

12 February 2009

Peter Cottrell  
Department for Business, Enterprise & Regulatory Reform  
Sustainable Development & Regulation Directorate  
1 Victoria Street  
London  
SW1H 0ET

RE: Eurobat position on Industrial batteries provisions of the Draft SI instrument transposing 2006/66/EC.

Dear Mr Cottrell

**Consultation Document on the Implementation of the Batteries and Accumulators and Waste Batteries and Accumulators Directive (2006/66/EC) – Waste Battery Collection and Recycling Provisions**

I write to you on behalf of Eurobat concerning the above Consultation Document. Eurobat represents the interests of the vast majority of the European industrial and automotive battery manufacturers and suppliers.

Our members are involved mainly in the production of industrial and automotive batteries and we restrict ourselves to comments on those sections of the consultation document which are relevant to these battery types.

This letter is providing comments and answers to the Industrial batteries provisions only.

The individual questions are addressed below:

**Industrial Batteries**

- 1. Do you agree that these producer obligations – which result in an entitlement for end-users to request free take-back, while continuing to allow other arrangements to operate - are the simplest means of providing the necessary producer responsibility safety net. If not, can you suggest a better alternative?***

We are pleased with the UK Government's pragmatic approach to implementing the Directive and its desire to retain a system which has historically been extremely successful in recycling scrap batteries. However we would like to receive confirmation that "take-back" is essentially an act by which the producer or third party acting on his behalf accepts waste brought by the end user to a place designated by the producer or third party acting on his behalf, and does not cover such operations as on-site battery decommissioning operations, packing of waste in transportation approved containers, commissioning of a collection vehicle to and from the end-user premise, and other similar services.

With regard to section 28(1):

Eurobat believes that this is a reasonable approach as it ensures the smooth continuation of existing operations. However we would welcome additional wording to the effect of clarifying that the obligation placed on the producer (selling the replacement) is limited to:

- The take back of those waste batteries that are being replaced by the new batteries sold in the compliance period. Batteries in (obvious) excess of this number would have to fall under section 28(2) (or preferably under section 28(1b) as described below).
- The take back of batteries of the same chemistry as those being supplied.

Eurobat welcomes the clarification/limitation introduced in section 28(3), but believes its applicability should be extended to section 28(1).

Proposal for a new section 28(1b):

Sections 28(2) and (3) and section 28(4) introduce two different layers of safety net designed to deal with situations where section 28(1) is not applicable (presumably when no new battery is sold to replace the waste battery). In these sections, another industrial battery producer (which may not have an established business relationship with the end-user) is called to step in. Eurobat suggests that an additional level of safety net be introduced first (under section 28(1b)) with the effect of assigning responsibility to the very producer of those batteries that have reached their end of life, (even if said producer has stopped producing that chemistry in the UK market).

This is all the more important as in many professional/industrial devices, the battery is extracted at a WEEE dismantling centre. In this case; section 28(1) cannot be invoked (as there is no replacement battery sold and hence no producer), therefore the end of life (eol) responsibility would be determined by section 28(2). The consequence of this is the following: in some segments, in which there exists a single UK manufacturer (producer), it is very likely that this entity will have to bear the brunt of the recycling costs of imports, as he will be named the responsible party under 28(2).

This is why we propose to create an obligation for the end-user to first turn to the original battery producer (which in many instances will be the entity that sold him the equipment), hence the proposal to create a new paragraph 28(1b).

With regard to sections 28(2) and (3):

The safety net that is proposed in these sections should not be designed with a “free of charge to the end-user” obligation. Otherwise, in a situation when a producer has exited the UK market, his take-back responsibility (and potentially very high associated costs) will automatically be shifted to those players (probably the more efficient ones) that have decided to continue their UK business in this chemistry. In narrow, niche markets, one should keep in mind that there could be just a few producers in the UK for a given chemistry and the possibility that the last one in business has to shoulder the liability of the exiting others is not an impossible event.

Although this scenario is likely to be rare, it should nevertheless be standard procedure for the remaining producer(s) called in under section 28(2) to be allowed to negotiate a cost sharing arrangement (and Agreement) with the end user (presumed to be the waste generator).

The concern about an exorbitant price (way above cost) which was expressed in the earlier consultation is mitigated:

- a) by the necessity that remaining producers in a competitive market have to establish and maintain a good reputation with potential new customers and
- b) by the (always open) ability of private waste operators to tender directly with the end-user, hence keeping some pressure on the price.

With regard to section 28(4):

For the same reason, the ultimate safety net proposed in this section should not be designed with a free of charge obligation to the end-user.

