

The implementation of the Producer Responsibility Principle

In the frame of

Battery Directive 2006/96/EC

Brussels, March 2, 2007

The implementation of the Producer Responsibility Principle

In the frame of

Battery Directive 2006/96/EC

1.	Objective of this position paper	1
2.	What are the essential requirements of the directive in relationship with these concepts?	
3.	Who is the producer, who has to register? The legal answer	1
4.	Who is the producer, who has to register? The practical answer	4
5.	Five cases study	6
5.1.	The key actors of the supply chain	
5.1.1.	List of Candidate Producers (Supply Chain)	
5.1.2.	Actors on the End User Market	
5.2.	Case Study N° 1: The Battery Manufacturer or Importer	7
5.3.	Case study N° 2. The Pack Assembler	8
5.4.	Case study N° 3. The Original Equipment Manufacturer	9
5.5.	Case study N° 4. The Private Label Owner	11
5.6.	Case study N° 5. Direct Sales from another Country	12
6.	Review of basic cases	14
7.	What information should be declared by the producer?	15
8.	Participation of producers to collective or individual schemes	15

PRODUCER, REGISTRATION AND THE COLLECTION RATE Three concepts that work seamlessly

1. Objective of this position paper

The objective of this position paper is to clarify how the three concepts introduced in the battery directive mentioned above actually work hand in hand and will:

- i. Ensure true and accurate data in order to fulfil essential directive requirements
- ii. Without double counting or double declaration
- iii. Whilst being fully coherent with the Directive's legal definitions
- iv. Limit the possibility of free riders and misinterpretation
- v. And remain simple and practical

It is important to underline that the references to "import/export" should be understood as a flow from and to another Member State unless it is explicitly mentioned that it is from and to the EU.

2. What are the essential requirements of the directive in relationship with these concepts?

The essential requirements of the directive in regards to producers, registration and collection rate are:

- i. Producers need to register (Art 17)
- ii. Quantities of portable batteries placed on National Markets need to be compiled (QtyP) (as per Annex I)
- iii. Quantities of portable batteries collected within National Markets need to be obtained (QtyC) (as per Annex I)
- iv. The collection rate needs to be calculated and compared to mandatory targets (Art 10).

3. Who is the producer, who has to register? The legal answer.

It is established in Art 3(12) of 2006/66/EC that:

'producer' means any person in a Member State that, irrespective of the selling technique used (...) places batteries or accumulators, including those incorporated into appliances or vehicles, on the market for the first time within the territory of **that Member State** on a professional basis;

In the special case of batteries incorporated into appliances or vehicles, the following clarification is brought in the Updated Q&A Document of May 2006 from the Commission (§ 2 - Financing p.8):

Who is regarded a battery producer?

The battery producers are regarded as every producer placing a battery on the national market. This means that if a battery is incorporated in an electrical or electronic equipment or a car, **the equipment producers/car producers are also regarded as a 'battery producer'** under this new Directive.

We also know from the Guide on New Approach and Global approach on Directives (§ 2.3.1.) that:

Placing on the market is considered not to take place where a product is:

- (...)
- transferred to a manufacturer for further measures (for example assembling, packaging, processing or labelling)
- in the stocks of the manufacturer, or the authorised representative established in the Community, where the product is not yet made available (...)

It is clear from these definitions that the entity that is required to register in a given MS is:

- the entity that sells to (a distribution network which in turn sells to) an end user within that MS a non-incorporated battery,
- or
- which sells to (a distribution network which in turn sells to) an end user within that MS an appliance or vehicle containing a battery or a battery packed with the appliance.

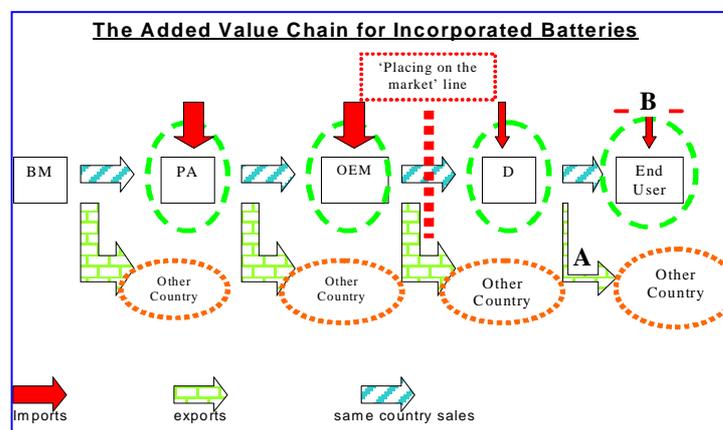
4. Who is the producer, who has to register? The practical answer.

