

Spanish Marking requirement contradicting the Battery Directive

The Spanish government is the first Member State that has transposed the battery directive. The battery industry welcomes that a country has finalised its transposition responsibilities a significant time before the actual deadline of 26 September 2008, since this allows sufficient time to ensure full compliance with the new requirements of the national legislation.

However, the battery industry is of the opinion that the Spanish transposition is not fully in line with the battery directive and even contradicts the internal market principles included in the EC Treaty and reiterated in this directive.

Art. 8 of the Spanish Decree which deals with Integrated Management Systems requires in paragraph 6 that *“The identification symbol for the Integrated Management System must visibly appear on each sales unit which may be purchased by the consumer or user”*.

This requirement is not in line with the battery directive for the following reasons:

- I. Art 8(6) Spanish Decree contains a marking requirement which exceeds what is foreseen in article 21 of the Battery Directive. The latter only contains 3 marking requirements for batteries: (1) crossed-out dustbin, (2) the chemical symbol and (3) capacity marking
- II. The Battery Directive explicitly states in recital 1 that “[...] *it is also appropriate to take measures at Community level on the basis of Article 95(1) of the Treaty to harmonise requirements concerning [...] labelling of batteries and accumulators and so to ensure the smooth functioning of the internal market and avoid distortion of competition within the Community*”. It is generally recognized that Member States cannot go beyond the requirements that are based on Article 95 EC Treaty.
- III. In addition the EC Treaty states in its article 28 that *“quantitative restrictions on imports and all measures having equivalent effect shall be prohibited between Member States”*. The Spanish marking requirement cannot even be justified on the basis of the exemptions of article 30 EC Treaty.

In conclusion, we urge the Commission, to ask the Spanish government to delete art. 8(6) of the Spanish Decree. On the basis of the aforementioned reasons, it is clear that it is not in line with the applicable EU legislation. Should this marking requirement remain applicable, every Member State would have the possibility to request specific non Battery Directive related marking. This would make the functioning of the internal market completely impossible. In addition, it would also contradict the principle of cutting red tape for industry – a principle which is confirmed by the recently adopted fast track procedure for administrative burden reductions.