

Ordinance of the Federal Minister of Agriculture, Forestry, Environment and Water Management on Waste Prevention, Collection and Treatment of Spent Batteries and Accumulators (Batteries Ordinance),

BGBI. (Austrian Federal Law Gazette) II No 159/2008

Having regard to Articles 13, 13a, 13b, 14, 19, 23 (1) and (3), 28a, and 36 of the Austrian Waste Management Act 2002 (Abfallwirtschaftsgesetz – AWG 2002), BGBI. I No 102, last amended by BGBI. I No 54/2008, the following ordinance is adopted in agreement with the Federal Minister of Economic Affairs and Labour:

Chapter 1

General provisions

Objectives

§ 1. The objectives of this Ordinance are:

1. to improve the environmental performance of batteries throughout their entire life cycle;
2. the avoidance of battery wastes and - if such wastes cannot be avoided - the recycling and other forms of recovery of such wastes so as to reduce the quantity of waste to be disposed with a view to a sustainable material flow management and an improvement of the environmental situation; this shall be done by integrating all those involved in the life-cycle of batteries, e.g. producers, distributors, consumers, and waste treatment operators;
3. to maximise the separate collection of waste batteries and avoid the final disposal as unsorted municipal waste, with a minimum target for waste portable batteries until 26 September 2012 of at least 25% and until 26 September 2016 of at least 45% of the mass of batteries put on the market in the respective year (collection rate);
4. to ensure a high level of recycling of waste batteries; and
5. to restrict the use of hazardous substances in batteries so as to make a contribution to the protection of human health, the averting of hazards to the natural living conditions of animals or plants, or to soil, and the environmentally sound recovery and disposal of waste batteries.

Scope of application

§ 2. (1) The present Ordinance shall apply to any and all types of batteries, regardless of their shape, volume, weight, material composition, or use. It shall apply without prejudice to the Austrian End-of-life Vehicle Ordinance, BGBI. II No 407/2002 (Altfahrzeugeverordnung), and the Austrian Waste Electrical and Electronic Equipment Ordinance (Elektroaltgeräteverordnung - EAG-VO), BGBI. II No 121/2005, each of them as amended.

(2) The provisions of this Ordinance shall not apply to batteries which

1. are used in equipment, arms, munitions, and war material that are specifically intended for military purposes and that are of importance for safeguarding Austria's essential security interests, or
2. equipment designed to be sent into space.

Definitions

§ 3. For the purposes of this Ordinance, the following definitions shall apply:

1. 'battery' means any source of electrical energy, generated by direct conversion of chemical energy, consisting either of one or more (non-rechargeable) primary battery cells or of one or more (rechargeable) secondary battery cells;
2. 'battery pack' means any set of batteries that are interconnected and/or encapsulated within an outer casing so as to form a complete unit that the final consumer is not intended to split up or open;
3. 'portable battery' means any battery, button cell, battery pack, or accumulator that:
 - (a) is sealed and
 - (b) can be hand-carried; and
 - (c) that is neither an industrial battery nor an automotive battery, except the industrial battery is used in electrical and electronic equipment (EEE) for private households;

4. 'button cell' means any small round portable battery whose diameter is greater than its height and which is used for special purposes such as hearing aids, watches, small portable equipment, or back-up power;
5. 'automotive battery' means any battery or accumulator used for the automotive starter, lighting or ignition power of vehicles; an industrial battery or industrial accumulator shall be considered an automotive battery or accumulator if, by type or construction, it is used as automotive battery or automotive accumulator;
6. 'industrial battery' means any battery or accumulator designed for industrial or professional uses or for any type of electric vehicle;
7. 'waste battery' means any battery or accumulator which is waste pursuant to Article 2 AWG 2002;
8. 'self-importers' means any final consumers who purchase portable batteries or automotive batteries from abroad for their business operations and in whose businesses such batteries become waste;
9. 'disposal' means any of the applicable operations provided for in **Annex 2** (2) of AWG 2002;
10. 'treatment' means any activity carried out on waste batteries after they have been handed over to a facility for sorting, preparation for recycling or preparation for disposal;
11. 'appliance' means any electrical or electronic equipment, as defined by Directive 2002/96/EC on waste electrical and electronic equipment (WEEE), OJ No L 37, of 13 February 2003, p. 24, which is fully or partly powered by batteries or is capable of being so;
12. 'final distributor' means any party offering batteries on a commercial basis to a final consumer;
13. 'final consumer' means any party purchasing a battery for using it;
14. 'putting on the market' means the transfer of batteries to another legal entity on a commercial basis;
15. 'collection point' means
 - (a) any point set up by a municipality or an association of municipalities under Article 28a AWG 2002, or
 - (b) any point set up by producers of portable batteries under Article 13a (1) AWG 2002, where waste portable batteries can be returned;
16. 'cordless power tool' means any hand-held appliance powered by a battery or an accumulator and intended for maintenance, construction or gardening activities;
17. 'collection rate' means, for a given Member State in a given calendar year, the percentage obtained by dividing the weight of waste portable batteries collected in accordance with Articles 5, 6, 7, 10, and 17 EAG-VO or in accordance with Articles 9 ff in that calendar year by the average weight of portable batteries that producers either sell directly to final consumers or deliver to third parties in order to sell them to final consumers in that Member State during that calendar year and the preceding two calendar years;
18. 'mass percentage' means the mass of portable batteries that are put on the market or imported for own use and reported by a collection and recovery system in relation to the total mass of portable batteries put on the market which is reported by collection and recovery systems;

Substance bans and prevention

- § 4.** (1) Without prejudice to the End-of-life Vehicle Ordinance the putting on the market of
1. batteries which contain more than 0.0005 % of mercury by weight, whether or not incorporated into appliances, and of
 2. portable batteries, including those incorporated into appliances, that contain more than 0.002 % of cadmium by weight,

shall be banned on each marketing stage. For the purposes of this provision 'putting on the market' means supplying or making available, whether in return for payment or free of charge, to a third party within the European Union and includes import into the customs territory of the European Union.

