



COMMISSION OF THE EUROPEAN COMMUNITIES

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OPINION OF THE COMMISSION

**pursuant to Article 251 (2), third subparagraph, point (c) of the EC Treaty,
on the European Parliament's amendments
to the Council's common position regarding the
proposal for a**

**DIRECTIVE OF THE EUROPEAN PARLIAMENT
AND OF THE COUNCIL**

**on batteries and accumulators and waste batteries and accumulators repealing Directive
91/157/EEC**

**AMENDING THE PROPOSAL OF THE COMMISSION
pursuant to Article 250 (2) of the EC Treaty**

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1. INTRODUCTION

Article 251(2), third subparagraph, point (c) of the EC Treaty provides that the Commission is to deliver an opinion on the amendments proposed by the European Parliament at second reading. The Commission sets out its opinion below on the 23 amendment proposed by Parliament.

2. BACKGROUND

The Commission's proposal (COM(2003) 723 final) was transmitted to the European Parliament and the Council in accordance with the co-decision procedure provided for in Article 175 (1) of the EC Treaty on 24 November 2003. The Proposal was based on Article 95 (1) and Article 175 (1) of the EC Treaty.

The European Economic and Social Committee gave its opinion on 28 April 2004.

The Committee of the Regions gave its opinion on 22 April 2004.

The European Parliament gave its opinion at first reading on 20 April 2004.

Following the opinion of the European Parliament and pursuant to Article 251(2) of the EC Treaty, the Council adopted the Common Position formally on 18 July 2005. The Commission's Communication on the Common Position (COM(2005)378 final) was adopted on 23 August 2005 and the European Parliament adopted its position at second reading on 13 December 2005.

3. PURPOSE OF THE PROPOSAL

The purpose of the Commission's Proposal is to avoid the final disposal of waste batteries by requiring a "closed-loop" system for all batteries placed on the Community market. The main elements of this proposed "closed-loop" system are (i) a collection target for portable batteries (160 grams), (ii) an additional collection target for portable cadmium batteries (which would

require the monitoring of the waste stream), (iii) a prohibition to landfill/incinerate industrial and automotive batteries and (iv) minimum recycling requirements for all collected batteries. Furthermore, the Proposal sets minimum rules for the functioning of national collection and recycling schemes in order to enhance the proper functioning of the internal market and to guarantee a level playing field for all the actors involved in the battery life-cycle. To this end, the Proposal introduces producer responsibility for the waste management of all batteries placed on the Community market. Once adopted, the proposed Directive will repeal and replace the existing Community legislation on batteries (Directive 91/157/EEC, as amended and Directive 93/86/EEC).

In its First Reading, the European Parliament preferred (i) a restriction on the use of cadmium and lead in batteries, instead of the proposed “closed-loop” system, and (ii) higher collection targets (50% and 60%). The Commission did not accept these changes, since its Extended Impact Assessment (ExIA) showed that the proposed “closed loop system” would entail an equivalent level of environmental protection at lower costs. As regards the collection targets, the Commission accepted to move from a “weight-based” target to a “sales-based” target. However, since its ExIA showed that a target of 160 grams (or 40%) would be the most cost-efficient target, the Commission did not accept to increase this.

In its Common Position, the Council favoured (i) a limited restriction on the use of cadmium in portable batteries, instead of the proposed “closed-loop” system, and (ii) lower collection targets (25% and 45%). The Commission accepted that new available information in the Council’s Impact Assessment showed that the proposed “closed loop system” could face considerable organisational and administrative costs, making the “closed-loop” system comparatively more expensive. The Commission thus supported the restriction on the use of cadmium of the Common Position. The Commission welcomed the increase of a long-term collection target (45%), but suggested that the time-frame for achieving the intermediate collection target (25%) could be more ambitious, in line with the Commission’s initial Proposal.

4. OPINION OF THE COMMISSION ON THE AMENDMENTS BY THE EUROPEAN PARLIAMENT

On 13 December 2005, the European Parliament adopted 23 of the 59 amendments that were tabled. Out of the 23 amendments adopted, the Commission can accept 12 amendments in full and 1 amendment in part. 10 of the adopted amendments are not acceptable to the Commission.

4.1. Amendments accepted by the Commission

4.1.1. Amendments Accepted in Full

Amendment **3** proposes a new recital referring to the 1988 Council Resolution on cadmium. This is a useful clarification in line with Article 4 of the proposed Directive.

Amendment **9** deletes the possibility to establish a “de minimis” rule on the basis of a comitology procedure and provides that all producers should be registered in recital 17. The Commission can accept the deletion of the possibility of adopting a “de minimis” rule through comitology, since such a “de minimis” rule could lead to free riders on the market and could jeopardise the credibility of each national collection system. The required registration of

producers is in line with Article 14 of the proposed Directive and thus also accepted by Commission.

Amendment **12** adds button cells and battery packs to the definition of portable batteries. This useful clarification is acceptable for the Commission.

Amendment **15** replaces the wording ‘sold to end-users’ by ‘placed on the market’ in the definition of collection rate. The Commission is of the opinion that this is a useful clarification which seems easier to monitor for the Member States.

