Unofficial Note of the Technical Adaptation Committee on the Batteries Directive (2006/66/EC)

Meeting held in Brussels on 6 November 2009

A. Summary

This Commission focussed mainly on updating Member States (MSs) on progress in terms of outstanding decisions still to be taken and clarifications on issues of interpretation.

B. Detail

1. Capacity Labelling

Keen for Member States (MSs) to ask questions during this session and clarify anything they are unclear about the draft Commission Regulation. One additional point that MSs will be corresponded with separately, is the marking of certain batteries in ‘Wh’ (Watt hours) based on an established US marking requirements standard.

The Commission explained that the measure was introduced as a Commission Regulation rather than as a Commission Decision or Directive, as it is addressed to economic operators, not to MSs. It is therefore directly applicable.

Addressing the draft Regulation itself, the Commission made the following points:

- Preamble (1) – delete reference to “through increased product-life”.

- Preamble (5) – a number of MSs believed this preamble (5) was not consistent with the corresponding Annex. Delete the reference to “are too small”, so that it falls in line with the view that batteries not intended to be seen or removed by the consumer are exempt.

- Preamble (5) – the exemption is intended to apply to batteries incorporated into appliances, not intended to be removed by the consumer and have a longer lifespan than the equipment – therefore considered non-removable. The Commission explained this text was based on the 2003 Impact Assessment and is also mentioned in the Q&A, but will look at amending it to offer a clearer description of the requirements.

- Preamble (6) – this point can and should be integrated with Preamble (5) as it also follows the point that batteries not intended to be removed by the consumer should be exempted.

- Article 1 – to clarify, the timescale for implementation is 18 months after the Commission Regulations comes into force.

- Article 1(2) – this sets out that all batteries are covered by the requirements of the draft Commission Regulation except for those referred to in Annex I.

- Article 3(2) – the term “CCA” is not to be used as an abbreviation as it is not a measure. The official SI measurement unit is amperes with the abbreviation “A”.

The Commission was asked if a definition of CCA can be developed for the draft Regulation. CCA is based on a method already described in an existing international standard. This
standard already includes relevant definitions, and it is therefore not necessary to create a new one for CCA.

- Article 4(1) – delete the reference to “…all portable secondary (rechargeable) batteries…” as there are certain applicable exemptions. The Commission will remove this reference.

- Annex IV (2) and (3) – exemptions are only applicable where batteries are incorporated into appliances and non-removable. In all other cases, this Annex sets out the specific requirements.

- Annex IV (2) – MSs had queried why battery packs are only labelled on the pack, and not on the packaging. The Commission explained the Annex proposes only to label battery pack as (i) this is current practice and they do not want to introduce new burdens (ii) end-users would as a general rule be viewing the pack as a functional unit and not as individual batteries, and (iii) because packs are often sold without packaging. However, the proposal does require the marking of packs rather than individual cells i.e. what the cells are wrapped in will form the basis for the marking requirements.

- Review of the draft regulation – delete the need for review as it is already set out in the Directive.

The Commission was thanked for their efforts in drafting the proposal. In light of the number of points raised by MSs seeking clarification, and suggested it is important for MSs to now have time to consider, review and comment on the next draft measure on Capacity Labelling before going to a vote.

The Commission believed that changes to the draft would be predominantly editorial rather than substantive. The approach may result in lengthy rounds of consultation, delaying a vote.

Clarity was sought on Annex IV(1)(e) - is the exemption for batteries included with equipment, not yet incorporated but once they have been, not intended to be removed from the appliance during its lifetime? Should these particular individual cells sold be capacity labelled?

The Commission reiterated that the exemption is only applicable to batteries incorporated into a product and not designed to be removed. However, they will revisit this point and will come back with new wording to clarify.

One MS believed Annex IV(2)(e) is about battery packs, but also refers to batteries. Perhaps these should be split into two parts. The Commission recognises there was a discrepancy and proposed a new heading “(2)For batteries and battery packs”.

The question was raised as to what extent packaging had to be marked in the appropriate circumstances. Was it intended for the “shrink wrapping” that batteries may be “bagged up” in, or the main packaging of the product a pair of shrink-wrapped batteries may be included in.

