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Eurobat position on producer responsibility in the new battery Directive

On behalf of the European industrial and automotive battery industry and in the context of the ongoing discussions within the Technical Adaptation Committee on the implementation of the battery Directive, Eurobat would like to present the following arguments regarding the implementation of provisions of the new batteries Directive on producer responsibility in Member States.

1. Industrial Batteries

Current situation:

Industrial battery manufacturers have hundreds of OEMs customers of all sizes, which serve very many different kinds of markets and export a large fraction of the equipments they manufacture.

These OEMs source batteries from battery manufacturers:

- Located in a different country (EU or non EU) than the OEM,
- Located in the same country as the OEM,
- A combination of both

As a general rule, the OEM is the Producer when selling to the end-user market in the same country as the one where the OEM is, as recognized by the European Commission in its draft Q&A (bullet point 4). Exception is proposed by the European Commission in the case of equipment sold in the same country as where the OEM is AND when the battery is sourced from a battery manufacturer located in this very same country. The battery manufacturer would then be the Producer (bullet point 3 of draft Q&A) for the batteries incorporated in these equipments.

Problematic consequences of this exception:

- For this situation covered in bullet point 3, in order to report quantities, battery manufacturer would have to obtain from all OEMs reliable sales data on the fraction of batteries sourced from them, incorporated in an equipment or car and sold outside of this Member State
- From previous experience, battery manufacturers know that OEMs will be reluctant to disclose this type of data which is considered as confidential business information, making it virtually impossible to collect accurate results through such a reporting system
- Moreover, most OEMs will not know what fraction of batteries sourced from the same country battery manufacturer stay in country or are sold abroad, since their supply

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chain management systems do not usually allow them to keep track of this type of information

- OEMs will be tempted to declare that batteries sourced from a manufacturer located in the same country are sold to same country end users, hence transferring responsibility for batteries supplied from third country manufacturers from OEM to same country supplier. This exception creates a risk that some OEMs will have the ability to escape from end of life eco-funding and associated responsibility for imported batteries (from EU or non-EU). See attached graph.
- Furthermore, art 16(5) could not be implemented if a battery manufacturer supplying to an OEM were to be the Producer (for equipment sold in same country). Indeed, in this case there is no commercial link whatsoever between the manufacturer and the end-user, the OEM is in between and therefore in the best position to provide accurate data on quantities of batteries sold within a Member State or exported.
- In order to ensure a good coordination between WEEE and the battery directive, industry believes that one single entity should be the producer for the purpose of compliance with provisions on Producer responsibility of WEEE and of the battery Directive, regardless of where the battery was sourced from.

Conclusion for industrial batteries:

OEMs are in a much better position to run and operate reverse logistics since they have the commercial relationship with end-users. OEMs know the end users, know where they are located, their maintenance strategy (key for replacement batteries). This is not the case for the battery manufacturer which often knows little about end users beyond technical specifications.

2. Automotive / SLI (Starter, lighting and Ignition) batteries

Current situation:

Automotive batteries incorporated in a new car are not available for recollection and recycling. Indeed, a car battery becomes available for collection and recycling once the battery needs replacement or once the vehicle reaches its end of life.

Therefore, only batteries sold to the after market (AM) and batteries from end of life vehicles (ELVs) are the ones which are available for collection and recycling.

The definition of Producer in 2006/66 refers to the market of the single Member States. This leads to the fact that a German car manufacturer which sells a German car with a German Battery in Germany is not a producer in Germany. If the same car with the same Battery is sold in any other EU Member State, the car manufacturer's local sales subsidiary is then considered as the producer in the respective Member State. This definition causes confusion.

The ELV Directive defines that batteries from scrapped cars are in the scope of the Battery Directive once they are removed from scrapped cars. These batteries have to be considered if a collection rate is calculated. The mechanisms in place for "ELV generated spent batteries" should not be upset by new requirements defined under 2006/66.