(2) Para. 1 (1) shall not apply to button cells with a mercury content of no more than two percent by weight.

(3) Para. 1 (2) shall not apply to portable batteries which are intended for use in any of the following appliances or systems:

1. emergency and alarm systems, including emergency lighting;
2. medical equipment;

3. cordless power tools.

(4) Para. 1 shall not apply to batteries if they were first put on the market in the European Union prior to 26 September 2008.

Treatment of waste batteries

§ 5. (1) For the waste batteries they have taken back, producers shall demonstrably ensure that:

1. the latter are treated in line with the state-of-the-art;
2. the requirements specified in the Austrian Ordinance on Waste Treatment Obligations (Abfallbehandlungspflichtenverordnung), BGBl. II No. 459/2004, as amended, are complied with;
3. by 26 September 2011, at the latest, the minimum efficiencies specified in **Annex 1** are achieved;
4. with regard to the calculation of the targets pursuant to Paragraph 3 records are permanently kept on the mass of waste batteries that
 - (a) are supplied to a recovery plant or
 - (b) are supplied to or leave another treatment plant.

The first to third sentences of Article 17(5) AWG 2002 shall apply *mutatis mutandis* to the records pursuant to Paragraph 4.

(2) Waste batteries exported from the European Union shall only be taken into account in the calculation of the minimum efficiencies given in **Annex 1** if:

1. the producer demonstrates that the requirements of Paragraph 1 are met, and
2. export complies with Community legislation on waste shipment.

(3) Each waste collecting operator (in particular municipalities or associations of municipalities) who accepts waste batteries from a final consumer and does not return them to the producer shall observe the provisions of Paragraphs 1 and 2.

Labelling

§ 6. (1) Producers who put batteries or battery packs on the market shall mark them with the symbol displayed in **Annex 2**.

(2) Producers putting on the market portable batteries or automotive batteries shall, as from 26 September 2009 at the latest, visibly, legibly and indelibly indicate the capacity on the battery.

(3) Producers putting on the market batteries containing more than 0.0005% mercury, more than 0.002% cadmium, or more than 0.004% lead shall mark those batteries with the chemical symbol for the respective metal (Hg, Cd or Pb) in accordance with **Annex 2**.

(4) Where the size of the battery or battery pack is such that the symbol would be smaller than 0.5 x 0.5 cm, the battery or battery pack does not need to be marked; instead, the symbol shall be printed on the packaging in a size of at least 1 x 1 cm.

Information for final consumers

§ 7. (1) Producers shall provide the final consumers of batteries with information at least on the following fields in an appropriate manner, e.g. in print media and through the Internet:

1. the potential effects on the environment and human health of the substances contained in batteries;
2. the purpose of the separate collection of waste batteries and the disadvantages of disposal together with unsorted municipal waste;
3. the available return and collection options;
4. the meaningfulness of recycling and other forms of recovery of waste batteries;
5. the meaning of the symbol of the crossed-out wheeled bin shown in **Annex 2** and of the chemical symbols Hg, Cd and Pb.

Producers of portable batteries shall coordinate the information identified in Number 3 with the operators of collection points pursuant to Article 3(15)(a).

(2) Final distributors of portable batteries or automotive batteries shall inform final consumers about the possibility of the take-back of waste portable and automotive batteries at their points of sale.

Chapter 2

Portable batteries

Removal of portable batteries

§ 8. Producers of WEEE under Article 13a AWG 2002 shall design appliances in such a way that portable batteries can be readily removed. Appliances into which portable batteries are incorporated shall be accompanied by instructions on how to remove those batteries safely and by information for the user on the type of the incorporated portable batteries. These provisions shall not apply where, for safety, performance, medical, or data integrity reasons, continuity of power supply is necessary and requires a permanent connection between the appliance and the battery.

Return of waste portable batteries

§ 9. (1) Final consumers shall be able to return waste portable batteries at least free of charge at:

1. collection points under Article 3(15)(a),
2. collection points under Article 3(15)(b),
3. other return facilities set up by producers or collection and recovery systems for that purpose,
4. the final distributor of waste batteries.

(2) For legal transactions in which the final distributor sells portable batteries by mail order, including electronic mail order, the final distributor can fulfil the obligation of taking back under Paragraph 1(4) by setting up at least two points accessible to the public per political district where final consumers can return waste portable batteries. Final consumers shall be informed of these points and their opening hours in an appropriate way.

(3) Producers of portable batteries shall set up at least one collection point per political district where final distributors of portable batteries can return waste portable batteries.

(4) Final distributors of portable batteries, collection and recovery systems for WEEE and producers of EEE pursuant to Article 10 of the WEEE Ordinance (EAG-VO) shall have the opportunity to return waste portable batteries at least free of charge at:

1. collection points under Article 3(15)(b),
2. collection points under Article 3(15)(a) provided appropriate contracts have been concluded between a collection and recovery system and the collection point and the legal and technical requirements are met.

