

The use of active substances in batteries.

Exemption from the authorisation requirement according to Article 58 § 1 (e) and Article 58 § 2 of REACH

A Position paper of the European Battery Industry

The Battery Industry invites the European Chemicals Agency to apply the provisions of Article 58 § 1 (e) and Article 58 § 2 of Regulation (EC) No 1907/2006 (REACH) to substances used as active material in industrial and automotive batteries and accumulators. These Articles provide for a limited exemption of the Authorization requirement under REACH of uses or categories of uses of substances placed on the list of substances subject to the Authorization procedure in accordance with Article 58 §3.

Indeed, as mentioned in Article 58 § 2, "*uses or categories of uses may be exempted from the authorisation requirement provided that, on the basis of the existing specific Community legislation imposing minimum requirements relating to the protection of human health or the environment for the use of the substance, the risk is properly controlled*".

Recital (126) of REACH also refers to the necessity to take full advantage of the work performed under Regulation (EEC) N° 793/93 which governs the preparation of Risk Assessment Reports and the implementation of Risk Reduction Strategies.

Article 2 of REACH suggests that overlaps with other relevant Community legislations should be avoided when implementing REACH.

1. The new Batteries Directive 2006/66/EC: an existing specific Community legislation.

The new Batteries Directive 2006/66/EC establishes rules regarding the placing on the market of batteries and accumulators and, in particular, a prohibition on the placing on the market of batteries and accumulators containing hazardous substances (Article 1 § 1).

The provisions of the new Batteries Directive provide also instruments to regulate the management of hazardous substances, for controlling potential risks and for proposing substitution options for all substances used in batteries.

2. Environmental and Health Protection Legislation applicable at work place.

Several substances used in batteries have undergone a Risk Assessment under Directive 67/548/EEC and Regulation (EEC) 793/93, with the practical consequence that a Risk Reduction Strategy has been developed and agreed by EU Institutions and is being implemented at EU level.

Moreover, some of these substances are classified CMR under EU law, and are therefore already regulated by the Directives 98/24/EC or 2004/37/EC on the protection of workers. They are also subject either to EU or to National - Binding or Indicative – occupational limit values.

Emissions to the Environment are also regulated by several Directives among others in the context of the implementation of the IPPC Directive.

3. REACH will cover all applications/uses of substances.

Substances such as those used as active materials in Batteries have also many other uses outside the batteries application field. The manufacturers and importers of such substances have to comply with the Registration, Evaluation and may be Authorization procedures under REACH on a generic level.

When considering the use of these active materials in batteries, the new Batteries Directive is an existing specific Community legislation that imposes minimum requirements relating to the protection of human health or the environment in order to obtain a proper control of any potential risk raised by the specific use of these substances in batteries.

The potential risk of using them in batteries are assessed under the Batteries Directive. If the substances are used in another application than batteries, the REACH regulation applies to its full extent.

4. Batteries used as intermediate energy storage technology.

In the context of the European Energy Policy, there is a need for a strong support to renewable energy utility grid integration as well as for the use of intermittent energy storage systems **such as batteries** for “non-grid integrated” renewable energy production.

The impact of batteries on large scale fleet of Hybrid Electric Vehicles should also be considered as a transportation technology for increased mobility with reduced dependence on non-renewable fossil energy.

Specific areas where batteries play a significant role in the future Energy Policy are:

- managing powersupply from renewable resources such as the sun, wind and water
- fuel conservation in conventional vehicles by optimization of the “start & stop” systems,
- fuel conservation via hybrid and electric road vehicles
- the use of exhaust-free industrial vehicles (e.g. forklift trucks, golf carts)

Existing batteries technologies fulfilling the technical requirements of these Renewable Energy areas should continue to be produced in Europe to respond to the demand of the changing markets in the world energy supply and demand.

5. The future of the European Battery Industry.

An exemption in accordance with Article 58 paragraph 2 would significantly increase the required planning security and the competitiveness of the European Battery production Industry. For example, the majority of European Batteries production sites are already owned by non-European Industrial Groups active on a global market. The willingness of these battery producers to invest in new plants in Europe or modernise existing locations would be significantly increased if the use of active substances in batteries were not subject to the REACH Authorisation process but governed by the Batteries Directive.

If this exemption is not granted, the risk exists that these Groups would invest in existing or new sites located in other continents such as in Asia and the USA.

Proven batteries technologies, for which no viable economic substitute exists, are playing an important economic role in Europe and Worldwide. Their production needs to be secured in EU Member States in order to supply the European and World markets

6. Conclusions.

On the basis of the scope and provisions of the new Batteries Directive (2006/66/EC) as well as of the extensive obligations within the Registration process according to REACH and due to numerous other EU Directives with specifying limit values for the uses and emissions of substances contained in batteries, the entire life cycle of the active substances in batteries – from development through production and utilization to collection and recycling – is already specifically regulated in suitable form.

Therefore it seems appropriate to apply the provisions of Article 58 § 1 (e) and Article 58 § 2 of Regulation (EC) No 1907/2006 (REACH) to substances used as active material in batteries and accumulators.

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