Contribution to the Stakeholder Consultation on the Evaluation of the Batteries Directive 2006/66/EC

Paris/Brussels, November 2017

The European Recycling Platform (ERP) welcomes the initiative of the European Commission to evaluate the Batteries Directive and to identify measures to improve this Directive and its implementation on the ground.

ERP, as part of the Landbell group, is the only pan-European producer responsibility organisation (PRO) for batteries, WEEE and packaging. The group supports producers to implement EU waste legislation and has collected more than 50,000 tonnes of portable batteries, more than 2.9 million tonnes of e-waste and more than 7 million tonnes of packaging. ERP's extensive expertise is built upon more than 15 years of experience in operating under various national compliance frameworks. In terms of batteries, we operate the take-back in 12 EU Member States as well as through partnerships across the rest of the EU and beyond.

From this experience, we would like to support the European Commission in evaluating the Batteries Directive by making the following proposals for improvement:

1. Extended producer responsibility in a level playing field:

In some countries, there are historically developed setups that are jeopardizing competition and might be triggered by the current Batteries Directive (e.g. article 8-2(c): "*maintain existing schemes*"). These setups make it difficult for newcomers to start business or to achieve the collection rates (access to waste).

Example: In Germany, a "default scheme" is defined by law (named "GRS") that has all obligations while in a revision of the law, the possibility to set up alternative producer schemes was added in order to open the market for competition. Nevertheless, those producer schemes are only "alternative schemes" and present challenges for them to collect their share of waste batteries as legally all collection points need to hand over all batteries to GRS unless they formally announce to GRS that the pickup will be carried out by a producer scheme. However, this announcement can only be done by the collection point once a year, at the end of the calendar year, with 3 months' notice. Firstly, collection points (shops etc.) hesitate this effort. Secondly, and more importantly, this long lead time (that can be up to 21 months) makes it extremely difficult for producer schemes to balance their obligation (calculated based on current producer volumes put on market (POM)) and the actual access to waste in time, which is required to achieve the mandated collection rate. Consequently, because they do not know for sure whether they have access to enough waste batteries, they have difficulties to contract new customers. This situation is clearly hampering competition.

- **A revision should promote extended producer responsibility (EPR) in a competitive environment following the EPR concept as currently being discussed in the new Waste Framework Directive (WFD) (article 8/8a) implementing a level playing field and basic rules.**

2. Distance sellers to be in scope:

In some countries, there are no authorized representative (AR) structures implemented for batteries. This is causing freeriding by distance sellers (selling from outside this Member State) since these distance sellers are not able to register – even if they so wanted. Some countries hesitate to implement the AR principle, because the Batteries Directive does not foresee it. However, implementing this principle is necessary for ensuring a level playing field among producers.

The new WFD is probably addressing this point (currently in the draft texts discussed in trialogue), but might not have immediate impact on the batteries legislation.

Example: Distance sellers selling to Finland from outside Finland do not need to contribute to the financing of battery collection and treatment. The law addresses only national producers.

- **A revision should mandate the AR concept for batteries following the principles currently discussed in the new WFD (article 8).**

3. National targets to be set carefully:

An increase of the collection target from currently 45% will be extremely challenging. A report commissioned by the European Portable Battery Association (EPBA) states that already the current target is very challenging and only very few states are on track to actually achieve it.[1]

Overly ambitious targets could hamper competition since the fulfilment of these targets is often a national permit requirement for schemes – although the schemes' influence on consumer behaviour and, thereby, on the achievement of those targets is rather limited.

Example: In 2014, only 7 European countries appear to have reached recycling rates above 45%: Austria, Belgium, Sweden, Luxembourg, Slovakia, Finland and Bulgaria, according to the study mentioned above.

- **The responsibility to achieve national collection rates shall not simply be passed on to EPR schemes. Instead, an "all actors" approach shall be implemented which might require e.g.:**
  - **a sorting of municipal waste (removing batteries from that stream for appropriate treatment) and**
  - **a proper reporting of batteries being removed from WEEE.**
- **In any case, a strong enforcement body ("independent national authority" as currently being discussed in the WFD drafts) is required.**

4. Reference period for targets:

The current Batteries Directive defines a slightly different reference period for targets compared to the WEEE Directive.

Current definitions:

Batteries Directive: "…for a given Member State in a given calendar year, the percentage obtained by dividing the weight of waste portable batteries and accumulators collected in accordance with Article 8(1) of this Directive or with Directive 2002/96/EC in that calendar year by the average weight of portable batteries and accumulators that producers either sell directly to end-users or deliver to third parties in order to sell them to end-users in that Member State **during that calendar year and the preceding two calendar years**."