Take-back of waste portable batteries

§ 10. (1) Producers of portable batteries shall take back waste portable batteries at least free of charge from collection points pursuant to Article 3(15)(a), from final distributors, from collection and recovery systems for waste electrical and electronic equipment or from final consumers at collection points pursuant to Article 3(15)(b), and – if they have set up other return facilities – from final consumers.

(2) Producers of portable batteries shall fulfil their take-back obligation under Paragraph 1 in proportion to the ratio of the mass of the portable batteries put on the market by them to the total mass of portable batteries put on the market by participation in a collection and recovery system pursuant to Article 16. Changing from one collection and recovery system to another shall only be permitted at the end of a calendar quarter.

Collection points

§ 11. (1) At the collection points pursuant to Article 3(15) waste portable batteries shall be collected and held ready at least separately from the other collection and treatment categories listed in **Annex 3**.

(2) Unless there is a contract on the collection of waste portable batteries with one or more collection and recovery systems, municipalities (associations of municipalities) may notify pick-up needs according to Paragraph 4 to the coordination body pursuant to Article 20 within the framework of the separate collection of these waste portable batteries under Article 28a AWG 2002

1. when the quantitative threshold defined in **Annex 3** is reached, or
2. in case the quantitative threshold defined in **Annex 3** has not been reached within six months.

(3) A collection and recovery system may notify pick-up needs according to Paragraph 4 from a collection point pursuant to Article 3(15)(b) to the co-ordination body if:

1. the collection and recovery system has already taken back waste portable batteries corresponding to the ratio of the waste portable batteries put on the market by him to the total portable batteries reported as put on the market by all collection and recovery systems, and

2. the quantitative threshold defined in **Annex 3** has been reached.
- (4) The notification of pick-up needs shall contain the following information:
 1. GLN (global location number) of the collection point,
 2. collection and treatment category,
 3. estimated mass, and
 4. number, type, form, and size of the collection containers.
- (5) Pick-up needs pursuant to Paragraph 2(1) and Paragraph 3 may be notified on 1 December 2008, at the earliest.

Chapter 3 **Automotive batteries**

Return of automotive batteries

§ 12. (1) Final consumers shall have the opportunity to return waste automotive batteries at least free of charge

1. at the final distributor of automotive batteries,
2. at other return facilities set up by producers or by collection and recovery systems for that purpose, or
3. at collection points which municipalities (associations of municipalities) set up for that purpose.

(2) For legal transactions in which the final distributor sells automotive batteries by mail order, including electronic mail order, the final distributor can fulfil his take-back obligation under Paragraph 1(1) by setting up at least two points accessible to the public per political district where final consumers can return waste automotive batteries. Final consumers shall be informed of these points and their opening hours in an appropriate way.

Take-back of waste automotive batteries

§ 13. (1) Producers of automotive batteries shall take back waste automotive batteries

1. from final distributors,
2. from collection and recovery systems for end-of-life vehicles, or
3. from collection points of municipalities (associations of municipalities)

at least free of charge.

(2) Producers of automotive batteries shall fulfil their take-back obligation pursuant to Paragraph 1 by participation in a collection and recovery system pursuant to Article 16. Changing from one collection and recovery system to another shall only be permitted at the end of a calendar quarter.

Collection and pick-up

§ 14. (1) Waste automotive batteries shall be collected and held ready at least separately from the other collection and treatment categories listed in **Annex 3**.

(2) Producers of automotive batteries shall, at the request of a final distributor, a collection and recovery system for end-of-life vehicles or the operator of a collection point of a municipality (association of municipalities), pick up waste automotive batteries free of charge from this distributor, this collection and recovery system, or this municipality (association of municipalities)

1. within 20 days when the quantitative threshold defined in **Annex 3** is reached, or
2. at least once per calendar year within six weeks in cases where the quantitative threshold set forth in **Annex 3** is not reached.

Chapter 4 **Industrial batteries**

§ 15. (1) Producers putting on the market industrial batteries shall take back waste industrial batteries irrespective of the date of their putting on the market and regardless of their origin or chemical composition.

(2) Producers may agree with the final consumers of the industrial batteries on arrangements for financing collection or treatment.

Chapter 5

Collection and recovery systems and coordination

Participation in a collection and recovery system

§ 16. (1) Producers of portable batteries or automotive batteries shall

1. fulfil their take-back obligation pursuant to Article 10 or Article 13 by participation in a collection and recovery system and
2. shall contractually transfer the obligations pursuant to Article 5(1) and (2), Article 7(1), Article 9(3), Article 14(2), Article 22(1)(6), Article 24(1), and Article 25(1) for each collection and treatment category in their entirety to an authorised collection and recovery system for waste portable or waste automotive batteries,

whereby the corresponding obligations and duties are conveyed to the system's operator.

(2) Producers of industrial batteries may contractually transfer their obligations pursuant to Article 5(1) and (2), Article 7(1) and Article 15(1) for each collection and treatment category in their entirety to an authorised collection and recovery system for waste industrial batteries, whereby the corresponding obligations and duties are conveyed to this system's operator.

(3) Producers and self-importers shall grant the relevant collection and recovery system appropriate audit rights, in particular with regard to the masses of batteries put on the market by them.

Requirements for the establishment and operation of a collection and recovery system

§ 17. (1) A waste battery collection and recovery system may only be set up and operated for taking over the obligations under Article 16(1) or (2) in their entirety for one or more collection and treatment categories.

