

POSITION PAPER

November 27th, 2007.

Compliance with Batteries Directive 2006/66/EC

Joint Position Paper of the European Battery Industry and EICTA
on several issues arising out of the new Batteries Directive 2006 /66/EC

The following position paper addresses several problematic issues for the European Battery Industry and EICTA (referred to as the Industry) in relation to market compliance with several provisions of Battery Directive 2006/66/EC. In particular, it describes several practical aspects of the implementation of the new Battery Directive and the application of some of its provisions while maintaining the respect of fundamental rules of sustainability as well as of consumer access to the market.

The Position Paper delivers recommendation on the issues identified. The Industry invites the Commission to deliver “Guidance” to Member States reflecting these recommendations.

The Position Paper is made of two parts: the first part lists briefly the issues of concern while the second part details the arguments of the Industry for a better understanding of the issues.

PART 1 LIST OF CONCERNS

The following practical issues are of concern for the Industry.

1. **Interpretation of Article 6 (2).**

The text of Article 6 (2) “Placing on/withdrawal from the market” opens some ambiguities in its interpretation that should be minimized by guidance clarifying that Article 6(2) is only intended to require withdrawal from the market of batteries put on the market **after 26 September 2008** that do not comply with the requirements of the Directive.

2. **Article 6 (2) imposes a marketing restriction on replacement batteries.**

This provision imposes an effective obligation for end-users to change their equipment instead of being supplied with replacement batteries for those batteries subject to a market restriction under Article 4 of the new Batteries Directive.

A similar treatment to spare parts under the Directive on the Restriction of Hazardous Substances 2002/95/EC should be adopted on this issue in order to maintain coherence between market implementation rules across EU Directives and the EU market.

3. Harmonization of technical requirements on “removability”.

There is a need for harmonization of the rules concerning which batteries can be considered as readily removable. Different requirements per member state would negatively impact the functioning of the internal market and free movement of goods.

Industry strongly supports the draft guidance document dated March 2007 in order to allow for further product miniaturization, material efficiency gains and the availability of new product concepts and technologies to European consumers.

4. Labelling requirements.

The Industry invites the Commission to evaluate the specific cases which are listed below and to deliver its recommendations for their practical implementation.

- 4.1. Granted exemption: the case of memory back-up batteries attached to a Printed Circuit Board and not removable.
- 4.2. Request for exempting from labelling memory back-up batteries with a diameter greater than 32.56 mm on which there is no technical possibility for marking.
- 4.3. Request for exemption of labelling of individual batteries in battery packs.
- 4.4. Request for exemption of labelling for batteries embedded in equipment.
- 4.5. Batteries delivered without packaging with equipment.

5. Capacity Labelling requirements.

Apart from the technical issues linked to the capacity marking of portable batteries that will be addressed separately, Industry invites the Commission to review the proposed time interval between a final capacity labelling recommendation and the first placing on the market of batteries labelled accordingly.

An interval period of 6 months is proposed in the current text of the Batteries Directive 2006/66/EC while the Industry needs between 15 to 18 months to implement efficiently and completely this provision on capacity marking.

These five issues are addressed in more details in PART 2 of this document.

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PART 2 DETAILED DESCRIPTION OF THE ISSUES OF CONCERN.

1. Interpretation of Article 6 (2) of Batteries Directive 2006/66/EC.

Article 6 (2) states:

“Member States shall take the necessary measures to ensure that batteries or accumulators that do not meet the requirements of this Directive are not placed on the market or are withdrawn from it.”

The Industry's view is that the producers would only be required to withdraw from the market batteries and accumulators that do not comply with the Directive and are placed on the market after 26 September 2008 (or after September 26, 2009 specifically for the capacity labelling issue).¹

Any different interpretation would represent a significant departure from the normal approach of Directives of this nature (e.g. WEEE or RoHS directives). Consequence of a different interpretation would be that all batteries and accumulators sold individually or incorporated in electronic and electrical equipment that have been placed on the market prior to 26 September 2008 and that do not meet the requirements of the Directive would have to be withdrawn from the market.

Indeed “compliance” covers all aspects of the Batteries Directive involving technical changes versus the current practice. In particular the provisions of Batteries Directive 2006/66/EC listed in Table 1 below introduce technical modifications for batteries (and electronic and electrical equipment containing batteries) placed on the market after September 26, 2008 when compared to batteries placed on the market today.

It should be noted that all issues listed in TABLE 1 concern the placing on the market of batteries, which under Article 95 of the EU Treaty requires harmonization.

