



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 29 August 2005 (31.08)
(OR. fr)**

11799/05

**Interinstitutional File:
2003/0282 (COD)**

**ENV 378
ENT 108
CODEC 678**

COVER NOTE

from: Secretary-General of the European Commission,
signed by Ms Patricia BUGNOT, Director

date of receipt: 24 August 2005

to: Mr Javier SOLANA, Secretary-General/High Representative

Subject: Communication from the Commission to the European Parliament
pursuant to the second subparagraph of Article 251 (2) of the EC Treaty
concerning the Common Position of the Council on the adoption of a
Directive of the European Parliament and of the Council on batteries and
accumulators and spent batteries and accumulators

Delegations will find attached Commission document COM(2005) 378 final.

Encl.: COM(2005) 378 final



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 23.8.2005
COM(2005) 378 final

2003/0282 (COD)

**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT**

pursuant to the second subparagraph of Article 251 (2) of the EC Treaty

concerning the

**Common Position of the Council on the adoption of a Directive of the European
Parliament and of the Council on batteries and accumulators and spent batteries and
accumulators**

**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT**

pursuant to the second subparagraph of Article 251 (2) of the EC Treaty

concerning the

Common Position of the Council on the adoption of a Directive of the European Parliament and of the Council on batteries and accumulators and spent batteries and accumulators

1. BACKGROUND

Date of transmission of the Commission Proposal to the EP and the Council (document COM (2003) 723 final 2003/0282 (COD))	24 November 2003
Date of the opinion of the European Economic and Social Committee:	28 April 2004
Date of the opinion of the Committee of the Regions	22 May 2004
Date of the opinion of the European Parliament, first reading:	20 April 2004
Date of adoption of the Common Position :	18 July 2005

2. OBJECTIVE OF THE COMMISSION PROPOSAL

The purpose of the Commission's proposal for a new Directive on batteries and accumulators was twofold:

- it aims to establish a closed-loop system for all batteries and accumulators, to avoid their incineration or disposal in landfill when they became waste. On the basis of the closed-loop system, all batteries would have had to be collected and recycled, and their metals re-introduced into the economic cycle;
- to set 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 operators involved in the life cycle of batteries and accumulators.

3. COMMENTS ON THE COMMON POSITION

3.1 General comments

The Commission could accept most of the amendments that the European Parliament proposed at first reading. These amendments contain useful technical clarifications or additions to the proposed definitions in the Commission's proposal. The Commission rejected a majority of the amendments related to the substance ban, since its Extended Impact Assessment showed that the proposed “closed-loop” system would entail an equivalent level of environmental protection at lower costs. In particular:

- The Commission fully accepted amendments 4, 5, 11, 12, 14, 21, 24, 46, 47, 50, 51, 52, 56, 57, 58, 59, 60, 61, 62, 64, 78, 79, 80, 81, 103 and 112, in total 26 amendments.
- The Commission accepted 16 amendments in part or in principle. Amendments 10, 29 and 35 can be accepted by the Commission in principle subject to re-wording and/or clarification. Amendments 16, 20, 22, 23, 27, 28, 40, 43, 44, 48, 53, 99 and 109 were accepted in part.
- Amendments 1, 2, 6, 7, 8, 9, 18, 19, 25, 26, 30, 32, 33, 34, 36, 37, 38, 39, 41, 45, 49, 54, 55, 63, 65, 66, 67, 68, 69, 71, 72, 73, 74, 75, 76, 77, 85, 92, 95, 82, 100, 101, 108 and 120, in total 44 amendments, were not accepted by the Commission.

The Council has to a large extent taken account of the Parliamentary amendments and has made a number of further changes. The Council considered that the proposed “closed-loop” system would be difficult to achieve in practice and would entail high costs and administrative burdens for Member States. Therefore, the Council preferred a partial ban on the use cadmium in portable batteries, instead of an additional collection target for portable cadmium batteries, which would have required the monitoring of the waste stream.

The Commission stands by its Extended Impact Assessment (see also the Commission’s statement under paragraph 4), but also accepts that there is now new information available, which shows that the proposed “closed-loop” system may entail a higher administrative burden and higher costs than initially estimated, i.e. more costs for Member States. Therefore, the Commission can accept policy measures other than those proposed in its initial proposal, provided that the level of environmental ambition is at least equivalent to the Commission’s proposal, in particular with respect to collection and recycling objectives.