Conclusion for automotive batteries:

- As OEM batteries are not available for collection and recycling, there is no need to have OEM's involved in other responsibilities than those that are already defined by the ELV Directive.

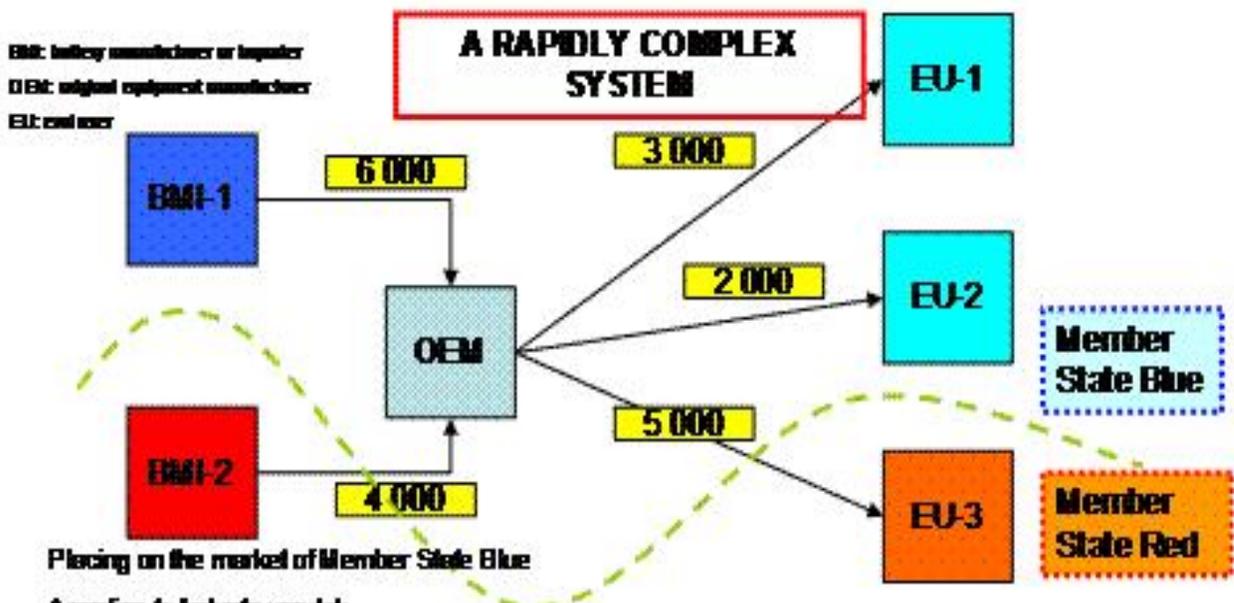
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Industry recommends that the battery Directive be implemented in a way which does not disrupt recently adopted end of life legislation (ELV and WEEE)
Eurobat notes that this is the case in most countries already having implemented producer responsibility in relation to batteries, and strongly recommends that this approach be retained for all Member States.

General Conclusion for automotive and industrial batteries:

Eurobat calls upon the members of the Technical Adaptation Committee to promote a rule that is easy to understand and implement, with the following key points:

An OEM is a producer when selling to the end user market within the same country, irrelevant of where the battery was purchased from
A battery manufacturer is a producer when selling to the end-user market within the same Member State



According to Industry model:

OEM responsible for 5 000 units (or its weight equivalent)

According to Commission view

BMM-1 responsibility within Member State Blue can be generated only if OEM knows what fraction of the 6 000 units purchased from BMM-1 stay on the territory of member State Blue.

Does the issuer take this into account?

Negative effect: OEM could be tempted to apply 5 000 of the 6 000 units sourced from BMM-1 to sales he made within the territory of Member State Blue, thus relieving himself from the responsibility to declare the import of 4 000 units

Negative effect: OEM may want to switch his purchases towards BMM-2 since price of battery does not include environmental fee.