It would be a disproportionate measure to withdraw from the market batteries and accumulators that do not meet the new labelling prescriptions. Industry cannot recall hundred of millions of battery units that are placed today (e.g. during the year 2007) on the market and will be sold to end users after September 26, 2008.

¹ The EC Blue Book definition of placing on the market, as endorsed by the Commission within section 2.1 of the EC WEEE & RoHS FAQ Guidance, makes it clear that finished product within the distribution chain of the manufacturer is deemed placed on the market. Product placed on the market before the 26th Sept 2008 is therefore outside of the scope of the EU battery Directive.

“A product is placed on the Community market when it is made available for the first time. This is considered to take place when a product is transferred from the stage of manufacture with the intention of distribution or use on the Community market.

(...)

The product is considered to be transferred either when the physical hand-over or the transfer of ownership has taken place”

TABLE 1. Issues on the battery directive which require guidance on the interpretation of Article 6 §2 on compliance.

Compliance issues		Articles of the Directive	Interpretation
Substance Restriction	Article 4	Prohibitions	Batteries covered by the prohibition article and not exempted cannot be called back by the producers after September 26, 2008 when they were placed on the market before.
Removability	Article 11	Removal of waste batteries and accumulators	Equipment which is not designed in order to have batteries removeable according to the requirements of Batteries Directive 2006/66 EC cannot be called back by producers after Sep. 26/2008. (*)
Labelling	Article 21 (1)	Crossed-out wheeled bin	Batteries placed today on the market and still on the shelf of distributors at the date of 26/09/2008 should be allowed for sales and not recalled. Equipment with incorporated batteries placed today on the market and still on the shelf of distributors at the date of 26/09/2008 should be allowed for sales and not recalled.
	Article 21 (2)	Capacity Marking	If batteries are placed today on the market and are sold after Sept. 26, 2009, they should not be recalled from the market.
	Article 21 (3)	Concentration limits of lead, mercury and cadmium in batteries (chemical symbol)	If batteries are placed today on the market and are sold after Sept. 26, 2008, they should not be recalled from the market.

(*) Further Guidance on the practical aspects of the removability requirements should be communicated by the Commission (Refer to § 3. below).

The withdrawal from the market of products that still have a potential useful life contradicts sustainable development across Europe.

The impact of such a measure would not be restricted to producers and importers but would impact the whole commercial chain. Distributors of batteries and accumulators may be left with stocks of batteries and equipment purchased prior to the Entry Into Force of the new Batteries Directive. Therefore, from September 26, 2008 such batteries and equipment could not be sold and would become waste. The Industry considers that the administrative burden and cost of such a measure would be significant and contradictory to the EU sustainable policy of the Lisbon agenda.

2. Article 6 (2) imposes a marketing restriction on replacement batteries.

Will it be possible to sell after September 26, 2008 replacement batteries for equipment sold in Member States before the transposition deadline?

2.1 There is no provision in the Battery Directive 2006/66/EC for a derogation in favor of replacement portable batteries (spare parts) that are subject to the provisions of Article 4 of the Battery Directive.

2.2. Without such a derogation end users are in effect forced to discard their Electrical and Electronic Equipment (EEE) as a consequence of the fact that a replacement battery cannot be supplied by e.g. wholesalers.

2.3 The replacement batteries are sold mainly in applications such as home cordless telephones, shavers, portable household vacuum cleaners, hobby toys and other specialized electrical equipment applications where the lifespan of the equipment is well above 5 to 10 years. As far as replacement batteries are concerned, they represent less than 10 % by volume (expressed in number of units) of initial yearly sales.

2.4 If replacement batteries would not be allowed for placing on the market after the date of September 26, 2008, this measure would contradict the policy principle adopted in other pieces of legislation such as Directive 2002/95/EC which allows spare parts to be placed on the market after its transposition date (see Annex 1 below for more details).

“Directive 2002/95/EC Article 2 Scope.

3. This Directive does not apply to spare parts for the repair, or to the reuse, of electrical and electronic equipment put on the market before 1 July 2006.”

2.5. In addition to Industry’s position on Article 6(2) explained in § 1, the suggestion of the Industry is to allow the sale of batteries covered by a marketing restriction as replacement parts in existing equipment still in service by September 26 2008 including the sales of batteries to power EEE under warranty. This is justified by the fact that end-users of a range of EEE will suddenly have to buy new EEE instead of purchasing new batteries to power their existing EEE. In effect a range of EEE will be brought to the end of its life prematurely. The need to fulfill the legal warranty requirements is also a critical argument for obtaining such an exemption.