When answering this question from a practical point of view, one should look at the typical supply chain that exists between a battery manufacturer and an end user. It is quite rare that the supply chain goes directly from the battery manufacturer to the end user without intermediate entities adding value or ensuring distribution of the product to the end user.

We shall take the case of a battery sold incorporated in an appliance to an end user to illustrate how one can keep the registration process simple and practical. In this situation, the battery is manufactured by Battery Manufacturer (BM), the battery is assembled into packs by Pack Assemblers (PA), this pack is sold to an Original Equipment Manufacturer (OEM) which in turn sells the equipment with the incorporated pack containing a battery it to a Distributor (D) who brings it to a final End-User in a given Member State (MS).

These different legal entities can be located in other MS (or non EU countries), and each entity is likely to export a fraction of its output to customers within several MS as well as non-EU countries (green arrows), and is also likely to import some batteries into that MS from other EU or non-EU countries (red arrows).

FIGURE 1. Schematic Representation of the flow of batteries and packs (Case 1 Incorporated Batteries).



It appears clearly that neither the battery manufacturer nor the pack assembler can know what is the weight of batteries that are sold to End Users within the green MS (see Figure 1), they are much too far up the supply chain and have little or no downstream knowledge that far down. This is due to the fact that intermediate entities export and import batteries (incorporated and unincorporated).

In addition, a system to track sales by country could be seen as an infringement of certain EU competition rules.

On the other end of the chain, it was never intended that the extended producer responsibility would be placed on distributors (except in the case of private labels or import of batteries from within and outside the Member States).

Therefore, the entity that should be required (as per art 17) to register should be the OEM.

It appears that this practical conclusion for OEMs **is fully in-line** with the legal definition of the producer as developed in section 3..

5. Five cases study.

A study of “Five Cases” where the Producer Responsibility applies according to Directive 2006/66/EC is proposed below. The application of the Producer Responsibility according to the examples supplied in those five cases should allow the coverage of more than 99 % of cases of Producers registration.

In each case we will identify who the producer is and what quantity of portable batteries he should be required to declare for a given member state.

5.1 The key actors of the supply chain.

Figure 2 illustrates the 7 key actors of the supply chain and of the End User Market that need to be considered for the registration procedure. They are listed below and separated in two categories: the list of “Candidate Producers” and the list of actors on the “End User Market”.

5.1.1. List of Candidate Producers (Supply Chain)

1. Battery Manufacturer or Importer (BMI)
2. The Pack Assembler (PA)
3. The Original Equipment Manufacturer (OEM)
4. The Private Label Owner (PLO)
5. Entity selling directly to End User market (6) & (7) from other country

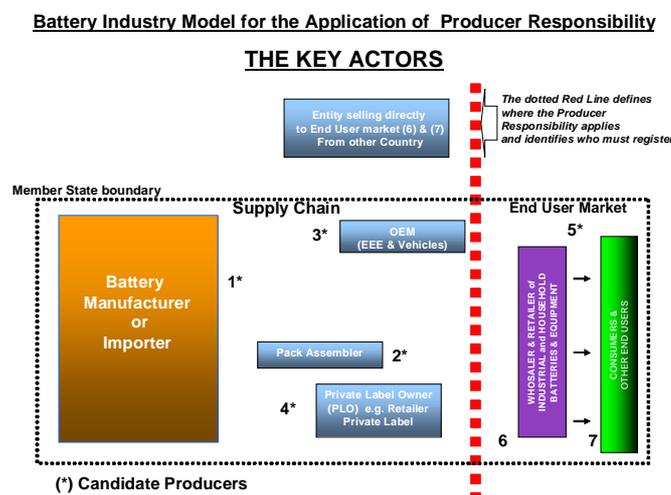
5.1.2. Actors on the End User Market

6. The Wholesaler or Retailer of Industrial or Household Batteries and Equipment.
7. The consumer and/or other end-user.

As it can be observed in Figure 2, there is a clear separation between the Supply Chain and the End User Market. This separation is indicated in Figure 2 by a vertical dotted line. This line defines a) where the Producer Responsibility applies and b) identifies who must register.

The five Supply Chain actors will be further considered as candidate “Producers” for registration of batteries placed on the market in a Member State in accordance with Directive 2006/66/EC. This will be illustrated by the Five Case Studies detailed below.