WEEE Directive: „…each Member State shall ensure the implementation of the 'producer responsibility' principle and, on that basis, that a minimum collection rate is achieved annually. From 2016, the minimum collection rate shall be 45 % calculated on the basis of the total weight of WEEE collected in accordance with Articles 5 and 6 in a given year in the Member State concerned, expressed as a percentage of the average weight of EEE placed on the market **in the three preceding years** in that Member State."

- **Harmonizing the reference points for targets among the Batteries and WEEE Directives would contribute to the "better regulation" approach.**

[1] http://www.epbaeurope.net/documents/Reportontheportablebatterycollectionrates-UpdateDec-15-Exerpt.pdf

5. Targets for battery collection schemes:

Member States tend to transfer the national collection target one-to-one to schemes including the reference period of three years. If there is no clearing mechanism in place, this could hamper competition, because some customers do not stay with the same scheme for three years. Typically, customer contracts are annual contracts. Therefore, the lack of a clearing mechanism could result in artificially higher collection targets and, hence, higher sourcing cost for a scheme (or lower, depending on the direction in which the customer moves).

If collection targets are set to schemes, it shall be assured that only the POM volumes that have actually been contracted by the individual scheme are counted to a scheme's obligation. When a customer moves to another scheme, the target for this contract period shall move with this customer at the same time to the new scheme.

- **A proper clearing mechanism governed by an independent national authority (as proposed by the current WFD draft texts) shall make sure the obligation of a scheme fully corresponds with the volumes contracted by that scheme over the reference period of three years in order to ensure a level playing field.**

6. Clear definitions for battery classification:

The definitions for the classification of batteries differ among European countries. This hampers transparency for the producers, makes reporting more difficult and prevents a fair comparison and evaluation of the Member States.

Example: In Austria, e-bikes are considered as large dimension applications. Therefore, as the (industrial) e-bike battery is incorporated in this LDA, it is considered as portable battery. However, the requirements for portable batteries are completely different compared to those from industrial batteries.

- **A clear definition for the classification of batteries that is equal in all Member States would lead to a transparent and fair regulation across Europe. Moreover, the actual usage shall be considered (consumer vs. industrial), but not only the size.**

7. Producer responsibility – consistent attribution:

The increase of lithium batteries put on the market leads to new challenges. Lithium batteries are very powerful, have a small self-discharge and are therefore ideal to fulfill the current requirements to support high tech EEE. Nevertheless, when becoming waste, they have a higher risk potential and therefore trigger special requirements regarding the collection, storage, transport and treatment. These additional risks lead to a huge increase of costs.

Batteries for electronic cars or electronic bikes are currently defined as industrial batteries, but are growing in prominence in consumer markets.
This triggers a discussion in terms of related operational costs (safe collection, logistics and treatment). Operational costs of e.g. e-bike batteries (mostly lithium ion batteries > 500 g and > 100 Wh classified as dangerous good according to ADR) can not always be covered by EPR schemes for portable batteries.

At the same time we observe, that hazardous consumer batteries are largely phased out (except for lead-acid based automotive starter batteries).

Example: In Austria (like also other countries), according to ADR, lithium batteries are collected separately in metal drums with a special ventilation valve in an inlay bag filled with vermiculite in a separate area on each municipal site. Under a transport system changed to ADR for all batteries, the treatment costs are four times higher than the average of portable batteries unsorted.

- **Targets should be set according to the chemistry of the respective battery considering the environmental impact, the value in a circular economy and the actual collection (collected as individual batteries, collected with appliances/cars etc.).**

8. Better enforcement for comprehensive reporting:

Batteries which are incorporated in appliances fall under the same collection target as all batteries. However, since they are collected in a different way (via WEEE stream), it is not guaranteed that their collection is reported comprehensively, also as the Directive itself speaks of "identifiable" batteries to be treated.
In addition, the life time of these batteries is typically higher than that of "normal" batteries. Some of these batteries won't return at all as the electronic equipment in which they are incorporated and will be kept in private shelves even if not in use anymore.

- **A better enforcement should be implemented to ensure that batteries reported as collected are truly portable ones, and that batteries coming from WEEE streams are properly recorded.**

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About ERP
The European Recycling Platform was founded in 2002 in response to the introduction of the European Union's Waste Electrical and Electronic Equipment (WEEE) Directive. ERP's mission is to ensure cost effective implementation of the directive, for the benefit of the participating companies and their customers. As of June 2014, the Landbell Group, an independent recycling and resource specialist, based in Germany, has become a shareholder of ERP SAS.

ERP is the first WEEE compliance scheme authorised to operate in Austria, Denmark, Finland, France, Germany, Ireland, Israel, Italy, Norway, Poland, Portugal, Slovakia, Spain, Sweden and the UK thus passing on the advantages of multinational recycling operations to the consumer. ERP has proved to be the most competitive solution for companies in the countries where operates now offering WEEE, Batteries, Packaging and PV panel compliance services and know-how.

For more information on ERP, please visit www.erp-recycling.org