2.6 A similar issue applies where producers make lifetime buys of batteries. Upon discontinuation of a product line producers typically do a lifetime buy of specifically designed or shaped batteries for the product lines in sufficient quantities to provide spare batteries for those products throughout the predicted life of those products [or at least 5 years]. These batteries may not fully comply with the requirements of the Batteries Directive but should be made available to end users otherwise they would have to buy new equipment instead of extending the life of existing one.

2.7. This issue can also be resolved by a derogation similar to that reported under paragraph 2.4 above.

3. Harmonization of technical requirements on the removability of batteries from equipment.

There is a need for harmonization of the rules according which battery can be considered as readily removable and on exemptions conditions to this rule.

Indeed Article 11 of Battery Directive 2006/66/EC on “Removal of waste batteries and accumulators” is not ruled by Article 95 of the Treaty dealing with Harmonization. Nevertheless, this is a global market issue and cannot be handled individually on a Member State basis.

The industry fully supports the draft Guidance Document text circulated to the TAC members, dated 30th May 2007. Specially, the following draft guidance text is very important in order to ensure products continue to be designed safely, avoid unnecessary redesign and material usage, and allow for new product concepts and product miniaturization. (e.g. where battery life exceeds product life):

The text of the Draft Guidance Document dated May 30th, 2007 is reproduced below.

What requirement does the Directive contain on the removality of waste batteries from appliances?

Directive 2006/66/EC requires in Article 11 "that manufacturers design appliances in such a way that waste batteries and accumulators can be readily removed" and that "appliances into which batteries and accumulators are incorporated shall be accompanied by instructions showing how they can be removed safely".

Exemptions are given for these requirements to appliances where for safety, performance, medical or data integrity reasons, continuity of power supply is necessary and requires a permanent connection between the appliance and the battery or accumulator.

“Who should remove the batteries?”

“End-users or professionals should be able to remove the batteries, depending on the appliance in question. The instructions accompanying appliances, that should show how the batteries can be removed safely from appliances, could also specify who would be the most suited to remove the battery safely.”

“When should waste batteries and accumulators be removable from appliances?”

“Waste batteries should be removable from the appliances during the life of the appliance if the batteries have a shorter lifetime or at the end of the life of the equipment, as applicable. “

4 Labelling requirements : crossed out wheeled dustbin.

4.1. Granted exemption : the case of button cells and memory back-up batteries attached to a Printed Circuit Board and not removable.

When batteries have dimensions that fall under the provisions of Article 21 § 5 of the Batteries Directive 2006/66EC, the batteries are exempted from the marking requirement which has to be indicated by a crossed out wheeled dustbin on the packaging with a size of 1.0 cm x 1.0 cm.

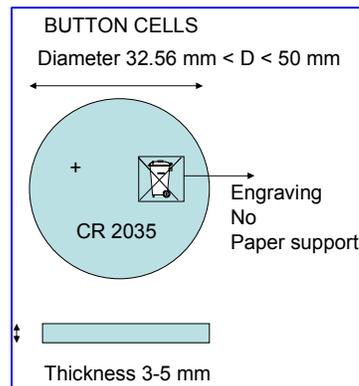
This applies to memory back-up batteries with a diameter less than 32.56 mm (3.256 cm).²

4.2. Request for exemption: the case of button cells and memory back-up batteries with a diameter greater than 3.256 cm.

There are memory back-up batteries with a diameter greater than 32.56 mm (3.256 cm). Under Batteries Directive 2006/66/EC, these batteries develop a surface which requires a labelling of a dimension superior to 0.5 cm X 0.5 cm. Such batteries already bear marking such as the IEC Standardised Number and the (+) or (-) signs.

As the upper and bottom surface are used as contacts to deliver power, technically the marking of the crossed wheeled dustbin is not possible. Any label made of paper, plastic or printing ink applied onto the contact surface of the battery would alter the performance of the battery. Therefore only engraving of the mark on the contact area of the battery is possible while potentially reducing the effective electrical contact surface. Such batteries already bear marking such as the IEC Standardised Number and the (+) or (-) signs. Industry does not consider as feasible adding other marking on such a surface.

This problem is illustrated in the Figure below.



² Calculation basis.