FIGURE 2 Schematic Representation of the Key Actors of the supply chain to be considered for the Application of the Producer Responsibility

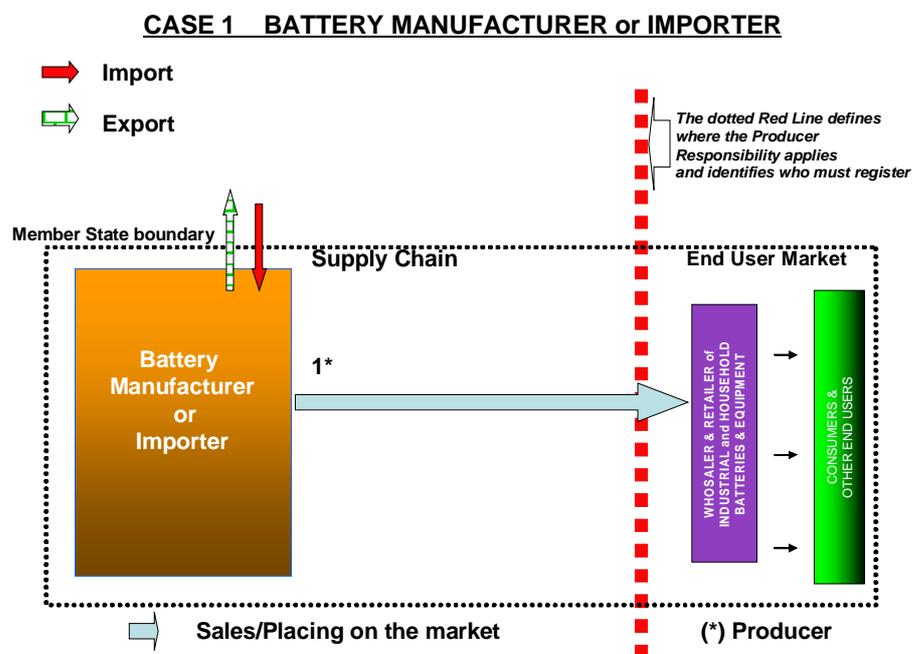


5.2. Case Study N° 1 : The Battery Manufacturer or Importer.

When a Battery Manufacturer or Importer (BPI) sells batteries directly to the End User Market, either to a Retailer or Wholesaler or an end-user (...on a professional basis), it must register as a “Producer”. In addition, as a producer of portable batteries, it must declare the weight of the portable batteries placed on that given national market (as materialised by the blue arrow in the figure below), in accordance with Annex I of the Battery Directive.

This is illustrated in Figure 3, where the Battery Manufacturer or Importer is identified by the mark (1*).

**FIGURE 3 Application of the Producer Responsibility.
CASE 1 BATTERY MANUFACTURER OR IMPORTER**



It must be noticed that:

- The volume purchased from foreign country based entities (imported) by the BMPI (red arrow) is already included in the volume declared as placed on the national market of that Member State and does not need to be reported separately (this would lead to double counting).

The volume sold into other countries (exported) by the BMI (green arrow) is not placed on the national market and therefore does not need to be reported here. This situation is covered in case study n°5

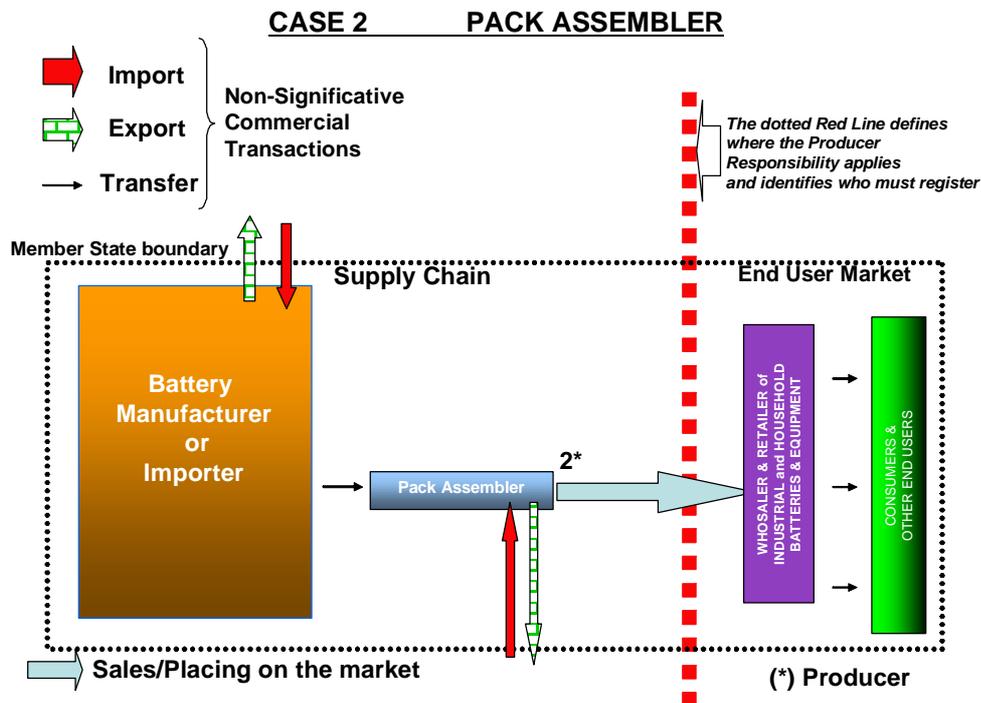
5.3. Case study N° 2. The Pack Assembler.