(2) Collection and recovery systems for waste portable batteries shall furnish proof of an appropriate coverage all over the national territory, which means that in line with the obligation of Article 9(3) at any rate a minimum of one collection point has to be established per political district and a disposal logistics plan has to be prepared which demonstrates that pick-up from collection points in accordance with Article 3(15) can be performed.

(3) Collection and recovery systems for waste automotive batteries shall prepare a disposal logistics plan which demonstrates that pick-up from distributors, collection and recovery systems for end-of-life vehicles and collection points of the municipalities (associations of municipalities) can be performed in all political districts.

(4) Funds shall be raised according to the following principles:

1. Provision shall be made of generally applicable tariffs relating to a collection and treatment category or – where this is factually justified – to groups of waste batteries which are comparable with respect to the requirements on collection and treatment (waste battery groups - tariff categories); all contracting parties shall be treated equally.
2. Tariffs shall be based on a transparent calculation of costs and shall be designed in such a way that the expenses to be expected for the waste batteries collected (registered) of one specific collection and treatment category or waste battery group in the calendar year, including their treatment costs and the expenses for the co-ordination point, are apportioned to the total mass of that specific collection and treatment category or waste battery group put on the market in the same calendar year with respect to which participation in the system takes place.
3. Collection and recovery systems shall contractually ensure an appropriate participation of the producers involved in the system in regard to the control of funds collection, in particular a complete notification of the total quantities of batteries put on the market in the calendar quarter per collection and treatment category for which participation in the respective system takes place, which shall include also an allocation to the relevant tariffs.

(5) Collection and recovery systems for portable batteries or automotive batteries shall submit the relevant duly signed agreement pursuant to Article 29(4) AWG 2002 to the Federal Minister of Agriculture, Forestry, Environment and Water Management as part of the documentation when applying for the system's authorisation. Any amendments to the agreement or the conclusion of a new agreement shall be submitted as well, but will not result in a modified authorisation according to Article 29(1) AWG 2002.

(6) As a prerequisite for the operation of their systems collection and recovery systems shall demonstrate by annually submitting the data according to Article 19(1)(1) – for the first time for the

calendar year following authorisation until 10 April of the second calendar year following authorisation – that they reach

1. either a mass percentage of at least 5% of all batteries put on the market in the relevant collection and treatment category annually, or
2. a mass percentage of at least 8% of the batteries put on the market annually when adding up the mass percentages in the individual collection and treatment categories for which the collection and recovery system has been authorised.

If the mass percentages are not reached after setting a reasonable period of grace, the Federal Minister of Agriculture, Forestry, Environment and Water Management shall appropriately restrict or withdraw pursuant to Article 31(2)(5)(b) AWG 2002 the authorisation for the operation of the collection and recovery system as per the end of the current calendar quarter.

(7) Paragraph 6 shall not apply to authorised collection and recovery systems for EEE which contain batteries, or for end-of-life vehicles.

(8) A waste battery collection and recovery system can stop its operation only at the end of a calendar quarter.

(9) Collection and recovery systems shall offer all-inclusive solutions for producers and self-importers of portable batteries putting very small quantities on the market that shall correspond to representative mass percentages.

Own collection volumes of collection and recovery systems

§ 18. (1) In addition to the collection points established pursuant to Article 3(15) a collection and recovery system for waste portable batteries may set up further return facilities for waste portable batteries. The waste batteries collected there shall be treated in accordance with Article 5.

(2) Collection and recovery systems shall offer an agreement on the crediting of the waste battery masses of the respective collection and treatment category demonstrably collected by their participants and submitted to treatment pursuant to Article 5.

(3) When calculating the obligation percentage pursuant to **Annex 4**, the co-ordination body shall take into account, as the own collection volume of the collection and recovery system, the masses of waste portable batteries that have been collected according to Paragraphs 1 and 2 and at collection points according to the definition of Article 3(15), that were treated or still have to be treated pursuant to Article 5 and that are not notified as pick-up needs and not handed over to a collection and recovery system through the co-ordination body, provided that the collection and recovery system has informed the co-ordination body of each transfer of waste portable batteries to another legal entity (to a contracted transferee) by supplying the following data through the register pursuant to Article 22(1) AWG 2002 within 30 days of the first day of the month following pick-up:

1. the locations where waste portable batteries were collected and – if available – the GLNs for these locations;
2. the contracted transferee;
3. the masses that have been re-used or treated, or that have been collected and still have to be submitted to re-use or treatment;
4. proof of compliance with Article 5(1)(2); and
5. the pick-up date.

The documentation confirming these data shall be kept on file by the collection and recovery system. The first to third sentences of Article 17(5) AWG 2002 shall apply *mutatis mutandis*.

Additional documentation duties of collection and recovery systems

§ 19. (1) Without prejudice to their contractual duties on record keeping, the operators of collection and recovery systems shall submit the following documents to the Federal Minister of Agriculture, Forestry, Environment and Water Management at any rate annually by 10 April of the following year in order to demonstrate the proper performance of their business activities:

1. a list of the participants, in particular the producers and self-importers, specifying the GLNs, and the mass of batteries put on the market or imported for own use during the preceding calendar year, for which the producers participated in this system, broken down by collection and treatment categories; and
2. an activity report.

The list pursuant to Number 1 shall be submitted through the register. For the calendar year 2008, notification of the mass pursuant to Number 1 shall comprise the batteries put on the market or imported for own use from 26 September 2008 onward.