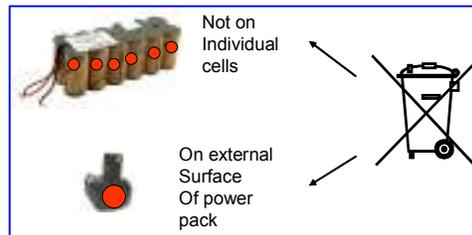
- (1) 0.5 cm X 0.5 cm = 0.25 cm² or 3 % of the area of the larger surface side.
- (2) 3% = 0.25 cm² >>>> 8.33 cm² for largest surface side
- (3) Button cell area = 8.33 cm² / 3.1416 = 2.65 cm²
- (4) Button cell radius = $\sqrt{2.65 \text{ cm}^2} = 1.628 \text{ cm}$ or 16.28 mm
- (5) Button cell diameter = 3.256 cm or 32.56 mm

An exemption to the application of the recycling mark and capacity marking on the battery is requested for such memory back-up batteries with a diameter larger than 32.56 cm and smaller than 50.0 mm

Such batteries should be exempt from the marking requirement that should be indicated on the packaging with a size of 1.0 cm x 1.0 cm. as in Case 4.1. above.

4.3. Request for exemption: the labelling of Batteries in battery packs.

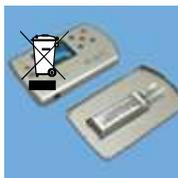
When a set of batteries are placed on the market in a battery pack, the mark should apply on the pack and not on the individual cells. Indeed only the external surface of the pack is visible to end users. This is illustrated in the Figure below.



4.4. Request for exemption: the case of embedded batteries (e.g. batteries incorporated in Equipment and not removable).

The Battery Directive requires the marking of the battery. When this battery is not visible nor accessible to the user, the marking of the battery does not provide the end-user with any particular environmental protection information. The requirement of the Directive for the labelling addressing the Environmental Protection aspect should be considered fulfilled by the crossed out wheeled bin mark imposed by the WEEE Directive on the equipment.

Industry recommends that one single marking of the crossed out wheeled dustbin mark should be required in such a case and in accordance with the WEEE Directive. This is illustrated in the Figure below.



- 4.5. Batteries not subject to the labelling requirement and delivered without packaging together with equipment.

E.g. in remote control equipment or small calculators, batteries may be supplied without packaging. Due to their size, those batteries may not be subject to the marking requirements which should be indicated on the packaging according to Article 21 § 5.

Such batteries being delivered without dedicated packaging and being supplied in the equipment package will only be incorporated in the equipment after sale.

In such cases Industry recommends that the crossed-out wheeled dustbin labelling requirement should be printed into the user's manual.

5. Capacity labelling (time interval between recommendation and implementation)

NB. The technical difficulty to implement the capacity marking on portable batteries will be addressed separately by Industry.

According to Article 21 § 6, the deadline for recommending a capacity labelling of certain types of batteries is March 26, 2009 while the deadline for implementing this measure is September 26, 2009.

A six months interval is too short for the practical implementation of such a marking requirement. Industry's experience shows that an interval period of 15 to 18 months is practically workable for implementing such a measure.

Industry invites the Commission to consider that the final recommendation should be communicated at the latest by September 26, 2008. Alternatively if it was communicated on March 26, 2009, it could only be implemented by June 26 or September 26, 2010.

Brussels, November 23rd , 2007.

Annex 1. Opinion of the Commission (Source: Ref.1.)

1.8. Does the RoHS Directive apply to spare parts installed in new equipment?

The RoHS Directive provides that new electrical and electronic equipment put on the market for the first time from 1 July 2006 should not contain lead, cadmium, mercury, hexavalent chromium, polybrominated biphenyls (PBB) or polybrominated diphenyl ethers (PBDE) (Article 4(1)).

The Directive provides for two sets of derogations:

- the Directive does not apply to the applications listed in the Annex,
- the Directive does not apply to spare parts for the repair, or reuse, of electrical and electronic equipment put on the market before 1 July 2006 (Article 2(3)). This is to allow old equipment to be maintained with spare parts and to ensure that old electrical and electronic equipment is reused. This derogation is explicitly limited to old equipment, i.e. put on the market before 1 July 2006.

Therefore, it is permissible to put on the market spare parts - containing the hazardous substances - for the repair of old equipment (put on the market before 1 July 2006), but not to repair new equipment (put on the market after 1 July 2006). In fact, the marketing of spare parts containing banned substances for the repair of new equipment would prolong the existence of hazardous substances in the waste stream and hamper efforts to increase recycling.

Ref.1. : Frequently Asked Questions on Directive 2002/95/EC on the restriction of the use of certain hazardous substances in electrical and electronic equipment (RoHS) and Directive 2002/96/EC on Waste Electrical and Electronic Equipment Directive (WEEE). Available from :

http://ec.europa.eu/environment/waste/weee_index.htm

Question 1.12. Does the RoHS Directive apply to spare parts installed in new equipment?