A Pack Assembler (PA) is purchasing batteries from a Manufacturer or Importer in order to supply the End User market with Battery Packs. A Pack Assembler may also buy batteries from suppliers located in another country than the one where its commercial transaction is made to the End User market. He may also export packs to another country. This information about the import of batteries and export of packs is proprietary information.

The Pack Assembler is considered as the Producer at the time when he supplies the End User market with Battery Packs, either to a Retailer or Wholesaler or end-user (...on a professional basis) and must register as a producer. In addition, as a producer of portable batteries, it must declare the weight of the portable batteries placed on that given national market (as materialised by the blue arrow in the figure below), in accordance with Annex I of the Battery Directive.

This is illustrated in Figure 4, where the Battery Manufacturer or Importer is identified by the mark (2*).

FIGURE 4 Application of the Producer Responsibility. CASE 2 PACK ASSEMBLER



Similarly, it should be noticed that:

- The volume purchased from foreign country based entities (imported) by the PA (red arrow) is already included in the volume declared as placed on the national market of that Member State and does not need to be reported separately (this would lead to double counting).
- The volume sold into foreign countries (exported) by the PA (green arrow) is not placed on the national market and therefore does not need to be reported here. This situation is covered in case study n°5.

5.4. Case study N° 3. The Original Equipment Manufacturer

An Original Equipment Manufacturer (OEM) is purchasing batteries from a Manufacturer or Importer or from a Pack Assembler in order to supply the End User market with equipment incorporating batteries or packs. OEM may also **purchase** batteries and packs from suppliers located in another country than the one where its commercial transaction is made to the End User market. He may also **sell** packs or equipment with battery packs incorporated to another country. This information about the import and export of batteries and/or packs is proprietary information.

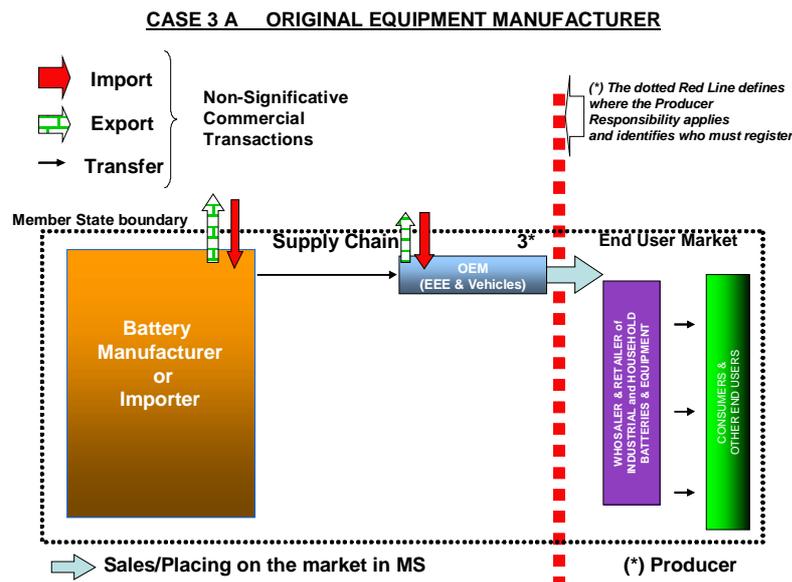
The OEM is considered as the Producer at the time when he supplies the End User market with Equipment and incorporated batteries or packs, either to a Retailer or Wholesaler or end-user (...on a professional basis). It must register as a "Producer". In addition, as a producer of portable batteries, it must declare the weight of the portable batteries placed on that given national market (as materialised by the blue arrow in the figure below), in accordance with Annex I of the Battery Directive.