(2) Furthermore, the operators of collection and recovery systems shall, by 10 September of each year, submit to the Federal Minister of Agriculture, Forestry, Environment and Water Management an annual report (at any rate the annual financial statements plus their annexes) on the previous calendar year which illustrates the financial situation for the area of Article 17 (1).

(3) The operators of collection and recovery systems shall publish their general terms and conditions in an appropriate fashion. Before any amendment of the general terms and conditions, the changes planned shall be submitted to the Federal Minister of Agriculture, Forestry, Environment and Water Management.

Co-ordination body

§ 20. (1) The co-ordination tasks defined in Article 13b(1) AWG 2002 shall be fulfilled, as a co-ordination body, by the Federal Minister of Agriculture, Forestry, Environment and Water Management or a legal entity appointed by the Minister.

(2) The agreements concluded with the collection and recovery systems for waste portable batteries shall contain provisions on the following issues, regulating in greater detail the provisions of Article 13b(1)(1) AWG 2002:

1. performance of pick-up from collection points pursuant to Article 3(15), in particular
 - (a) definition of the possibility of taking over pick-up needs notified by the operators of collection points on a voluntary basis within a specific period of time;
 - (b) time limits for picking up waste portable batteries pursuant to Article 11(2) or (3);
 - (c) consent to the direct commissions placed by the co-ordination body with a transferee contracted by the collection and recovery system at the system's expense if pick-up is not effected by the system in due time;
2. definition of flat rates to cover the costs of using the collection infrastructure of municipalities or associations of municipalities within the framework of pick-up co-ordination; in this context, one shall take into consideration:
 - (a) the waste quantities to be expected, the facilities required for fulfilling the tasks of municipal collection, the useful life of the facilities and the possibilities for raising efficiency with regard to picking up waste portable batteries;
 - (b) the flat rates for financing the collection infrastructure shall cover:
 - (aa) the costs of containers as far as these are borne by the municipality or association of municipalities, and
 - (bb) the costs of any necessary covers and structural measures for waste portable batteries, if these are required under the Ordinance on Waste Treatment Obligations (Abfallbehandlungspflichtenverordnung);The flat rates shall be reduced proportionately to the relevant mass of waste portable batteries collected if the latter are not returned to the producers within the framework of pick-up co-ordination;
 - (c) the flat rates shall be borne by the collection and recovery systems in proportion to their mass percentages, with the infrastructure costs of the collection points pursuant to Article 3(15)(a) demonstrably covered by their own collection volume being counted against their share of the flat rate up to the amount of that share in relation to the mass of waste portable batteries collected in this way;
3. establishment of a fee for the costs incurred by municipalities or associations of municipalities to ensure the harmonised information of final consumers as a function of the number of residents; this fee shall be borne by the collection and recovery systems in proportion to their mass percentages;
4. identification of the institutions to which disputes may be referred for arbitration, the potential arbitration cases, the duration of the arbitration proceedings, and payment of arbitration costs.

(3) Co-ordination shall comprise the following measures regulating in greater detail the tasks defined in Article 13b(1)(2) AWG 2002:

1. calculation of the obligation percentages of the collection and recovery systems for waste portable batteries and forwarding of a notified pick-up need to the collection and recovery system with the highest obligation percentage;

2. allocation of the flat rates pursuant to Paragraph 2(2) and the fee pursuant to Paragraph 2(3);
3. preparation of an annual concept for information activities pursuant to Article 7 with the involvement of the operators of collection points according to Article 3(15).

(4) In fulfilling its tasks, the co-ordination body shall comply with the requirements specified in **Annex 4**.

(5) Further specifying the provision of Article 13b(1)(1) AWG 2002 the agreements concluded with the collection and recovery systems for waste automotive batteries shall include the consent of the system to the performance of pick-ups in particular from collection points of municipalities (associations of municipalities) by the co-ordination body through direct commissioning of a contracted transferee of the collection and recovery system at the system's expense, if pick-up is not effected by the system in due time. Furthermore, the co-ordination of the information of final consumers, on the no-cost take-back obligation and return facilities, shall be laid down in this agreement.

Notification and transmission of pick-up needs

§ 21. (1) In line with their obligation percentages pursuant to **Annex 4** collection and recovery systems for waste portable batteries shall pick up waste portable batteries from collection points according to Article 3(15) when the co-ordination body informs them in electronic form, through the register, of pick-up needs for waste portable batteries. The pick-up needs shall be forwarded together with the following information:

1. GLN of the collection point,
2. estimated mass, and
3. number, type, form, and size of the collection container(s).

(2) The collection and recovery system shall forthwith inform the co-ordination body of the GLN of the contracted transferee through the register.

(3) Before taking over waste portable batteries, the contracted transferee shall report the pick-up date (when transport starts) and the GLN of the site to which the waste is planned to be transported to the co-ordination body through the register.

(4) After pick-up, the contracted transferee shall report the GLN of the site to which the wastes were delivered, the date of receipt, and the mass weighed to the co-ordination body through the register.

(5) Collection and recovery systems for waste portable batteries can use the reporting structures pursuant to Paragraphs 1 to 5 for recording their own collection volumes. Notwithstanding Paragraphs 2 and 3, the contracted transferee shall in that case specify the collection and recovery system for which such own collection volume is to be recorded.

Chapter 6

Registration and obligation to notify

Registration of obligated parties

§ 22. (1) Producers shall enter the following data in electronic form in a register pursuant to Article 22 (1) AWG 2000 via the website edm.gv.at and to ensure that these data will be available by 1 September 2008 at the latest.