As regards the collection rates, the Commission welcomes the increase of the long term collection target. However, the time-frame for achieving the 45% collection rate (8 years after the transposition date) could be more ambitious.

On the basis of the foregoing, the Commission can support the common position taken as a package.

3.2 Detailed comments

3.2.1. *Parliamentary amendments accepted by the Commission and incorporated in full, in part or in principle in the common position*

Amendments 4, 10, 11, 12, 14, 16, 20, 21, 23, 24, 28, 35, 40, 43, 44, 46, 51, 52, 53, 56, 57, 59-62, 64, 78, 79-81, 99, 109 and 112 adopted by the European Parliament in first reading, were accepted, in full, in part or in principle by the Commission. They are also in full, in part or in principle incorporated in the Council's common position.

Amendments 4 and 52 change the word 'consumer' into 'end-user'. They were fully accepted by the Commission. They are incorporated in recital 18 and the title of Article 17 of the common position. The part of amendment 53 related to end-users was accepted by the Commission is also partly incorporated in Article 17 (1) of the common position.

Amendment 10 clarifies the scope of the Directive and was in principle accepted by the Commission. It is incorporated in Article 2 of the common position.

Amendments 11, 12 and 14 contain useful clarifications to the definitions of 'battery', 'accumulator' and 'battery pack' and were fully accepted by the Commission. They are incorporated in Article 3 (1), (2) and (3) of the common position.

The Commission accepted amendment 16 in part, since the Commission welcomed the clarification that button cells can also be used as back-up power. This is incorporated in Article 3 (4) of the common position.

As regards the proposed definition of producer, amendment 20 was partly accepted by the Commission. The Commission suggested the following wording for Article 3 (13) (b): *"resells batteries or accumulators under his own brand on the condition that the brand of the producer no longer appears on the batteries or accumulators"*. For the amendment related to subparagraph (c) the Commission suggested the following wording: *"(..) into the Community market from third countries"*. The Council's definition of producer is partly consistent with amendment 20, in that it covers all batteries and accumulators incorporated into appliances. The Council has further simplified the definition, in order to allow Member States to identify a responsible producer on their national territory while at the same time avoiding concerns related to the internal market.

Amendment 21 adds a definition of 'distributor' which was fully accepted by the Commission. It is incorporated in Article 3 (13) of the common position.

The Commission accepted the first two parts of amendment 23, namely that Article 4 applies without prejudice to Directive 2000/53/EC and the 5 ppm weight limit for mercury batteries and accumulators, since both changes are in line with Commission Proposal. The Council partly accepted this amendment in that Article 4 of the common position provides for a cadmium ban, subject to exemptions, and for a review.

Amendment 24 reinforces the obligation on producers to increase the environmental performance of batteries and accumulators and for Member States to promote research in this field. It was fully accepted by the Commission. It is partly incorporated in Article 19 (3) (a) and (d) of the common position.

The Commission partly accepted amendment 28, which rewords the requirements for collection schemes for portable batteries and accumulators. The Commission considered it a useful clarification to add that batteries can also be collected together with electrical and electronic waste on the basis of schemes which were set up implementing this Directive. The common position incorporates this in Article 7 (1) (c).

The Commission could in principle agree to the approach that the Directive itself should establish a list of Member States that may derogate from the proposed recycling targets in an Annex, as suggested by amendment 35. The Council preferred the establishment of transitional arrangements through a comitology procedure (see Article 9 (4) (a) of the common position).

The Commission accepted the correction of the typing error in Regulation 259/93/EEC in amendment 40. The Council incorporated this together with the addition of the word 'recycling' in Article 12 of the common position.

As regards amendment 43, the Commission accepted the re-wording with respect to lead and cadmium recycling. The Commission also welcomed the new paragraph stipulating that the minimum recycling efficiencies could be adapted through comitology in the light of scientific and technical progress. This amendment is incorporated in Article 10 of the common position.

The Commission partially accepted amendment 44, namely the replacement of the word 'arrange' by 'provide' as well as the addition of the word 'collection' and 'environmentally'. Article 13 of the common position partly incorporates this amendment by including the word 'collection'.

The Commission accepted amendment 46, which stipulates that batteries still incorporated in other products such as cars or electrical and electronic equipment at the moment those products become waste, the battery producers will only become responsible for the further treatment of the batteries after their removal from the other products. The Council's common position aims to avoid overlap between the different financing schemes and is therefore consistent with the aim of this amendment (see Article 13 (2) of the common position).