In Figure 5 B, the case of a commercial exchange of batteries between a Pack Assembler and an OEM is illustrated. It shows that the OEM will be considered as the "Producer" for the quantity of batteries placed directly by himself on the End User market, while the Pack Assembler will be declared as "Producer" for the limited quantity he is placing directly, without intermediate, on the end user market. The quantity of batteries transferred between the Pack Assembler and the OEM should not be declared by the Pack Assembler, but by the OEM.

It should be noted that a part of the packs supplied to the OEM may be sold outside the given Member State by the OEM. Therefore only the OEM owns the information relative to the quantity of batteries placed on a professional basis on the local end-user market.

This is illustrated in Figure 5A and Figure 5B, where the OEM is identified by the mark (3*).

FIGURE 5 A Application of the Producer Responsibility. CASE 3 A THE ORIGINAL EQUIPMENT MANUFACTURER (OEM)

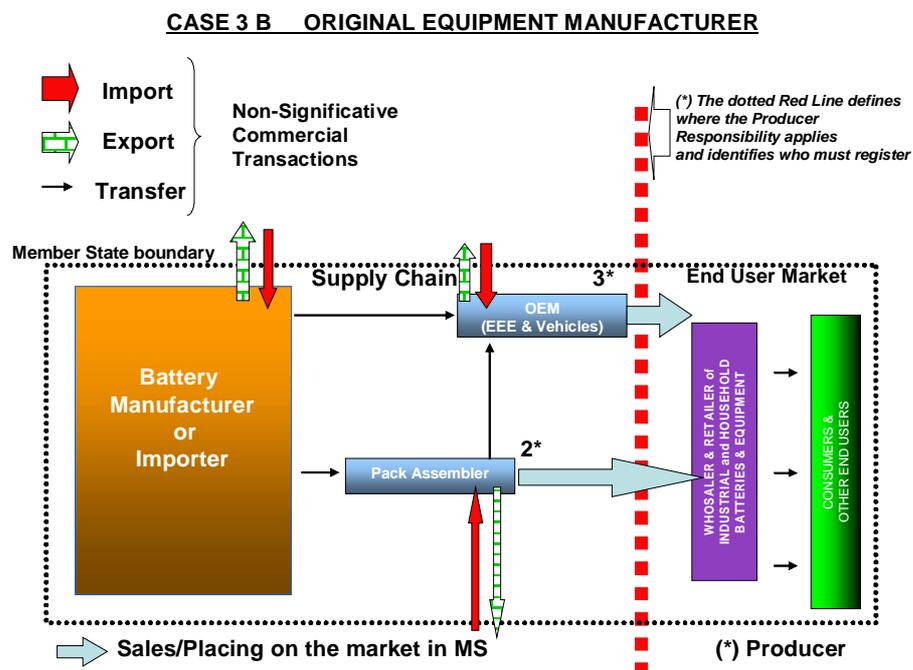


Similarly, it should be noticed that:

- The volume purchased from foreign country based entities (imported) by the OEM (red arrow) is already included in the volume declared as placed on the national market of that Member State and does not need to be reported separately (this would lead to double counting).

- The volume sold into foreign countries (exported) by the OEM (green arrow) is not placed on the national market and therefore does not need to be reported here. This situation is covered in case study n°5.

**FIGURE 5 B Application of the Producer Responsibility.
CASE 3 B THE ORIGINAL EQUIPMENT MANUFACTURER (OEM)
And the PACK ASSEMBLER**



5.5. Case study N° 4. The Private Label Owner.

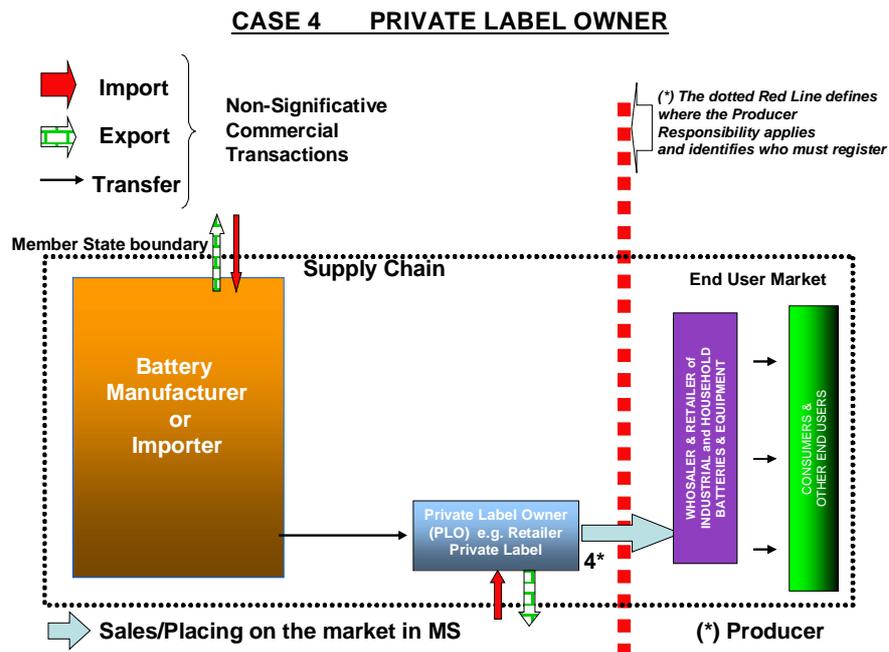
It is exceptional that a direct connection exists between the battery manufacturer and the end-user. The Private Label Owner (PLO) is often an additional intermediate before the batteries are supplied to the end user. An example of such a PLO is the brand IKEA. It is important to underline that the PLO has the intellectual property rights on their own brand.