1. Name, addresses (e.g. registered office) of the producers and the business address relevant for serving notices,
2. if required company register numbers, association register numbers, supplementary register numbers or, for natural persons, sector-specific personal identifiers,
3. identification of economic sectors (four-digit code) in accordance with Council Regulation (EC) No 1893/2006 establishing the statistical classification of economic activities, NACE Revision 2 and amending Council Regulation (EEC) No 3037/90 as well as certain EC Regulations on specific statistical domains, OJ No L 393 of 30 December 2006 p. 1,
4. contact addresses, including e-mail addresses, if available, and contact persons,
5. the batteries put on the market, indicating the collection and treatment category,
6. for portable batteries the collection points pursuant to Article 3(15)(b) by indicating the GLN,
7. the respective collection and recovery system if a participation takes place or has to take place.

Producers who put on the market batteries for the first time after 2 August 2008 shall supply the data pursuant to Numbers 1 to 7 to the register within one month of taking up business. Changes of data pursuant to Numbers 1 to 7 shall be supplied to the register within one month.

(2) At the request of their participants, collection and recovery systems shall forward the registration data pursuant to Paragraphs. (1) to (5) and (7) to the register.

(3) In addition to their registration according to AWG 2002 operators pursuant to Article 3(15) shall forward to the register the type of collection point (Article 3(15) (a) or (b)) to the register by 1 August 2008 at the latest. Operators of collection points which will enter into operation for the first time after 2 July 2008 have to forward to the register, in addition to their registration according to AWG 2002, the type of collection point (Article 3(15)(a) or (b)) within one month of taking up this activity. Changes shall be supplied to the register within one month.

(4) Self-importers shall enter the following data in electronic form in a register pursuant to Article 22 (1) AWG 2002 via the website edm.gv.at and to ensure that these data will be available by 1 September 2008 at the latest.

1. Name, addresses (e.g. registered office) of the self-importer and the business address relevant for serving notices,
2. company register numbers, association register numbers, supplementary register numbers or, for natural persons, sector-specific personal identifiers,
3. identification of economic sectors (four-digit code) in accordance with Council Regulation (EC) No 1893/2006 establishing the statistical classification of economic activities, NACE Revision 2I and amending Council Regulation (EEC) No 3037/90 as well as certain EC Regulations on specific statistical domains, OJ No L 393 of 30 December 2006 p. 1,
4. contact addresses, including e-mail addresses, if available, and contact persons,
5. the purchased portable and automotive batteries indicating the collection and treatment category,
6. the respective collection and recovery system, provided that a participation according to Article 26 (2) takes place.

Self-importers who put on the market portable and automotive batteries for the first time after 2 August 2008 shall supply the data pursuant to Numbers 1 to 6 to the register within one month of taking up business. Changes of data pursuant to Numbers 1 to 6 shall be supplied to the register within one month.

Publication of the lists of producers, self-importers, collection points and treatment operators

§ 23. The Federal Minister of Agriculture, Forestry, Environment and Water Management shall publish and update:

1. A list of producers of portable batteries or automotive batteries,
2. a list of collection points pursuant to Article 3(15), indicating the type of collection point (Article 3(15)(a) or (b)),
3. a list of battery treatment operators, with treatment operators registered under Article 16 of the Environmental Management Act (Umweltmanagementgesetz – UMG), Federal Law Gazette I No 96/2001, as amended by Federal Law, Federal Law Gazette No 99/2004, being marked specifically on the list, and
4. a list of self-importers according to Article 26,

on the website of the Federal Ministry of Agriculture, Forestry, Environment and Water Management.

Reporting of batteries put on the market

§ 24. (1) Producers of portable batteries shall report the masses of batteries put on the Austrian market in a calendar quarter in electronic form to the coordination body via the register not later than seven weeks after the expiry of the reference quarter. The report shall specify the masses of portable batteries and indicate the calendar quarter. If no portable batteries were put on the market in a specific calendar quarter, a nil report shall be submitted. The first report shall cover the third quarter of 2008.

(2) Collection and recovery systems shall report the total masses of portable batteries put on the Austrian market or imported for own use by their participants in a calendar quarter, in electronic form through the register no later than seven weeks after the expiry of the reference quarter, whereby the reporting duty under Paragraph 1 of the producers participating in the collection and recovery system in question is fulfilled.

Reporting on collection and treatment

§ 25. (1) Producers of portable and automotive batteries shall report the masses of batteries, broken down by collection and treatment categories via the register by 10 April of each calendar year for the previous calendar year, which were

1. collected or recorded
2. recycled,

3. recovered in total,
4. exported to another Member State of the European Union,
5. exported to countries outside the European Union, and

(2) Each waste collecting operator (in particular municipalities and associations of municipalities) who accepts waste batteries from final consumers – except for self-importers – and does not return them to the producer shall submit for these waste batteries reports pursuant to Paragraph 1 to the co-ordination body via the register.

(3) Each waste treatment operator, who treats waste batteries shall make available to the relevant reporting agent pursuant to Paragraphs. 1 and 2 the data specified in Paragraph 1 (2) and (3) separately for each item through the register.1

(4) For the year 2008, the reports pursuant to paragraphs (1) and (2) shall cover the waste batteries collected from 26 September 2008 to 31 December 2008.

