

BMU

**Act Revising the Law of Waste-Related Product Responsibility for
Batteries and Accumulators***

Of 25 June 2009

The Bundestag has adopted the following act with the approval of the Bundesrat:

Article 1

**Act Concerning the Placing on the Market, Collection and
Environmentally Compatible Waste Management of Batteries and
Accumulators**

(Batteries Act [Batteriegesetz] – BattG)

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* This Act transposes into German law Directive 2006/66/EC of the European Parliament and of the Council of 6 September 2006 on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/157/EEC (OJ L 266, 26.9.2006, p. 1; OJ L 399, 6.12.2006, p. 39; OJ L 139 of 31.5.2007, p. 40), last amended by Directive 2008/103/EC (OJ L 327 of 5.12.2008, p. 7). The obligations under Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services (OJ L 204, 21.7.1998, p. 37), last amended by Directive 2006/96/EC (OJ L 363, 20.12.2006, p. 81), have been observed.

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Part 1

General Provisions

Section 1

Application

(1) This Act shall apply to all types of batteries, regardless of their shape, size, mass, material composition or use. It shall also apply to batteries incorporated into other products or provided with other products. It shall apply without prejudice to the Electrical and Electronic Equipment Act [Elektro- und Elektronikgerätegesetz] of 16 March 2005 (BGBl. I p. 762), last amended by Article 3 of the Act of 19 July 2007 (BGBl. I p. 1462) and as amended from time to time, and without prejudice to the End-of-Life Vehicles Ordinance [Altfahrzeug-Verordnung] as published on 21 June 2002 (BGBl. I p. 2214), last amended by Article 364 of the Ordinance of 3 April 2009 (BGBl. I p. 738) and as amended from time to time.

(2) This Act shall not apply to batteries used:

1. In equipment connected with the protection of the essential security interests of the Federal Republic of Germany;
2. In arms, munitions or war material, with the exclusion of products that are not procured or deployed for specifically military purposes;
3. In equipment designed to be sent into space.

(3) Unless otherwise provided in this Act or in subordinate legislation issued under it, the Closed Substance Cycle and Waste Management Act [Kreislaufwirtschafts- und Abfallgesetz] and subordinate legislation issued thereunder shall apply as amended from time to time. Section 26, Section 43 (3), Section 54 (1) sentence 1 and Section 58 of the Closed Substance Cycle and Waste Management Act and Section 1 (2) sentence 1 of the Ordinance on Transport Licences [Transportgenehmigungsverordnung] of 10 September 1996 (BGBl. I p. 1411; 1997 p. 2861), last amended by Article 5 of the Act of 19 July 2007 (BGBl. I p. 1462), shall apply mutatis mutandis. The obligations to offer waste and make waste available under Section 13 (4) of the Closed Substance Cycle and Waste Management Act shall not apply to waste batteries separately collected under this Act.

Section 2

Definitions

(1) For the purposes of this Act, the definitions in paragraphs (2) to (22) shall apply.

(2) 'Battery' means any source of electrical energy generated by direct conversion of chemical energy and consisting of one or more non-rechargeable primary battery cells or consisting of rechargeable secondary battery cells.

(3) 'Battery pack' means any set of batteries that are connected together or encapsulated within an outer casing so as to form a complete unit that the end-user is not intended to split up or open. Battery packs are batteries for the purposes of this Act.

(4) 'Automotive battery' means any battery for automotive starter, lighting or ignition power. 'Automotive' in sentence 1 means relating to a motorised land transport vehicle not confined to rails.

(5) 'Industrial battery' means any battery designed for exclusively industrial, commercial or agricultural uses or used in any type of electric vehicle or for propulsion of hybrid vehicles. Automotive batteries are not industrial batteries. The provisions of this Act relating to industrial batteries apply to all batteries that are not automotive, industrial or portable batteries.

(6) 'Portable battery' means any battery that is sealed and can be hand-carried. Automotive and industrial batteries are not portable batteries.

(7) 'Button cell' means any small round portable battery whose diameter is greater than its height.