Two MSs highlighted a technical problem with the marking of battery packs as required by Annex IV(2)(b). They asked the Commission to consider reducing the minimum sizing requirements down to 2mm x 5mm. If not, it would present a major adaptation issue for producers.
The Commission explained that in circumstances where batteries could not be marked, the significant or substantial packaging of the product should be marked. It also agreed to check with stakeholders if the 2.5mm x 5mm size is an issue.

Uncertainty was raised as it was suggested by one MS that the draft Regulation set differing international and/or European standards for measuring the capacity of automotive batteries. The Commission believed that the standards are the same – one carries the symbol for European recognition, while the other is used internationally. However, asked the MS to provide further detail on any differences.

The discussion was summarised and MSs were informed that it would receive three documents to consider:

- a version of the draft Commission Regulation incorporating the points highlighted today in “track changes” format;
- a short explanation of the changes that have been made; and
- a note setting out proposals of the marking of certain batteries in “Wh” as has been adopted in the US i.e. current EU proposals require the marking of certain batteries (e.g. Li-ion) in “Ah” (or Ampere hours) would present trade barriers.

2. Update on Implementation

The Commission provided MSs with an overview of the Batteries Directive, Decisions that had been agreed/adopted to date, and Decisions still to be finalised.

TAC was informed that 23 MSs had transposed the Directive to date, and 22 had transposed amending Directive 2008/103/EC with regard to Article 6(2) withdrawal of non-compliant batteries from the market.

One MS sought clarification if the amending Directive required formal transposition as it was already accounted for in their national implementation of the Batteries Directive.

The Commission did not believe it would require formal transposition if accounted for in existing legislation. However, notification of transposition should be transmitted in the usual manner.

3. Recycling Efficiencies

BiPRO/ESWI provided MSs with an overview of the main findings of their final report on a “Study on the calculation of recycling efficiencies and implementation of export article (Art. 15) of the Batteries Directive 2006/66/EC”. MSs are invited to provide comments on the Commission working paper by no later than 13 November (subject to Commission agreement to an extension).

The discussion opened with BiPRO being asked how they involved industry/stakeholders, and who did it include?

BiPRO consulted a number of battery manufacturers, hosted a consultation group in January and received a lot of subsequent input from stakeholders. A list of all participants is included at the end of the final report.
One MS understood the report recommends that recycling of liquids and acids should count towards the efficiencies, yet the removal of liquids and acids is considered ‘treatment’ under the Directive. The Commission also asked if you deducted acids/fluids from the efficiency formula, would it be possible to hit the target.

BiPRO explained that the draining of acids is recycling, not preparation (as set out in slide 7). Once fluids/acids are removed, the battery would no longer function. It is therefore integral and part of the recycling process and would contribute to the calculation of efficiency. If not part of the calculation, you could still hit the target, but it would be very difficult for those on the fringes. The Commission added that minimum treatment requirements were established.

BiPRO were asked if they had considered if the inclusion of output slag would meet the definition of recycling under the Batteries and Waste Framework Directives (WFD), and if they knew which processes/chemistries could not meet the efficiencies without the inclusion of slag.

The Commission conceded that this is a complicated issue. Officials are reflecting on this point and will need to reach a conclusion with TAC. Whilst the approach needs to be consistent with the WFD, MSs will be asked for their views as to whether slag is a recycled material or not. The Commission stressed to MSs that the inclusion of slag may be crucial for meeting the requirement.

BiPRO were also asked, in terms of the definition of recycling under the Batteries Directive, would it exclude backfilling as it does under the WFD? Furthermore, would the Batteries Directive definition of recycling go beyond current definition and exclude landfill construction?

The Commission clarified that the definition of recycling in the Batteries Directive will not be overruled by the WFD definition. There is no definition of ‘recovery’ however, so the WFD definition will be adopted. Under the WFD, landfill remediation is usually considered as a recovered material.

BiPRO approach to carbon was queried as it did not appear consistent with the definition of recycling in the Batteries Directive.

The Commission stressed this point was covered in the Working Document, and asked them to note concerns in their response.

