100% of nickel-cadmium batteries for industrial use must be collected (due to the ban on final disposal) and recycled with a minimum efficiency of 75%.
- Portable nickel-cadmium batteries are subject to a collection rate of 160 g, and 80% of the available quantity must be collected and recycled with a minimum efficiency of 75%.
- Other portable batteries (zinc-carbon, zinc-magnesium, nickel-metal hydride, lithium ion, etc.) are subject to the collection rate of 160 g and are to be recycled with a minimum efficiency of 55%.

## **Comments on the Commission proposal**

The four new elements in the Commission proposal, as described in the previous section, are to be welcomed. However, there are some comments to be made, particularly regarding points 1 and 2.

Re 1 (collection of all types of batteries)

In the Member States where all batteries are collected, collection works much better than in those where only batteries containing mercury, lead or cadmium are collected. It is also very sensible that the Commission has not opted for a collection rate based on annual sales. It would be extremely difficult, if not impossible, to ascertain (even retrospectively) whether such a collection rate was being attained. It is difficult to correlate collection statistics with sales figures. Batteries may remain in use for years, after which it is not uncommon for them to lie about the home for years longer. The problem with portable batteries is that consumers do not feel a strong urge to return them. They are small and therefore do not get in the way but tend to be left lying in drawers, boxes and so on. The situation with paper and glass is very different. Within a few weeks, boxes of paper and crates of glass containers begin to create an obstacle, and they are therefore removed quickly. This explains why consumers may retain batteries for so long. The decision to opt for a quantity in grams which can readily be checked is therefore much better. The Commission's extended impact assessment states that a quantity of 160-200 g is the most cost-efficient (SEC(2003) 134, p. 78). Thus it is possible to opt for a figure of 200 g per inhabitant per annum. Moreover, Member States can link the necessary arrangements to collection systems which exist under the WEEE Directive. There are therefore strong arguments in favour of opting for a slightly more ambitious figure of 200 g per inhabitant per annum. On average, this target represents a collection rate of approximately 50% of annual sales.

## Re 2 (compulsory collection rates)

In addition to the collection quantity (the 160 g proposed by the Commission) for portable batteries, it follows from the proposed ban on the disposal of industrial and car batteries that 100% of these batteries must be collected. The current practice is to collect and recycle all of these large batteries via the existing collection systems. Thus the ban on final disposal is no problem at all.

In the case of portable batteries the situation is quite different, and it is for this reason that the Commission has decided on a quantity in grams to be collected. For portable nickel-cadmium batteries, however, an additional collection obligation is also proposed. This is inconsistent with the approach to other batteries. The proposed collection rate for nickel-cadmium batteries is high: 80% of the quantity available for collection. It is not clear why the Commission anticipates that this high collection rate can be attained. The reason for opting for a high rate is the so-called closed-loop system for cadmium. Even with a collection rate of 80%, there will not be a closed loop, because 20% of the cadmium will still enter the ordinary waste stream and ultimately find its way into incinerators or landfills. As cadmium is a volatile metal, if waste containing it is incinerated it will inevitably be emitted into the air.

## **Monitoring of nickel-cadmium batteries in the waste stream**

In order to ascertain whether 80% of the available quantity of portable nickel-cadmium batteries has been collected, a complicated method is proposed. Briefly, it means that four times as many nickel-cadmium batteries must be collected as are disposed of with domestic refuse. Samples are to be taken of domestic refuse in order to ascertain what quantity of nickel-cadmium batteries the total quantity of domestic refuse contains. The following calculation shows what quantities are involved. In 2002, 158 000 tons of batteries were marketed in the EU, including 10 994 tons of nickel-cadmium batteries. Assuming that urban refuse totalled 200 million tons (in 2000), this means that 0.0055% of all urban refuse consists of nickel-cadmium batteries. Thus in order to obtain a representative sample it would be necessary to take an enormous quantity of domestic refuse, ranging from tens of thousands to hundreds of thousands of tons. The very high costs of this sampling are not taken into account in the Extended Impact Assessment (SEC(2003)134). Moreover, it is not clear who is to pay for it. This absurd method of checking whether the collection target is being attained will confer absolutely no environmental benefits. If account is taken of the waste strategy (in which the order of priority is: prevention, recycling, disposal), it goes without saying that efforts must be made to eliminate heavy metals from the waste stream.

## **Prevention of heavy metals**

On pages 9 to 12 of the Explanatory Memorandum on the Commission's proposal, the damaging effects of the heavy metals mercury, cadmium and lead on the environment and health are clearly described. Directive 98/101/EC (amending Directive 91/157/EEC) bans batteries containing mercury (= more than 5 ppm mercury). EU law now bans motor components and materials in vehicles placed on the market after 1 July 2003 from containing the heavy metals mercury, lead and cadmium, and the same applies to new electrical and electronic equipment placed on the market after 1 July 2006. In accordance with existing law, the use of mercury, cadmium and lead should also be limited as strictly as possible under this directive. In a number of cases, exceptions are justified, such as mercury in hearing aids, lead in car batteries and

cadmium for industrial uses, as it is disputed whether reliable substitutes exist for these applications.

The Commission has not opted to ban cadmium and lead in portable batteries because a closed loop for cadmium in portable batteries would supposedly afford the same environmental protection (p. 31). As has already been observed in this Explanatory Statement, a closed loop is impossible. 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 have been logical to take similar measures with regard to the hazardous substances contained in batteries.

Moreover, there is a clear trend towards nickel-metal hydride and lithium ion batteries as replacements for NiCd batteries in electronic equipment. As satisfactory alternatives exist for these applications and are already in use on a large scale (lithium-metal hydride in mobile phones, for example), a ban on portable NiCd batteries is justified. Such a ban will prevent the damaging and polluting effects of cadmium.

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.