(8) 'Cordless power tool' means any hand-held electric or electronic appliance within the scope of the Electrical and Electronic Equipment Act powered by a battery and intended for maintenance, construction, gardening or assembly activities.

(9) 'Waste battery' means any battery that is waste within the meaning of the Closed Substance Cycle and Waste Management Act.

(10) 'Treatment' means any activity carried out on waste after it has been handed over to a facility for sorting, preparation for recycling or preparation for disposal.

(11) 'Recycling' means recycling as defined in Section 4 (3) of the Closed Substance Cycle and Waste Management Act.

(12) 'Disposal' means disposal as defined in Section 10 (2) of the Closed Substance Cycle and Waste Management Act.

(13) 'End-user' means any person who uses batteries or products incorporating batteries and does not resell them in the form they were supplied.

(14) 'Distributor' means any person who supplies batteries on a commercial basis to an end-user.

(15) 'Producer' means any person who, irrespective of the distribution method used, places batteries on the market within the jurisdiction of this Act for the first time on a professional basis. Any distributor and dealer who intentionally or negligently places on the market batteries from a producer who has not given notice under the Section 4 (1) sentence 1 shall be considered a producer for the purposes of this Act. This shall apply without prejudice to sentence 1 of this paragraph and to paragraph (14).

(16) 'Placing on the market' means supplying, whether in return for payment or free of charge, to a third party for the purpose of sale, consumption or use. Placing on the market includes import to within the jurisdiction of this Act. This shall not apply to batteries that are demonstrably re-exported outside of the jurisdiction of this Act.

(17) 'Commercial battery waste management company' means a certified specialised waste management company within the meaning of Section 52 of the Closed Substance Cycle and Waste Management Act whose business includes the separate collection, treatment, recycling or disposal of waste batteries.

(18) 'Expert' means a person who is publicly appointed under Section 36 of the German Industrial Code [Gewerbeordnung] or accredited as an environmental verifier or environmental verification organisation under the Environmental Audit Act [Umweltauditgesetz] as published on 4 September 2002 (BGBl. I p. 3490), last amended by Article 11 of the Act of 17 March 2008 (BGBl. I p. 399) and as amended from time to time, for activities under Annex I, Section E, Division 38 of Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 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 L 393, 30.12.2006, p. 1), last amended by Regulation (EC) No 296/2008 (OJ L 97, 9.4.2008, p. 13) and as amended from time to time.

(19) 'Collection rate' means the percentage obtained by dividing the mass of waste batteries collected within the jurisdiction of this Act in a given calendar year by the average mass of batteries placed on the market for the first time within the jurisdiction of this Act and available there for separate collection during that calendar year and the preceding two calendar years.

(20) 'Recycling rate' means the percentage obtained by dividing the mass of waste batteries properly recycled in a given year by the mass of waste batteries collected in that year. Waste batteries exported for recycling outside the jurisdiction of this Act shall not be counted unless the requirements under Section 14 (3) are complied with.

(21) 'Chemical system' means the group of substances primarily involved in the storage of energy in a battery.

(22) 'Classification' means the classification by size and shape of batteries with the same chemical system.

Part 2

Placing on the market and collection of batteries

Section 3

Prohibitions

(1) The placing on the market of batteries that contain more than 0.0005 percent of mercury by weight is prohibited. This prohibition shall not apply to battery cells, or to battery packs composed of battery cells, with a mercury content of no more than two percent by weight.

(2) The placing on the market of portable batteries that contain more than 0.002 percent of cadmium by weight is prohibited. This prohibition shall not apply to portable batteries intended for use in emergency and alarm systems, including emergency lighting, in medical equipment or in cordless power tools. Sentence 1 shall not apply to batteries that, under Annex II of Directive 2000/53/EC of the European Parliament and of the Council of 18 September 2000 on end-of-life vehicles (OJ L 269, 21.10.2000, p. 34), last amended by Directive 2008/33/EC (OJ L 81, 20.3.2008, p. 62) and as amended from time to time, are exempt from the prohibition of cadmium under Article 4 (2) (a) of Directive 2000/53/EC.

