



28 August 2013

## BATTERY REMOVABILITY

### THE NEED FOR A COHERENT INTERPRETATION

The undersigned industry associations understand that DG Environment is in the final stages of revising the Q&A on the Batteries Directive (2006/66/EC)<sup>1</sup>. Based on the information received from DG Environment, the members of the undersigned industry associations are concerned about DG Environment's interpretation of article 11 on removability of batteries from appliances.

On 23 April 2013, as a result of the first informal dialogue on the revision of the Batteries Directive, the European Parliament and the Council informally reached an agreement on the revised text of article 11 (changes to current Directive are underlined):

#### **'Removal of waste batteries and accumulators**

*Member States shall ensure that manufacturers design appliances in such a way that waste batteries and accumulators can be readily removed. Where they cannot be removed by the end-user, Member States shall ensure that manufacturers design appliances in such a way that waste batteries and accumulators can be easily removed by qualified professionals that are independent of the manufacturer. Appliances into which batteries and accumulators are incorporated shall be accompanied by instructions how they can be removed safely by the end-user or by independent qualified professionals. Where appropriate, the instructions shall also inform the end-user of the type of the incorporated batteries and accumulators. 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 or accumulator.'*

The revised wording makes a clear distinction between batteries intended to be removed by end-users and those intended to be removed by qualified professionals. This distinction reflects the acknowledgement by both the European Parliament and the Council of the fact that there are good (safety) reasons for certain integrated batteries to be removed by professionals rather than end-users.

We understand that the revised Q&A will state that removability instructions should be provided to the end-user for all products, irrespective of the battery being end-user removable or intended to be removed by a qualified professional. In the opinion of DG Environment, manufacturers may warn end-users of the risks of removing an integrated battery, but it should ultimately be the choice of the end-user if he or she decides to ignore this warning. In our views this interpretation raises the following concerns:

<sup>1</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:266:0001:0014:EN:PDF>

- Improper handling of soft cell Lithium-ion batteries, typically used for integration into appliances, presents serious safety risks [like exposure to the electrolyte and (strong) thermal reaction], and therefore calls for removal by a qualified professional. Due to the risks, manufacturers are by default not able to provide instructions to non-professionals on how to safely remove such batteries. Providing such instructions would make manufacturers liable for any damages, even if warnings are provided in the notice.
- A warning naturally implies a risk. In placing a warning in the product's notice, the manufacturer communicates that it sees a risk for the end-user. At the same time, according to the Commission, the manufacturer shall provide instructions on how to remove the battery safely, i.e. without any risk for the end-user. Placing a warning regarding the battery removal and providing instructions on how to do this safely exclude each other by definition.
- According to DG Environment, in case an appliance is designed in such way that professionals can readily remove the battery, the end-user would still have to be provided with instructions on how to remove the battery safely. This is contradictory, as the new wording of article 11 implies that appliances can be designed so that batteries can be removed by **either** a qualified professional **or** an end-user. Requiring both parties to be able to remove the batteries is clearly not in line with the proposed legal text and the intentions of the European Parliament and the Council.
- The EU General Product Safety Directive (GPSD) 2001/95/EC covers consumer products and obliges producers to only place safe products on the market (Art 3). Such "safe product" must be designed to be safe under "*normal or reasonably foreseeable conditions of use including... installation and maintenance requirements*" and may "**not present any risk or only the minimum risks compatible with the product's use**" (emphasis added). The Directive's justification is that any risks for the health and safety of consumers must be prevented (preamble 6). Therefore, we believe it is incompatible with the GPSD for manufacturers to provide end-user with instructions on how to remove batteries from products which necessitate removal by qualified professionals in order to ensure safe removal. Providing such instructions, irrespective of any warnings, would mean creating a foreseeable and unnecessary risk, contrary to the GPSD provisions, requiring manufacturers to provide protective safeguards and thus overriding sentence 2 of Article 11.

In addition to the safe removal of the battery, which necessitates removal by qualified professionals, there are added risks related to the safe storage and disposal of waste batteries. Neither the EU Battery Directive nor GPSD cater for this situation, hence manufacturers should not be in a position to provide information to end-users, which would create undue risk.

We are of the opinion that the interpretation of DG Environment goes beyond the legal text and the intention of the revised article 11. The Irish Presidency, who led the negotiations on behalf of the Council earlier this year, confirmed that in light of the distinction between end-user and professional removability it would be logical that instructions on how a battery can

be removed safely should only be provided to end-users when the battery is intended to be removed by them and the manufacturer can guarantee the end-user's safety while doing so. Legal opinion which has been sought, also confirms this.