The proposed decision tree would then be:

- If the end-user generates waste industrial batteries, apply 28(1): the producer selling replacement batteries should take back the replaced batteries of the same chemistry (and no accumulated waste in excess of replacement quantities).
- If no replacement is carried out and/or if excess waste batteries are still on hand or if another technology is sold as replacement, apply 28(1b): end-user should contact original producer,
- If the original producer is no longer in business (at all in the UK), then apply 28(2): contact another UK producer of the same battery technology and come to an Agreement,

- If no other producer can be found dealing with the same battery technology, contact any UK industrial battery producer and come to an Agreement.
- If no Agreement can be reached with established producers, the end-user should contract directly with waste collection/recycling operators.

**2. Do you agree with the proposal to dispense with the notion of producers of industrial batteries being required to become members of compliance schemes, and with the suggestion that such producers, when not members of portable Battery Compliance Schemes, should register with BERR, rather than the Environment Agencies?**

Eurobat agrees with this proposal. However we would like to see some flexibility being given to Portable Battery Compliance Schemes so that industrial battery producers could be accepted as regular members provided that the weight of industrial batteries such producers place on the UK market is small (<5%) relative to the weight of portable batteries covered by the compliance scheme. The collection system developed by the portable batteries compliance scheme could be ideally suited to ensure efficient end-of-life management for some segments of the professional/industrial batteries market.

**3. Do you agree that it is right to confine producer obligations to battery chemistries they place on the market?**

Yes, we do agree:

- We would wish to ensure that this limitation is also applicable in section 28(1)
- with the reservation spelled out in section 28(1b) in which it is described that under specific circumstances a former producer of chemistry A, if now a current producer of chemistry B (both industrial batteries), may still be called for extended producer responsibility by an end user,
- with the reservation spelled out in section 28(4) in which it is described that under specific circumstances a producer of any chemistry may be called for extended producer responsibility by an end user.

**4. Do you foresee difficulties in producers being able to submit accurate total sales data which reflects exports by their customers?**

Three different reporting mechanisms could be imposed on Industry:

1. Option 1: Industrial battery producers could be required to report on quantities placed on the UK market (as defined per the "first invoice printed in the UK" rule), irrelevant of the place where the battery will be operated (as proposed in the draft SI within section 34).
  - a. We should note that industrial batteries are components of industrial equipment manufactured by OEMs. These OEMs usually specialize in niche markets (from commercial airplanes to air quality measuring equipment) and export the majority of their production (there is often a rather limited number of players worldwide in a given niche market),
  - b. The reporting as UK sales those batteries that are, for the most part, exported would lead to vastly overestimating what is placed on the market for the purpose of UK use,
  - c. Therefore this option makes little practical sense and is bound to generate never ending debates on whether the number generated constitutes a reasonable benchmark to assess collection performance.
2. Option 2: Industrial battery producers could be required to report on quantities placed in the UK market for use within the UK, hence requiring that producers estimate their UK customers' export to correct for the weakness identified in option #1.
  - a. The amount of reporting time required at the UK level would be significant. A simple estimate (a producer supplies 100 OEMs, time allocated to each contact: 30min) shows

- that 50 hrs (1 week) would be necessary to develop this information every year for each producer,
- b. Furthermore, if this principle was to be extended to all 27MS, and 20 producers are identified in each MS, this would generate 27,000 hours of administrative work (approx: 17 man-years)!
  - c. More importantly, one needs to realize than more often than not, the likely answer producers will get is that the information requested is “business confidential”,
  - d. But the result of this effort would lead to a “reasonable estimate” of what is truly placed on the UK market for UK use in the current year, and a much better estimate than the information which would be gathered under option#1.
  - e. The last comment which needs to be made is about the use that could be made from the numbers so developed. As industrial battery waste arisings in a given year have no correlation with the weight of industrial batteries placed on the market in the same year (or even in the few years preceding the current year since industrial batteries typically have a useful lifetime which lasts from 4 to 25 years), what value would this number have as a benchmark to evaluate collection performance?
3. Option 3: Based on these very reasons, the Battery Directive has not established a collection target as EU lawmakers reached the conclusion that it was impossible to derive a performance indicator based on recent sales data (and the difficulty in developing such data).
- a. Therefore the Directive addresses this issue from another angle by prohibiting incineration and land filling of industrial batteries and by creating a take-back requirement.
  - b. This lighter option needs to be considered in the UK transposition SI. It is the one favoured by Industry given:
    - o The lack of operational value linked to the number derived in option I
    - o The time that will be required to develop a reasonable number under option 2 along with its inability to assist in evaluating collection performance, as it does not deal with the long life of these products (4 to 25 years)

Yours sincerely,

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