(3) A producer shall not place batteries on the market within the jurisdiction of this Act unless it has given prior notice under Section 4 (1) sentence 1 read in conjunction with subordinate legislation issued under Section 20 no. 1, and, by complying with its take-back obligations under Section 5 read in conjunction with Section 6 (1) sentence 1 or Section 6 (5) or Section 7 (1) or Section 8 (1), ensures that waste batteries can be returned in accordance with this Act.

(4) A distributor shall not supply batteries to end-users within the jurisdiction of this Act unless, by complying with its take-back obligations under Section 9 (1) sentence 1, it ensures that end-users can return batteries in accordance with this Act.

(5) Batteries placed on the market within the jurisdiction of this Act in breach of paragraphs (1) and (2) shall be withdrawn from the market by their producer.

Section 4

Producer notification obligations

(1) Before placing batteries on the market within the jurisdiction of this Act, each producer shall notify the Federal Environment Agency [Umweltbundesamt], stating the data stipulated in subordinate legislation issued under Section 20 no. 1. The Federal Environment Agency shall be notified without delay of any change in data submitted under sentence 1 and of any permanent withdrawal from the market. Each notification under sentences 1 and 2 shall be submitted electronically on the website of the Federal Environment Agency. The Federal Environment Agency shall confirm receipt of the submitted data.

(2) For the purposes of notifications under paragraph (1) sentences 1 and 2 and of other communication with producers, the Federal Environment Agency may require electronic transmission, the use of a specific means of encryption, and the opening of an account for the submission of electronic documents. The requirements under sentence 1 shall be published on the website of the Federal Environment Agency.

(3) The Federal Environment Agency shall publish on its website the data submitted in accordance with paragraph (1) whose publication is required under the subordinate legislation issued under Section 20 no. 1. The published data shall be subdivided by producers of automotive, portable and industrial batteries and shall include for each producer the data under sentence 1 and the date of submission. For producers who have withdrawn from the market, the data shall also include the date of withdrawal. The data under paragraph (1) shall be deleted three years after notification of producer's withdrawal from the market.

Section 5

Producer take-back obligations

(1) Each producer shall, at no charge, take back and recycle in accordance with Section 14 the waste batteries taken back by distributors under Section 9 (1) sentence 1 and the portable batteries collected by public waste management authorities under Section 13. Non-recyclable waste batteries shall be disposed of in accordance with Section 14.

(2) Paragraph (1) shall also apply to waste batteries from the treatment of waste electrical and electronic equipment under the Electrical and Electronic Equipment Act and from the treatment of end-of-life vehicles under the End-of-Life Vehicles Ordinance.

Section 6

Joint Collection Scheme for waste portable batteries

(1) Producers of portable batteries shall ensure compliance with their obligations under Section 5 by setting up and participating in a joint, not-for-profit, nation-wide collection scheme for waste portable batteries (Joint Collection Scheme). Each participating producer shall provide to the Joint Collection Scheme the information needed to comply with the reporting obligations under Section 15 (1) on demand. Any producer who withdraws from the Joint Collection Scheme shall notify the authority named in Section 7 (1) of its withdrawal without delay.

(2) The Federal Ministry of the Environment, Nature Conservation and Nuclear Safety (BMU) acting in consultation with the Federal Ministry of Economics and Technology (BMWi) shall issue a binding declaration stating whether the collection scheme under paragraph (1) read in conjunction with paragraph (3) has been established. Producers under paragraph (1) sentence 1 shall be notified of the declaration under sentence 1 of this paragraph by publication in the Federal Gazette [Bundesanzeiger]. The notice shall specifically and clearly designate the Joint Collection Scheme.