More information requested on what was meant by ‘water content’ i.e. what percentage of the acids/fluids in a lead acid battery should be considered water?

BiPRO made the point again that it did not think water content should be included as a part of the efficiency. Therefore, in terms of a lead acid battery, you count the sulphuric acid content, but not the water content e.g. if it is 100% solution – 8% acid, 92% water - the water content is discarded.

A further point was added that the deduction of water content is not subtracted from WEEE, so presents an inconsistency. Would a protocol therefore be required for any deductions in water – contents vary considerably between battery types and brands.

BiPRO noted their suggestion to establish a list of average battery compositions, and said it would be useful if water content were included in that.
4. Cadmium Review

The Commission reminded MSs that it is obligated to review the exemption on the restriction of the use of cadmium in portable batteries used in cordless power tools (CPTs). BiPRO have been appointed by the Commission to undertake a study to inform their review which was launched in August 2009.

The Swedish delegation presented on their Environmental Protection Agency’s (EPA’s) report on “Cadmium in power tool batteries: The possibility and consequence of a ban”. Presentation slides attached.

Sweden was thanked for their work, recognising that it provided a useful overview of the use of Cadmium in CPTs in Sweden and Norway. On next steps, was the Commission planning to undertake a full Europe-wide socio-economic and environmental impact assessment of the impact of retaining or abolishing the current exemption?

The Commission responded that BiPRO is to undertake a study in line with the requirements of the Directive (Article 4(3) “Prohibitions”). The study will include a socio-economic and environmental impact assessment of the use of cadmium in CPTs. Following the conclusion of the report, a stakeholder event may be convened as it has proven successful in the past.

The Commission then asked Sweden how its EPA concluded that the current exemption could be lifted.

Alternative options to the use of cadmium were looked at and considered. Although not a perfect approach, it comes down to price – the alternatives to NiCad are comparable. The Swedish study shows that an alternative can be identified and it can replace NiCad.

One MS fully supported the approach, even if the questions they asked were awkward, and more difficult to answer. First, can the presenters elaborate on why industry were not interested in developing alternatives – was this because they have invested heavily in one chemistry type, or some other reason? Second, there have been huge developments and demands for lithium based battery technology. Lithium is sourced from either saltwater, or – at 1/10 the cost – extracted from salt deserts. Is further information or a view available on rates of future demand, and what impact the potential damage may have to some fragile environments?

With regard to the first question, as a part of the study it is believed a lack of initiative on behalf of industry: they have invested heavily in existing factories. Moving to alternative technologies negates that investment. With regard to the demand for lithium, yes, demand has already increased. Unfortunately, an answer cannot be provided on the need for future supplies and sources.

The Commission added that its report will include a market analysis of the availability of technical alternatives in the EU and worldwide.

The Commission were asked by one MS if the study will look simply at substitution of NiCad, or at developmental technologies as well. The Commission, as far as it was aware, would be looking at all options, but would check the remit of the study.
The questioned was asked how much the cadmium industry had already been affected by the cadmium ban in portables, and questioned what additional impact a ban on cadmium in CPT batteries would actually have. However, the report did not go into that level of detail.

5. Interpretations

- **Producers and third-parties** – The Commission explained that Articles 8(1) and (2) “Collection schemes”, leaves MSs to decide how it implements the infrastructure necessary for the collection of waste batteries. Article 8(3) also permits the participation of Independent Third Parties (ITPs) and allows them the opportunity to establish collection schemes. Article 8(4) gives all economic operators the opportunity to participate – therefore distinguishing between third-parties acting on behalf of producers, and third parties.

  This gives MS the opportunity to design their scheme, and decide who will be responsible for designing the collection schemes.

  One MS inquired if in Article 8(4) third-parties meant either acting on behalf of producers, or as an ITP?

  The Commission clarified that third-parties acting on behalf of producers can be made financially responsible.

- **Capacity Labelling** – A question had been raised with the Commission as to what obligations MSs were under in terms of Article 21(2) requiring the labelling of all portable batteries, not just portable secondary and automotive batteries. Do MSs have to require the labelling of portable primaries in the absence of a Commission Decision?