This case is illustrated in Figure 6, below. The PLO purchases batteries from a battery manufacturer. However, before the PLO sells these batteries to the end-user, it places its own label on the battery. As a result, the end-user will purchase a battery on which only the PLO brand is indicated. No reference to the original battery manufacturer is on the battery. This practice is similar to the sector of electrical and electronic products for which the WEEE Directive explicitly defines a producer under art 3(i)(ii) if it [...] *resells under his own brand equipment produced by other suppliers (...)*. In addition a PLO may directly import batteries from other countries and ship batteries with its own label to another EU Member State or outside EU.

A PLO is considered as the Producer at the time when he sells batteries directly to the End User market either to a Retailer or Wholesaler or end-user (...on a professional basis) and it must register as a "Producer". In addition, as a producer of portable batteries, it must declare the weight of the portable batteries placed on that given national market, in accordance with Annex I of the Battery Directive.

This is illustrated in Figure 6, where the Private Label Owner is identified by the mark (4*).

FIGURE 6 Application of the Producer Responsibility. CASE 4 THE PRIVATE LABEL OWNER (PLO)



In line with the previous examples:

- The volume purchased from foreign country based entities (imported) by the PLO (red arrow) is already included in the volume declared as placed on the national market of that Member State and does not need to be reported separately (this would lead to double counting).
- The volume sold into foreign countries (exported) by the PLO (green arrow) is not placed on the national market and therefore does not need to be reported here. This situation is covered in case study n°5.

5.6. Case study N° 5. Direct Sales from another Country.

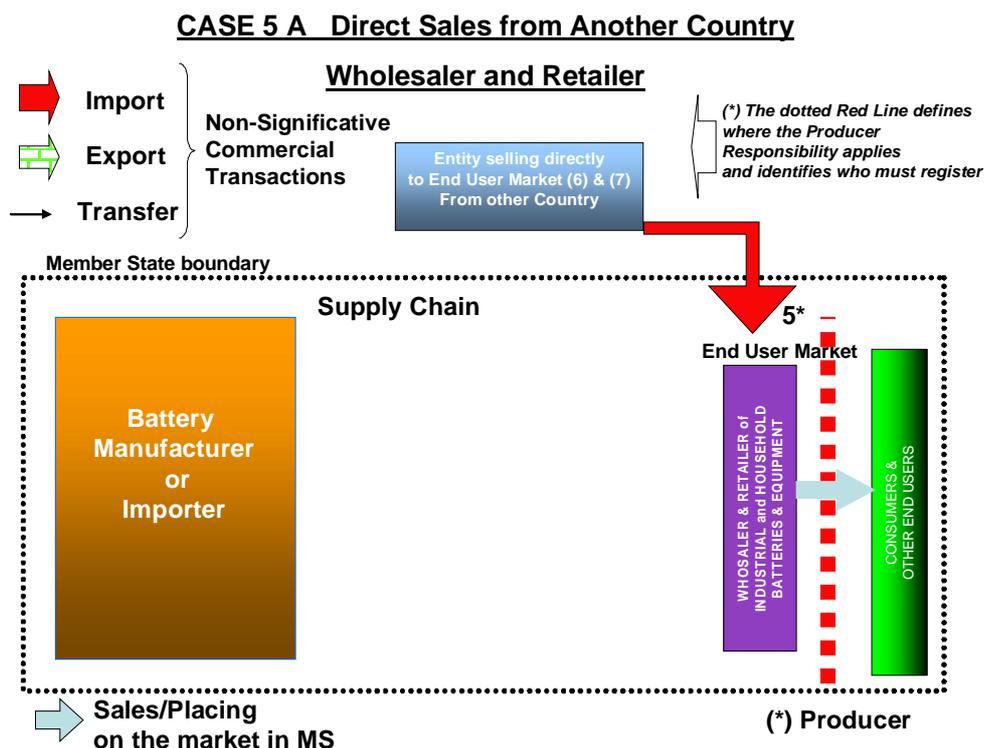
Batteries are **also directly placed on a National Market** by commercial entities located in another country (EU or non-EU) but selling directly to the End User Market. In order to be able to enforce their national legislation, Member States need to have a responsible legal entity located within their territory. Therefore, it is necessary that the legal entity which purchases batteries on a professional basis be recognised as the Producer.