Chapter 7

Final provisions

Duties of self-importers

§ 26. Self-importers (Article 3(8)) are, if there is no producer taking back the waste portable or automotive batteries available (self-import), obliged

1. either
 - (a) to record the waste generated from waste portable or automotive batteries
 - (b) to treat them according to Article 5
 - (c) to submit for these waste portable or automotive batteries reports pursuant to Article 25 (1)or
2. to take part, with respect to these waste portable or automotive batteries in a collection and recycling system.

It shall not be permitted to hand over these waste portable or automotive batteries according to Article 9, Paragraph 1.

Transposition of Community legislation

§ 27. With this Regulation Directive No 2006/66/EC on batteries and accumulators as well as waste batteries and accumulators and repealing Directive No 91/157/EEC, OJ No L 266 of 26 September 2006, p. 1 has been implemented.

Entry into force and repeal

§ 28. (1) Unless provided otherwise in Paragraph 2, this Ordinance shall enter into force on the day subsequent to its promulgation.

(2) Articles 4 to 21, 23 and 26 will enter into force on 26 September 2008.

(3) The Regulation on the take-back and on emission controls of batteries and accumulators Federal Law Gazette No 514/1990, as amended by Ordinance Federal Law Gazette II No 495/1999, and Article 1(7), Article 26 as well as Annex G, item 1 of the Chemicals Ordinance 1999, Federal Law Gazette II No 81/2000, as amended by Ordinance Federal Law Gazette II No 62/2007, will become ineffective after the end of 25 September 2008.

Annex 1

Minimum efficiencies

Recycling processes shall achieve the following minimum recycling efficiencies for material processing:

- (a) recycling of 65% by average weight of lead-acid batteries, including recycling of the lead content to the highest degree that is technically feasible while avoiding excessive costs;
- (b) recycling of 75% by average weight of nickel cadmium batteries and accumulators, including recycling of the cadmium content to the highest degree that is technically feasible while avoiding excessive costs;
- (c) recycling of 50 % of the average weight of other waste batteries.

Annex 2

SYMBOLS FOR BATTERIES, ACCUMULATORS AND BATTERY PACKS FOR SEPARATE COLLECTION

The symbol indicating 'separate collection' for all batteries and accumulators shall be the crossed-out wheeled bin shown below:



The symbol shall cover at least 3% of the area of the largest side of the battery, accumulator, or battery pack, up to a maximum size of 5 × 5 cm. In the case of cylindrical cells, the symbol shall cover at least 1.5% of the surface area of the battery or accumulator and shall have a maximum size of 5 × 5 cm.

The chemical symbol with the indication of the heavy metal contained has to be printed below the symbol, the chemical symbol must cover an area of at least one quarter of the size of the symbol.

Symbols shall be printed visibly, legibly and indelibly.

Annex 3**Classification of waste batteries and quantity thresholds**

Collection and treatment category,	Quantity threshold in kg for notifying pick-up needs or for pick-up according to Article 14
Waste portable batteries	300 kg
Waste automotive batteries	600 kg
Waste industrial batteries	-

Annex 4**Rules for the co-ordination body according to Article 20****1. Mass percentage in portable batteries**

For the calculation of the mass percentage the masses of portable batteries that are put on the market or imported for own use and reported by a collection and recovery system serve as a reference basis. For the year 2008 the masses of batteries that are registered as put on the market or imported for own use from the third calendar quarter and reported by a collection and recovery system serve as a reference basis.

The mass percentage has to be calculated separately for every collection and recovery system per calendar quarter and has to be determined according to Article 24 two weeks after the expiry of the reporting period and will be effective for the calculation of the obligation percentage of the following calendar quarter.

In the case that a collection and recovery system stops its operation at the end of a quarter of calendar year the masses put on the market by the system in the quarters of the calendar year preceding the termination of operation shall not be included in the calculation of the mass percentages of the remaining systems in the quarters subsequent to the termination of operation.

The mass percentages of the collection and recovery systems determined have to be published in each case.

The mass percentage of a system is calculated as follows:

The mass percentage of a system (MP_S) is the mass of batteries (M_S) reported (by its participants) divided by the total mass of all masses of batteries (M_{total}) reported by all systems.

$$MP_S \text{ in } \% = 100 \times M_S / M_{total}$$

The mass percentage changes as a consequence of the reports on batteries put on the market or imported for own use (per quarter)

2. Consideration of collected waste portable batteries according to Article 18 (own collection volume)

The masses collected within the framework of own collections are only taken into account when a report according to the provisions of Article 18(3) has been submitted.

The co-ordination body forthwith performs a plausibility check on the reports received pursuant to Article 18(3) and re-calculates the obligation percentage of the collection and recovery system in line with the masses reported.

3. Selection criteria for the transmission of pick-up needs

The selection criterion for transmitting pick-up needs to a collection and recovery system shall be the obligation percentage which is calculated from the mass percentage and the pick-up percentage.

3.1. Pick-up percentage

The pick-up percentage shall be calculated continuously on the basis of the waste portable batteries collected by the collection and recovery systems in the course of the calendar year so far.

In the case that a collection and recovery system stops its operation at the end of a calendar quarter the masses collected by this system in the calendar quarters preceding the termination of operation shall not be included in the calculation of the pick-up percentages of the remaining systems in the quarters subsequent to the termination of operation.