(3) The Joint Collection Scheme shall:

1. Be open to all producers of portable batteries on equal terms;
2. Offer to collect waste portable batteries at no charge from all distributors of portable batteries, all public waste management authorities and all treatment facilities under Section 12 (1) and (2);
3. Ensure that waste portable batteries are taken back nation-wide by all distributors of portable batteries, all public waste management authorities and all treatment facilities under Section 12 (1) and (2) who make use of the offer under no. 2 (participating collectors);
4. Collect portable batteries, regardless of type, brand or origin, at no charge from participating collectors and submit the collected batteries for recycling in accordance with Section 14;
5. Provide participating collectors with suitable transport containers at no charge;
6. Put waste management services such as collection, transport, sorting and recycling of waste portable batteries and disposal of non-recyclable waste portable batteries out to tender for a maximum period of five years in a tendering procedure which ensures that contracts are awarded in free competition;
7. Secure its financing by allocating any costs remaining after collection, recycling and disposal, including value-added tax and necessary overheads, to producers in proportion to their respective shares, as measured by battery mass and subdivided by chemical system and classification, of batteries placed on the market in the year in question and by collecting a commensurate contribution from each producer;

8. Report each year to the Federal Environment Agency stating the cost of collection, sorting, recycling and disposal of collected waste portable batteries, including overheads, subdivided by chemical system and classification;
9. Safeguard the confidentiality of data to which it has access to the extent that the data is specific to or directly attributable to individual producers.

(4) The Joint Collection Scheme may charge producers of portable batteries who neither participate in the Joint Collection Scheme nor operate a producer-specific collection scheme under Section 7 for the costs of collection, sorting and recycling or disposing of waste portable batteries that they place on the market and are collected by the Joint Collection Scheme. The chargeable costs may include the overheads of the Joint Collection Scheme.

(5) If it is not determined that the Joint Collection Scheme has been established, producers of portable batteries shall each be required to ensure compliance with their obligations under Section 5 by setting up a producer-specific collection scheme as defined in Section 7.

Section 7

Producer-specific collection schemes for waste portable batteries

(1) Section 6 (1) sentence 1 shall not apply if a producer has set up and operates a collection scheme for waste portable batteries (producer-specific collection scheme) approved by the supreme waste management authority, or by an authority designated by the supreme waste management authority, in the Land in which the producer has its registered office. Approval under sentence 1 shall be granted on application in accordance with paragraphs (2) and (3). If the authority does not reach a decision within a period of three months, approval shall be deemed granted subject to the condition in paragraph (2) sentence 1. The period under sentence 3 shall commence on receipt of the full documentation by the competent authority.

(2) Approval for producer-specific collection schemes shall only be granted subject to the condition that the collection targets stipulated in Section 16 are attained by the dates specified. In all other respects, Section 6 nos. 2 to 5 shall apply mutatis mutandis to producer-specific collection schemes. As part of the approval procedure, the opinion of an independent expert shall be obtained to demonstrate that the preconditions necessary for probable attainment of the targets under sentence 1 are met and the requirements under sentence 2 are complied with. Producer-specific collection schemes may also be approved retroactively subject to the conditions necessary to ensure ongoing compliance with the recycling requirements under Section 14 and the requirements under sentence 2.

(3) Two or more producers may cooperate in establishing and operating a collection scheme under paragraph (1). If two or more producers cooperate in establishing and operating their collection scheme by commissioning a joint third party, the approval under paragraph (1) may be granted to the third party with effect for the cooperating producers; the producer's registered office for the purposes of paragraph (1) is then that of the commissioned third party. Section 6 (3) no. 9 shall apply mutatis mutandis to the jointly commissioned third party.

(4) Producers of portable batteries who operate an approved producer-specific collection scheme may charge other producers of portable batteries who neither participate in the Joint Collection Scheme nor operate a producer-specific collection scheme for the

costs of collection, sorting and recycling or disposal of waste portable batteries that those other producers place on the market and are properly dealt with by the producer-specific collection scheme. The chargeable costs may include the overheads of the producer-specific collection scheme.

