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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 16.4.2008
COM(2008) 211 final

2008/0081 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**on amending Directive 2006/66/EC of the European Parliament and the Council on
batteries and accumulators and waste batteries and accumulators as regards Article 6(2)
on placing batteries and accumulators on the market**

(Text with EEA relevance)

(presented by the Commission)

EXPLANATORY MEMORANDUM

1) CONTEXT OF THE PROPOSAL

– Grounds for and objectives of the proposal

The objective of this proposal is to clarify Article 6(2) of Directive 2006/66/EC.

– General context

Article 6(2) sets out that batteries and accumulators that do not meet the requirements of Directive 2006/66/EC should not be placed on the market or should be withdrawn from it. This provision could be understood to require that batteries lawfully placed on the market before 26 September 2008, still on the market after this date, and not meeting the requirements of this Directive, also need to be withdrawn from the market.

If the provision of the Directive is read as above, it would mean that a considerable amount of batteries that were legally placed on the market become waste prematurely. This would be contrary to the principle of waste minimisation. This could also result in appliances becoming waste prematurely. Withdrawing these batteries from the market or making them compliant with the Directive would also cause increased administrative burden both for the Member States and for industry. The effect of Article 6(2) remaining unchanged would either involve the labelling of batteries that are still on the market and not labelled with the wheeled bin and chemical symbols or withdrawing them from the market. This would also involve the withdrawal from the market of specific portable batteries that contain more than the cadmium allowed by Article 4 of Directive 2006/66/EC, and appliances that do not comply with the requirement of making batteries removable as set out by Article 11 of this Directive.

The content of Article 6(2) was already included into the Commission's original proposal¹ for Directive 2006/66/EC. The Commission's intention was not to withdraw the batteries from the market after 26 September 2008 that were legally placed on the market before this date. Therefore, the Commission proposes to clarify this provision and thus provide legal certainty on this matter in order to avoid the situations of diverging legal regimes between Member States amounting to problems of mutual recognition and of internal market disruption. Considering that this clarification should intervene before 26 September 2008, this is proposed as 'fast track action' to reduce the administrative burden mentioned above.

– Existing provisions in the area of the proposal

This proposal aims at modifying Article 6(2) of Directive 2006/66/EC.

– Consistency with other policies and objectives of the Union

The proposal is included as a fast track action under the 'Commission Communication on 2008 Fast Track Actions to reduce administrative burdens in the European Union'.²

The proposal is in line with the Commission Communication on 'Taking the sustainable use of resources forward: A Thematic Strategy on the prevention and recycling of waste'³, where one of the main objectives is waste prevention in line with the goal of increased resource efficiency.

¹ COM(2003)723 final

² COM(2008)141

³ COM(2005)666 final

2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESMENT

– Consultation of interested parties

Formal consultation of the interested parties did not take place due to the urgency of the proposal, as well as because this proposal only aims at clarifying one provision of Directive 2006/66/EC.

– Collection and use of expertise

There was no need for external expertise.

– Impact assessment

It was not deemed to be proportionate to prepare a full impact assessment for this proposal, as the proposal only clarifies a provision of Directive 2006/66/EC providing legal certainty on this measure. An impact assessment has already been carried out in preparation of the battery Directive 2006/66/EC⁴.

If batteries that were legally placed on the market before 26 September 2008 need to be withdrawn from the market after this date due to non-compliance with Directive 2006/66/EC, this would have negative impact on the environment due to the additional waste created, new resources needed and additional transport required. The re-labelling and the withdrawal of batteries from the market have negative economic impacts due to the administrative burden they create.

Some estimates indicate for example that only the primary batteries that do not comply with the labelling requirements and would need to be withdrawn from the market would generate 123000 tonnes of premature waste on the EU level. Estimates indicate that re-labelling only a section of the rechargeable batteries in the EU, batteries used in laptops, cordless power tools and mobile phones, to make them compliant with the labelling requirements of the Directive 2006/66/EC would mean 400 million euros cost⁵.