Amendment 51 clarifies that the participation in such schemes should be open to all economic operators on a non-discriminatory basis and was accepted by the Commission. The aim of this amendment is incorporated in Article 7 (2) of the common position.

The Commission accepted amendment 56, which would oblige Member States to take appropriate measures to encourage end-users to participate in collection schemes. This is incorporated in Article 17 (1) (b) of the common position.

Amendments 57, 59, 60, 61, 62, 78, 79, 80 and 81 move the detailed labelling requirements from Annex II to the Directive to an article. Amendment 59 also deletes the possibility for the Commission to amend the labelling requirements according to technical progress on the basis of a comitology procedure. Amendment 64 inserts the possibility for the Commission to grant exemptions from the labelling requirements on basis of a comitology procedure. The Commission has accepted all these amendments and they are incorporated in the Article 18 of and Annex II to the common position.

The Commission partly accepted amendment 99, namely the deletion of the 10% derogation from the recycling requirement and the possibility of making technical adaptations. This is incorporated in Article 10 (1) (b) of the common position.

The Commission accepted the part of amendment 109 which clarified that automotive batteries should be collected ‘from the end-user or from an accessible place in their vicinity’. This is incorporated in the common position in article 7 (4).

Amendment 112 clarifies that the use of visible fees is prohibited for the sale of new products. These amendments were accepted by the Commission and are incorporated in Article 13 (3) of the common position.

3.2.2. Parliamentary amendments accepted in full, in part or in principle by the Commission but not incorporated in the common position

Amendments 5, 22, 27, 29, 47, 48, 50, 58 and 103 were accepted by the Commission, in full, in part or in principle, but are not incorporated in the common position.

Amendments 5 and 58 stipulate that end-users should be informed about the capacity of the batteries and that the capacity should be indicated on the battery pack. They were fully accepted by the Commission. The Council did not incorporate these amendments in its common position, since they considered it inappropriate to indicate the capacity for technical reasons.

In amendment 22 related to the definition of the “closed-loop” system, the Commission welcomed the linguistic clarification (a third ‘party’, instead of ‘parties’). As regards amendment 27, the Commission welcomed the first part, which clarifies that Member States should achieve the “closed-loop” system. The references to a “closed-loop” system are not incorporated in the common position, since the Council considered the “closed-loop” system to be a theoretical concept which would be difficult to achieve in practice.

The Commission accepted amendment 29 in principle, which obliges end-users to deliver their spent batteries and accumulators to collection points. Similarly, the Commission welcomed amendment 47 which obliges Member States to ensure that end-users return their batteries to the battery collection schemes. The Council did not include these amendments, since it considered that such obligations for end-users would be difficult to enforce.

Furthermore, the Commission accepted the parts of amendment 48, inserting new provisions clarifying the scope of producer responsibility and stipulating that the size of the guarantee should depend on the hazardousness of the batteries. In order to avoid a gap in financing, the Council decided the principle of producer responsibility should apply both to producers of individual batteries and appliance and car producers who place batteries on the market, while avoiding double charging (see Articles 3 (12), and 13 of the common position).

Amendments 50 and 103, first part, clarify that the cost of the management of historic portable batteries and accumulators should be borne by the producers of these batteries and accumulators according to market share. The Commission considered that this was useful clarification of the application of the producer responsibility principle and in line with Article 8 (3) of the WEEE Directive. The Council however considered that, in order to allow some flexibility for the national systems, it was not necessary to include rules on the financing of historic waste.

3.2.3. Parliamentary amendments rejected by the Commission and the Council and not incorporated in the common position

Amendments 2, 6, 9, 18, 19, 25, 32, 39, 41, 45, 49, 54, 55, 63, 65, 67, 68, 77, 92, and 101 were rejected by the Commission and not incorporated in the common position of the Council.