  As there are no detailed rules, the Commission believed there was no obligation on MSs to implement Article 21(2). However, MS could implement if they so wished, but it would not be in a harmonised way. Therefore, the Commission encouraged MSs to focus on, and participate in, the development of forthcoming harmonising rules.

  The Commission was asked when draft proposals for portable primaries would be available.

  It responded that a further study on the capacity marking of portable primaries is about to launched. Expect a report in early 2010.

- **Article 11 “Removability”** – The Commission clarified that as the Batteries Directive draws its definition of ‘appliance’ from the WEEE Directive, appliances that do not fall within scope of WEEE do not have to meet the removability requirements of the Batteries Directive. For example, a child’s ‘teddy bear’ is excluded from the scope of WEEE as its primary function is as a ‘comforter’. Therefore, it would also be exempt from the removability requirements of the Batteries Directive.

  Three MSs understood the definition of EEE to be a lot broader than the Commission’s interpretation. One MS explained that’s its understanding under RoHS, was that the primary function of a product would be decided by the person placing it on the market and that would dictate the primary function – a ‘walking talking’ doll would fall within scope of the removability requirement as that is the primary function. A child may lose interest in the doll if the electrical components were to fail. Another MS added that they considered how a product was marketed would also dictate primary function.
A third MS added that as the measure was adopted as an Article 175 measure, could they go beyond the minimum requirements and include WEEE excluded products such as teddy bears within scope? Support for this point was followed up with a question of clarification as to which Treaty base Article 11 was adopted – Article 95 or 175? More importantly, how it should be treated.

Concern was raised that producers would not have to provide for removability for many products because of the reference to the WEEE Directive.

One MS stressed that whilst the definition of EEE was broad, the removability requirements applied specifically to “appliances” as defined by – and within the scope of – the WEEE Directive. Therefore, if appliances were outside the scope of the WEEE Directive, the UK would also view them as outside the scope of the removability requirements of the Batteries Directive.

The Commission clarified that Article 11 “Removability” had been adopted under Article 175, and that MSs could introduce national measures beyond the minimum requirements. However, they added caution as the definitions in the Directive are very specific and the harmonising elements of this Directive may be compromised if some MSs did so. The Commission did add that there was also more specific existing legislation such as the Toys Directive which would impact on batteries legislation.

The Commission also clarified that certain medical devices would not have to meet the removability requirements. Infected medical devices are excluded from the scope of the WEEE Directive and therefore not within the scope of ‘appliance’, it is therefore excluded from the removability requirement of the Batteries Directive. The Commission are therefore not in a position to require relevant economic operator to remove waste batteries from excluded medical devices.

One MS questioned whether the medical profession were talking about the permanent or temporary contamination of medical devices – often equipment is sterilised and re-used a number of times. Concern was raised as to whether a specific exemption may be exposed to abuse to include all medical devices. The Commission was asked if they could further question industry on this point to assess the situation in more detail.

The Commission responded that the medical industry has asserted that it is not safe to remove waste batteries from certain infected medical devices, and questioned whether they have to be removed. The Commission reiterated that infected medical devices are currently excluded from the requirements of the WEEE Directive, and are therefore excluded from complying with the removability requirements of the Batteries Directive. They would consult Legal Services on this issue and write to MSs further on this issue.

- **Batteries and ELV** – Specific points had been raised with the Commission by the automotive sector that MSs were unlikely to be sighted on. The Commission would write on these points separately.

### 6. Planning

- **CPTs** – The Commission has engaged BiPRO to undertake a study on the continued use of cadmium in CPTs. BiPRO will be reporting on their work in the New Year.
• Capacity labelling of primary portable batteries – Following the circulation of the three documents referred to previously and a subsequent vote on the revised Commission Regulation, proposals for the marking of primary portable batteries will be developed next year.

• Conformity – The Commission will be initiating a study on MS conformity of transposition of the Directive into national law.

7. Any Other Business

• Capacitors and Fuel Cells – One MS sought clarification as to whether capacitors and/or fuel cells fall within scope of the Batteries Directive. The Commission would look into this issue and circulate something following the TAC.

• Date of next Meeting - Next TAC meeting (tentatively) arranged to take place in spring 2010.