The measure proposed does not lower the environmental protection aim of Directive 2006/66/EC as it only clarifies the original intention.

3) LEGAL ELEMENTS OF THE PROPOSAL

– Summary of the proposed action

The proposal clarifies Article 6(2) of Directive 2006/66/EC. It makes it clear that batteries must not be placed on the Community market after 26 September 2008 if they do not comply with Directive 2006/66/EC. If they happened to be placed on the market after this date, they need to be withdrawn from the market. The proposal thus clarifies that batteries lawfully placed on the market before 26 September 2008 and which are on the market after this date and yet do not comply with Directive 2006/66/EC, do not have to be withdrawn from the market or relabelled after this date. By clarifying this provision the proposal provides legal certainty on this matter.

– Legal basis

The proposal is based on Article 95 of the EC Treaty, as Article 6 of Directive 2006/66/EC is based on this Article.

⁴ COM(2003) 723 final

⁵ Data: Industry (Recharge, Eicta, EPBA, EPTA AeA) position paper on Compliance with the batteries Directive 2006/66/EC, 7 March 2008

– **Subsidiarity principle**

The subsidiarity principle applies as the proposal does not fall under the exclusive competence of the Community. The objective of the proposed action cannot be sufficiently achieved by the Member States, as harmonised effort is needed in order to ensure the smooth functioning of the internal market.

– **Proportionality principle**

The proposed action does not go beyond what is necessary as it limits itself to the sole Article 6(2) of Directive 2006/66/EC. It therefore respects the principle of proportionality.

– **Choice of instruments**

As the proposal addresses the modification of an Article of a Directive, therefore the chosen instrument is also a Directive.

4) BUDGETARY IMPLICATIONS

The proposal has no implications for the Community budget.

5) ADDITIONAL INFORMATION

– **Simplification**

The present proposal clarifies and simplifies administrative procedures for both public authorities and the industry. It reduces the administrative burden of re-labelling batteries with the wheeled bin and the chemical symbols that were legally placed on the market before 26 September 2008 and are still on the market after this date. For the public authorities it simplifies the enforcement of the battery Directive.

– **European Economic Area**

The proposal concerns an EEA matter and should therefore extend to the European Economic Area.

Proposal for a

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on amending Directive 2006/66/EC of the European Parliament and the Council on batteries and accumulators and waste batteries and accumulators as regards Article 6(2) on placing batteries and accumulators on the market

(Text with EEA relevance)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 (1) thereof,

Having regard to the proposal from the Commission⁶,

Having regard to the opinion of the European Economic and Social Committee⁷,

Having regard to the opinion of the Committee of the Regions⁸,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁹

Whereas:

- (1) Article 6(2) of Directive 2006/66/EC of the European Parliament and Council¹⁰ needs to be clarified in order that batteries and accumulators that were legally placed on the market anywhere in the Community before 26 September 2008 and do not comply with Directive 2006/66/EC can remain on the Community market after this date. This clarification would provide legal certainty for batteries placed on the market in EU Member States and would ensure the smooth functioning of the internal market. The clarification is in line with the principle of waste minimisation and would reduce administrative burden.
- (2) Directive 2006/66/EC should therefore be amended accordingly.

HAS ADOPTED THIS DIRECTIVE:

Article 1

Amendment of Directive 2006/66/EC

Article 6(2) of Directive 2006/66/EC is replaced by the following:

⁶ OJ C , , p. .

⁷ OJ C , , p. .

⁸ OJ C , , p. .

⁹ OJ C , , p. .

¹⁰ OJ L 266, 26.9.2006, p. 1. Directive as amended by Directive 2008/12/EC (OJ L 76, 19.3.2008, p. 39).

"2. 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 after 26 September 2008.

If batteries and accumulators that do not meet the requirements of this Directive are placed on the market after this date, they shall be withdrawn from it."

Article 2

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 26 September 2008. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 4

This Directive is addressed to the Member States.

Done at Brussels,

For the Council
The President