3.2.4 Parliamentary amendments rejected by the Commission, but incorporated in the common position

Amendments 1, 7, 8, 26, 30, 33, 34, 36, 37, 38, 66, 69, 71, 72, 73, 74, 75, 76, 82, 85, 95, 100, 108 and 120 were rejected by the Commission, but incorporated in the common position

3.2.5. Additional changes made by the Council to the Proposal

Recitals

The changes the Council made to the recitals aim at adjusting the text to reflect the various changes made throughout the articles, in particular:

- Recitals 8 and 9 give a non-exhaustive list of examples of industrial and portable batteries and cordless power tools, in order to clarify the definitions in Article 3 (3), (6) and (16).
- Recital 11 incorporates requirements of Articles 5 and 17 (2) of the initial Commission Proposal. Recital 16 explains what is meant by ‘best available techniques’ in Article 10 (1) (a) of the common position.
- On the financial producer responsibility, Recital 17 clarifies what is meant by ‘net costs’ mentioned in Article 13.

Articles

The main change made by the Council to the articles is the introduction of a limited ban on the use of cadmium in portable batteries (see Article 4 of the common position) instead of the proposed 80% collection target for portable cadmium batteries, which requires the monitoring of the waste stream (see Article 13 of the initial Commission proposal). This should contribute to the achievement of a “closed-loop system” (see Article 3 (14) of the initial Commission proposal). On the basis of new information on the availability of substitutes for cadmium batteries and the costs of monitoring the waste stream, the Council considered that a limited ban would be a more sustainable policy option than the proposed “closed-loop system”. In line with these changes, the Council also deleted Articles 3 (14) and 6 of the initial Commission proposal and reworded Article 8 of the initial Commission proposal (now Article 6). It also included the requirement of article 25 (2) of the initial Commission proposal. The reference to the environmental impact of transport replaces the similar requirements in Article 9 (2) and article 15 (1), second paragraph of the initial Commission Proposal.

As regards collection targets, like the European Parliament, the Council preferred to express the collection targets as a percentage instead of in grams per inhabitant as initially proposed by the Commission (see Article 13 of the initial Commission proposal). The Council favoured targets of 25% and 45%, to be achieved respectively 4 and 8 years after the transposition date

(see Article 9 of the common position). Since these targets are not linked to the national consumption, it was no longer necessary to keep the possibility of derogations from the targets for reasons of a particularly low battery consumption (see Article 14 (2) of the initial Commission proposal). Instead, the Council proposed to provide for the possible adoption of transitional arrangements on the basis of a comitology procedure (see Article 9 (4) (a) of the common position).

As regards producer responsibility, the Council adopted a new definition of “producer”, which would allow Member States to identify a producer on their national territory for the implementation of financial producer responsibility (see Article 3 (12) of the common position). In order to avoid a gap in the financing of the waste management of batteries removed from appliances/cars, appliance manufacturers and car producers are also covered by the definition of “producer” in this Directive, if the appliance or car incorporates a battery at the moment when it is placed on the market. Article 13 of the common position requires Member States to avoid double charging and clarifies that producers have to finance the net costs related to the waste management of batteries. Article 14 of the common position (replacing Article 22 of the initial Commission proposal) no longer requires producers to provide a guarantee when placing a battery on the market. Article 23 of the initial Commission Proposal establishing rules on the financing of historic waste is deleted. Furthermore, the Council added the possibility of adopting *de minimis* rules for financing and registration on the basis of a comitology procedure (see Article 15 of the common position).

Annexes

Annex I of the common position contains a table for monitoring compliance with the collection targets and reflects the changes made in Article 9 of the common position. The prescriptive labelling requirements of Annex II have moved to Article 18 of the common position and therefore, like in the European Parliament’s first reading amendments, Annex II only contains the labelling symbol (crossed-out wheel bin). The detailed treatment and recycling requirements of Articles 15(2) and 19(1) of the initial Commission’s Proposal have moved to Annex III to the common position.

4 CONCLUSION

The environmental objective of the Commission’s Battery Proposal is to prevent the incineration and landfill disposal of all batteries when they become waste. In order to achieve this environmental objective, the Commission proposed high collection and recycling targets for all batteries, with a particularly high collection target for portable cadmium batteries, in order to achieve a so-called “closed-loop” system.

In its common position, the Council preferred other policy measures to achieve the objectives of the Commission’s Proposal. Since the level of environmental ambition of the Common Position is at least equivalent to the Commission’s Proposal, the Commission can support the overall package.

Statement by the Commission related to the Council's impact assessment:

The Commission underlines the importance of impact assessments being carried out in line with the agreed interinstitutional objectives of better regulation in future. These issues should be further explored between the three Institutions in the ongoing work under the Interinstitutional Agreement, with a view to reaching agreement on a methodology for such impact assessments.