The pick-up percentage of a system is calculated as follows:

The pick-up percentage (PP_S) is the mass of waste portable batteries (P_S) collected (picked-up) by the system divided by the total mass of all masses of waste portable batteries collected (picked-up) by systems (P_{total}) in percent.

$$PP_S \text{ in } \% = 100 \times P_S / P_{total}$$

The pick-up percentage changes as a result of:

- (a) the transmission of pick-up needs due to the voluntary acceptance of pick-up needs according to item 4(a);
- (b) the transmission of pick-up needs according to Point 4(b);
- (c) the consideration of own collection volumes according to Point 2;
- (d) any corrections after weighing errors and communication of the mass actually picked up;
- (e) credits and setoffs based on annual re-computation according to Point 5.

The pick-up percentage is used as a basis for the calculation of the obligation percentage.

3.2. Obligation percentage

The obligation percentage shall serve as the basis on which the co-ordination body transmits pick-up needs to a collection and recovery system.

The obligation percentage is a percentage value representing the extent to which a collection and recovery system is obliged to pick up waste portable batteries held ready from the collection points pursuant to Article 3(15). The obligation percentage corresponds on 1 October 2008 and subsequently at the beginning of each calendar year to the respective mass percentage.

Whenever the pick-up percentage changes, the obligation percentage shall be re-calculated and communicated to the system concerned in electronic form and published on the website of the coordination body.

The obligation percentage of a system is calculated as follows:

The continuous obligation percentage of a system (OP_S) shall be calculated on the basis of the mass percentage (MP_S) according to Point 1 divided by the pick-up percentage (PP_S) calculated on an ongoing basis according to Point 3.1.

$$OP_S \text{ in } \% = 100 \times MP_S / PP_S$$

After each calendar quarter, the new mass percentages reached by the collection and recovery systems shall be used for calculating the obligation percentage.

4. Transmission of pick-up needs to a collection and recovery system

The co-ordination body shall maintain and continuously update a list of all collection and recovery systems ranked by the level of the obligation percentages obtained. This list of collection and recovery system shall be announced.

Pick-up needs shall be transmitted to a collection and recovery system through the register as follows:

- (a) Transmission based on a voluntary acceptance of pick-up needs under Article 20(2)(1)(a) shall be made to the collection and recovery system that expressed its readiness for voluntary acceptance; if several systems have done so, the co-ordination body shall select from among them the system the one that had the highest obligation percentage at the end of the period fixed for declaring readiness for voluntary acceptance of pick-up needs.
- (b) If none of the systems declared to be ready for voluntary acceptance of pick-up needs, the pick-up need is to be transmitted to the collection and recovery system that has the highest obligation percentage in numerical terms upon receipt of a pick-up need notification from a collection point pursuant to Article 3(15). If two or more systems have identical obligation percentages, the system with the highest mass percentage shall be selected.

The time when a pick-up need notification is received and the end of the period fixed for declaring readiness for voluntary acceptance of pick-up needs shall be determined accurately to one minute. The obligation percentage of the collection and recovery system obliged to pick up shall be recalculated before the next pick-up need notification is processed, which results in a revised ranking by obligation percentages.

Any change of the obligation percentage after transmitting pick-up needs does not affect transmissions performed previously.

5. Annual re-computation

Annual re-computation serves to compensate for seasonal fluctuations of the quantities picked up quarterly and to prevent potential unequal framework conditions in the obligations of the collection and recovery systems for waste portable batteries resulting therefrom. Annual re-computation shall be performed by the end of the second calendar quarter after the original calculation. Annual re-computation shall be performed as follows:

- 5.1. Addition of the waste portable batteries generated in total and held ready for pick up at the collection points pursuant to Article 3(15) and of the own collection volume taken into account pursuant to Point 2 in the calendar year in question. (CV_{TOTAL}).
- 5.2. Addition of the collection volumes of the collection and recovery system in the calendar year (CV_S). From 1 January 2010, for the first time for the annual re-computation of the year 2010, the consideration of the collection volume will only take place up to 10 % of exceeding the mass which the collection and the recovery system had to collect in the respective calendar year on the basis of its obligation percentage.
- 5.3. Calculation of the mass percentage of a system for the entire calendar year based on the masses of portable batteries reported by the system (its participants) as having been put on the market or imported for own use in the calendar year in accordance with Article 19(1)(1) divided by the total mass of all portable batteries reported as having been put on the market or imported for own use by all systems in the calendar year (MPS_S).
- 5.4. A collection and recovery system has fulfilled its pick-up obligations for a calendar year if the following requirement is met:

$$CV_S = CV_{total} \times MPS_{year}$$

- 5.5. If a collection and recovery system has exceeded its pick-up obligation for a calendar year by picking up a higher total mass, this mass difference shall be credited as fictitious pick-up to the system's pick-up percentage at the beginning of the third quarter of the following calendar year. This mass has to be credited as collection volume of the collection and recovery system to the annual re-computation to this following calendar year.

- 5.6. If a collection and recovery system has fallen below its pick-up obligation for a calendar year by picking up a lower total mass, this mass difference shall be counted against the masses picked up by the system when calculating the pick-up percentage from the beginning of the third quarter of the following calendar year after original calculation until the amount of the mass difference has actually been picked up. Collected masses, which are used for balancing the lower total mass of the previous year shall not be taken into consideration once again as collected for the current calendar year.

6. Termination of a system

In the case of the termination of a collection and recovery system on the basis of a legally binding decree the coordination body has to carry out and publish for the quarters of the calendar year following the termination a new calculation of the mass percentages on the basis of the reported masses of the remaining collection and recovery systems according to item 1. Previous calculations of the mass percentages for the quarters of the calendar year subsequent to the termination become thus invalid.