This legal entity is either a wholesaler or retailer or alternatively, the end-user (acting on a professional basis) and needs to be registered. In addition, as a producer of portable batteries, it must declare the weight of the portable batteries placed on that given national market, in accordance with Annex I of the Battery Directive.

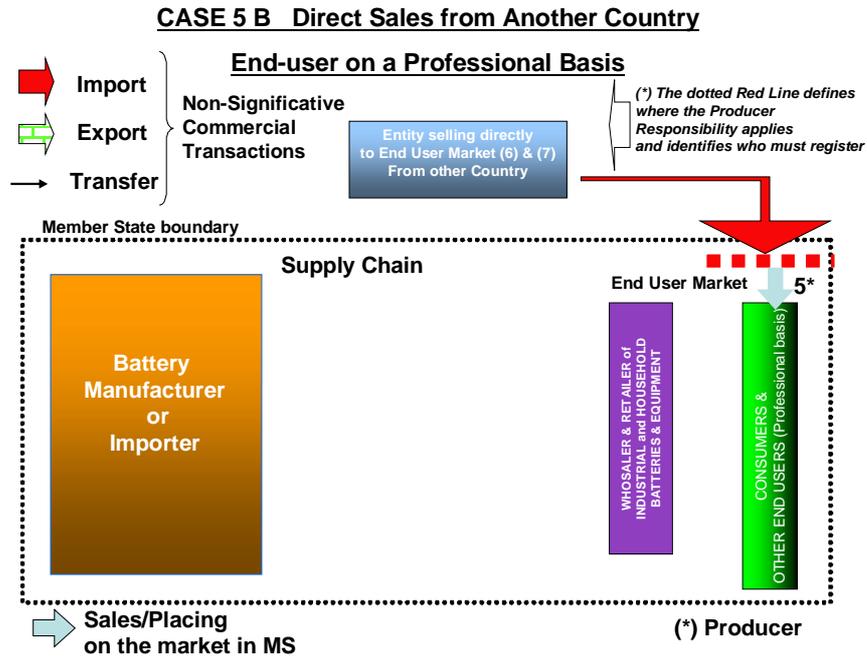
This is illustrated in Figure 7, for the wholesaler and retailer cases (Case 5 A) where the entity located in the Member State, but purchasing directly from an entity located in another country, is identified as the Producer under (5*).

The case of the end user acting on a professional basis is also illustrated in Figure 8 (case 5 B).

**FIGURE 7 Application of the Producer Responsibility.
CASE 5 A DIRECT SALES FROM ANOTHER COUNTRY:
Whosaler and Retailer**



**FIGURE 8 Application of the Producer Responsibility.
 CASE 5 B DIRECT SALES FROM ANOTHER COUNTRY:
 To an end-user on a Professional basis.**