Amendment **17** introduces the obligation for Member States to promote research to increase the environmental performance of batteries. This amendment is in line with the Commission’s initial Proposal and can thus be accepted.

Amendment **19** obliges Member States to take the necessary measures to maximise collection and prevent disposal. This amendment re-introduces amendment 27 of the European Parliament’s First Reading, which was accepted by the Commission.

The Commission also accepts amendment **25**, which transfers the definition of collection rate to Article 3, since this is a useful drafting clarification. Moreover, the Commission also considers the requirement for Member States to start calculating the collection rate 4 years after entry into force of the proposed Directive a useful clarification as this would allow Member States and the Commission to gain experience with the calculation method of the collection target, 2 years before the target itself becomes legally binding.

Amendment **29** specifies that “best available techniques” in Article 10 of the proposed Directive refer to the protection of human health and the environment and that the schemes of this Article should comply with Community legislation. The Commission accepts this amendment since it contains useful clarifications.

The Commission accepts amendment **31** which re-introduces Article 17 of the initial Commission Proposal.

The deletion of the term ‘broadly’ in Article 12, paragraph 2 of the proposed Directive laid down in amendment **32** is also in line with the Commission’s initial Proposal and can also be accepted.

In line with amendment 9, the Commission also accepts amendment **36** which deletes the possibility to establish a ‘de minimis’ rule on the basis of a comitology procedure.

The Commission accepts amendment **38** which requires that the battery capacity will be indicated on a label. This amendment is in line with the Communication on IPP (see Chapter 5.3 “Giving consumers the Information to Decide”). This is also in line with Article 5 of the Commission’s initial Proposal.

4.1.2. Amendments Accepted in Part

Amendment **41** changes the word ‘target’ into ‘efficiency’, clarifies that Member States should achieve the recycling efficiencies, requires a ‘closed-loop’ of the recycled heavy metal content, increases the recycling efficiency target for non-hazardous batteries from 50% to 55% and provides that the efficiencies can be amended on the basis of a comitology procedure. This amendment is partly acceptable. The reference to closed-loop system is not

acceptable, since the Commission has accepted that it may create impracticalities from an implementation and cost point of view. The other parts of this amendment are accepted by the Commission. The reference to ‘efficiencies’ and the recycling efficiency for non-hazardous batteries of 55% target are in line with the Commission’s initial Proposal, which was based on the Commission’s Extended Impact Assessment. The reference to technical adaptations on the basis of a comitology procedure, is in line with Article 10 (5) (b) of the proposed Directive.

4.2. Amendments rejected by the Commission

Amendment **11**, which changes the subject matter into specifying the environmental objectives of the proposed Directive is not acceptable since it is not in line with the inter-institutional drafting guidelines.

Amendment **14** clarifies what is meant by “energy recovery” in Article 3 (8) of the proposed Directive. This amendment is not accepted by the Commission. The proposed Directive focuses on recycling as the treatment operation for batteries, not on energy recovery. Moreover, the term ‘energy recovery’ could be reviewed within the framework of the Thematic Strategy on Waste Prevention and Recycling.

Amendment **18** introduces the requirement that batteries should be readily removable by consumers with a list of exemptions in amendment **40**. These amendments are not acceptable. From an environmental point of view this requirement is redundant now that the WEEE Directive requires the collection of batteries incorporated into appliances. From a technical point of view, it may hamper technological developments of applications which require a battery soldered into the appliance.

Amendment **20** deletes the reference to population density for the setting up of national collection schemes for portable batteries. Furthermore, it specifies that collection points do not need a licence under Directive 75/442/EEC or 91/689/EEC. The deletion of the reference to population density was not accepted by the Commission in the European Parliament’s first reading. The specification that collection points do not need a licence under Directive 75/442/EEC is unnecessary since this is already covered by Article 7 (2) of the proposed Directive.

Amendment **23** obliges distributors to take-back portable batteries. This is not accepted by the Commission since this is already covered by Article 7 (2) (b) of the proposed Directive, which leave the role of distributors in the collection of portable batteries to the discretion of the Member States, in line with the subsidiarity principle.

Amendment **24** deletes the possibility for Member States to adopt deposit schemes and introduces specific conditions for adopting economic instruments. The Commission did not accept this amendment since the adoption of economic instruments should be left to the discretion of the Member States. The conditions for adopting national economic instruments are already governed by primary EC law.

The Commission does not accept amendment **33**, which makes producers financially responsible for information campaigns for the public. The Commission considers that this issue, which is already covered by Article 17 (2) of the proposed Directive, should be left to the discretion of the Member States, in line with the subsidiarity principle.

Amendment **34**, which regulates financial producer responsibility for historic waste, is not accepted by the Commission, since the Commission prefers to leave this issue to the discretion of the Member States, in line with the subsidiarity principle.

Amendment **37** obliges distributors to inform end-users about the possibility of discarding waste portable batteries at their sales points. The Commission does not accept this amendment, since according to Article 17 (2) of the proposed Directive, this issue should be left to the discretion of the Member States, in line with the subsidiarity principle.

5. CONCLUSION

Pursuant to Article 250(2) of the EC Treaty, the Commission amends its proposal as set out above.