The undersigned call on DG Environment to take into account the information provided in this paper when finalizing its guidance on article 11, so that legal contradictions are prevented and consumer safety is ensured in accordance with the EU General Product Safety Directive. We propose the guidance to explain that instructions to end-users shall consist of **either** step-by-step safe removal instructions in case of end-user removable batteries, **or** a general instruction pointing to a qualified professional.

## ABOUT THE UNDERSIGNED ASSOCIATIONS

**ACEA** is the European Automobile Manufacturers' Association, representing the fifteen Europe-based car, van, bus and truck makers. ACEA speaks on behalf of a sector that is vital to EU growth and plays an important part in Europeans' lives, from employment and social benefits, to education, innovation, investment, and product and mobility concepts. ACEA's members provide direct employment to more than 2 million people and indirectly support another 10 million jobs. Annually, ACEA members invest over €26 billion in R&D, or 5% of an annual turnover of over €500 billion. ACEA maintains close relationships with governmental institutions at EU and national level, as well as with other key non-governmental and civil-society stakeholder groups. ACEA works closely with the 29 national automobile associations throughout Europe. Our website provides further information: <http://www.acea.be>.

**DIGITALEUROPE** represents the digital technology industry in Europe. Our members include some of the world's largest IT, telecoms and consumer electronics companies and national associations from every part of Europe. DIGITALEUROPE wants European businesses and citizens to benefit fully from digital technologies and for Europe to grow, attract and sustain the world's best digital technology companies. DIGITALEUROPE ensures industry participation in the development and implementation of EU policies. DIGITALEUROPE's members include 60 global corporations and 33 national trade associations from across Europe. In total, 10,000 companies employing two million citizens and generating €1 trillion in revenues. Our website provides further information on our recent news and activities: <http://www.digitaleurope.org>

The **European Portable Battery Association (EPBA)** is the authoritative voice of the portable power industry. It supports the common interests of its members regarding portable batteries and battery chargers with European institutions and other leading international bodies to provide consumers with complete power solutions which are sustainable across their life-cycle. EPBA's members include battery manufacturers, original equipment manufacturers and national battery associations.

**EPTA** represents power tool manufacturers making both corded and cordless power tools (CPT). CPT account for approximately 40% of the power tool market in 2011 (up from 36% in 2008) and is the fastest growing business segment. The steadily increasing share of the market taken by CPT reflects their greater safety and convenience. They are light weight, low voltage and require no electric cables while in operation.

**The Federation of the Swiss Watch Industry FH**, based in Biel/Bienne, Switzerland, is the leading trade association of the Swiss watch industry, with over 500 members representing more than 90 per cent of all Swiss watch manufacturers (including finished products, watch movements and components). With around 53,000 persons employed, the Swiss watch industry comprises the bulk of the European watch industry. Moreover it is possibly the largest client of the European watch component supply industry.

**The Japan Business Council in Europe** was established in 1999 as the representative organization of Japanese companies operating in the European Union. Our membership consists of more than 60 leading multinational corporations that are active across a wide

range of sectors, including electronics, automotive, and chemical manufacturing. The key goal of JBCE is to contribute to EU public policy in a positive and constructive way. In doing this, we can draw upon the expertise and experience of our member companies.

**LightingEurope** is an industry association representing 31 leading European lighting manufacturers and national lighting associations. LightingEurope members employ over 100,000 people in Europe and represent an annual turnover estimated to exceed 20 billion euros.

**RECHARGE aisbl** is the European Non Profit Association for the promotion of Advanced Rechargeable Batteries. Its Membership includes the worldwide major manufacturers of rechargeable batteries for consumer, professional and industrial applications. RECHARGE Membership is representative of the various stages of the life cycle of a rechargeable battery. It includes Batteries Manufacturers, Original Equipment Manufacturers incorporating batteries in their appliances, Spent Batteries Recyclers and Raw Materials Suppliers to the Worldwide Battery Industry.

**TechAmerica Europe** represents leading European high-tech operations with US parentage. Collectively we invest Euro 100 bn in Europe and employ approximately 500,000 Europeans. TechAmerica Europe Member companies are active throughout the high-technology spectrum, from software, semiconductors and computers to internet technology, advanced electronics and telecommunications systems and services. Our parent company, TechAmerica, is the leading voice for the US technology industry worldwide.