6. Review of basic cases

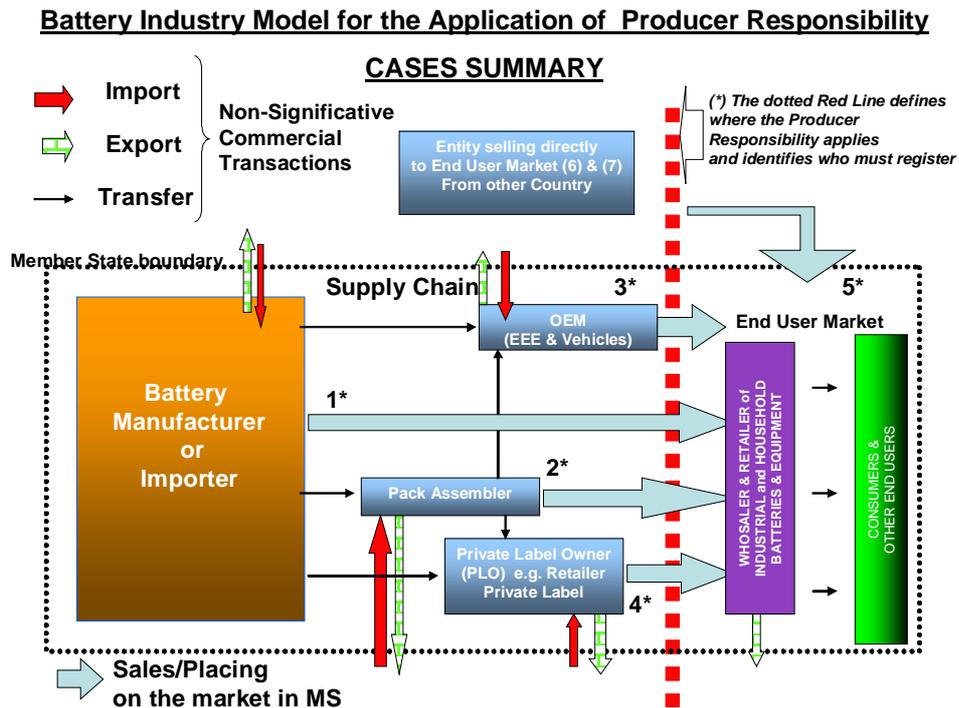
The analysis of the practical flow of batteries, packs and equipment with incorporated batteries or batteries packed with the appliances confirms that neither the battery manufacturer nor the pack assembler has accurate information on batteries that are sold to End Users within a given MS.

Therefore, the legal entity that is recognised as the “PRODUCER” and is required to register according to Article 17 of the battery directive will be, depending on the supply chain structure, one of the following:

1. The battery manufacturer or importer when it is selling directly to the End User Market in that MS,
2. The Pack Assembler when it is selling directly to the End User Market in that MS,
3. The OEM selling equipment with incorporated batteries or packs to the End User market in that MS,
4. The Private Label Owner selling to the End User Market in that MS.
5. The entity within the End User Market located inside the Member State that makes a direct purchase of batteries on a professional basis from another country (acting as a wholesaler or retailer or as an end user acting on a professional basis)

Those various options are represented schematically in Figure 9 and should be addressed similarly in all national legislations in order to ensure coherence in the application of the Producer Responsibility.

FIGURE 9 Application of the Producer Responsibility. 5 CASES SUMMARY



7. What information should be declared by the producer?

Within a given MS, the producer should declare the weight of portable batteries he sells directly to the end user market located within that Member State. In particular, it needs to declare,

- i. the quantity of portable batteries sold directly to end users located within that Member State and
- ii. In the case where some batteries are sold to wholesalers or distributors and then to the end-users, an estimate of the fraction of batteries which is sold by said distributors to end-users located within that member State.

The following producers have to declare the quantity of portable batteries by weight that they place on the market in order to fulfil the requirements of ANNEX I of the Battery Directive.

1. The battery manufacturer or importer when it is selling directly to retailer or wholesaler or end user (the End user Market) in that MS as in Case 1.
2. The Pack Assembler when it is selling directly to a wholesaler or retailer or end user (the End User Market) in that MS as in Case 2.
3. The OEM selling equipment with incorporated batteries or packs to a wholesaler or retailer or end user (the End User Market) in that MS as in Case 3.
4. The Private Label Owner selling to domestic or industrial retailers or wholesalers (the End User Market) in that MS as in Case 4.
5. The entity located inside the Member State that makes a direct purchase of batteries on a professional basis from another country (acting as a wholesaler or retailer or as an end user purchasing on a professional basis - Case 5).

Choosing any other actor further up in the process would contradict the legal definitions and would require

- a much increased amount of guesswork to gauge exports by downstream actors,
- as well as a lot more tracking of imports (with the risk of opening the door to many free riders) to account for the fact that the EU is a single market and an open economy.

This does however, not exclude commercial agreements between the supplier and the distributor who are not based in the same country. Such an agreement could consist of the out of MS supplier taking over the registration requirements for the distributor.

Today, general import/export data fall within the responsibilities of the National Collection and Recycling Organisations (NCROs) or falls within the responsibilities of any private or collective compliance scheme.

8. Participation of producers to collective or individual schemes

A part of the registration process will require producers, as defined by the Battery Directive, to report sales of portable batteries expressed by weight on a yearly basis.

Producers should be allowed to register through a Collection and Recycling Organisation (CRO) which is an entity set up by Producers to fulfill in a collective way the legal requirements of the Directive. More than one CRO can be active in a Member State.

The option should remain open for an individual producer to fulfil its legislative obligations by himself. However, this producer should comply with the same rules as the collective organisations in order to avoid competition distortion.

Brussels, March 2, 2007.