Section 8

Collection of automotive and industrial batteries

(1) Each producer of automotive and industrial batteries shall ensure compliance with its obligations under Section 5 by providing

1. distributors in respect of waste automotive and industrial batteries taken back by them in accordance with Section 9 (1) sentence 1, and
2. treatment facilities under Section 12 (1) and (2) in respect of waste automotive and industrial batteries from treatment

with a reasonable means of returning batteries at no charge and by recycling the returned waste batteries in accordance with Section 14. Distributors and treatment facilities shall not be under obligation to give such waste batteries to producers.

(2) In respect of waste industrial batteries, producers, distributors, treatment facilities under Section 12 (1) and (2) and end-users may make arrangements other than those stipulated in paragraph (1).

(3) Insofar as waste automotive and industrial batteries are recycled under Section 14 by distributors, treatment facilities under Section 12 (1) and (2), public waste management authorities or commercial waste battery management companies, the producer's obligations under Section 5 shall be deemed to be complied with.

Section 9

Distributor obligations

(1) Each distributor shall be required to take back waste batteries from end-users at no charge at or in the immediate vicinity of the point of sale. The take-back obligation specified in sentence 1 shall be restricted to waste batteries of the same type as new batteries carried at any time by the distributor as part of its product range and to the quantities that end-users normally discard. Sentence 1 shall not apply to products incorporating waste batteries; it shall apply without prejudice to the Electrical and Electronic Equipment Act and without prejudice to the End-of-Life Vehicles Ordinance. In mail order operations, the point of sale for the purposes of sentence 1 shall be the dispatch warehouse.

(2) Each distributor under paragraph (1) shall be required to allow the Joint Collection Scheme to collect the waste portable batteries that the distributor takes back. As an alternative to sentence 1, a distributor may, for a period of at least one calendar year in each instance, enter into a binding commitment to withdraw from collection by the Joint Collection Scheme and instead give the waste portable batteries that the distributor takes back to one or more producer-specific collection schemes. The Joint Collection Scheme shall be given written notice of such withdrawal at least three months before the beginning of the period concerned.

(3) Insofar as a distributor does not take up the producers' offer under Section 8 (1) and either recycles waste automotive or industrial batteries itself or delivers them to third parties for recycling, the distributor shall ensure compliance with the requirements under Section 14. If a distributor delivers waste automotive or industrial batteries to a commercial battery waste management company or public waste management authority for recycling, the requirements under Section 14 shall be deemed to be complied with in respect of the distributor.

(4) A distributor shall not show separately the costs of collection, sorting, recycling and disposal of waste portable batteries to end-users at the time of sale of new portable batteries.

Section 10

Obligation to collect a deposit on automotive batteries

(1) Each distributor who supplies automotive batteries to end-users shall collect a deposit of € 7.50 per automotive battery, including value-added tax, from each end-user who does not return a waste automotive battery at the time of purchasing a new automotive battery. The deposit shall be refunded on the return of a waste automotive battery. A distributor may issue a token on collection of the deposit and make the refunding of the deposit conditional upon return of the token.

(2) The obligation to collect a deposit shall not apply when supplying or passing on to an end-user an automotive battery fitted in a vehicle.

Section 11

End-user obligations

(1) Persons in possession of waste batteries shall discard them through a separate collection channel from unsorted municipal waste. Sentence 1 shall not apply to waste batteries incorporated in other products; it shall apply without prejudice to the Electrical and Electronic Equipment Act and without prejudice to the End-of-Life Vehicles Ordinance.

(2) Waste portable batteries shall be solely collected by collection points participating in the Joint Collection Scheme or in a producer-specific collection scheme. End-users who are commercial or other economic operators or are public institutions may make arrangements other than those stipulated in sentence 1 concerning how and where they return their waste portable batteries.

(3) Waste automotive batteries shall be solely collected through distributors, public waste management authorities and treatment facilities under Section 12. As an alternative to sentence 1, end-users who are commercial or other economic operators or are public institutions may deliver their waste automotive batteries directly to producers or commercial battery waste management companies.

(4) If other arrangements are not made under Section 8 (2), waste industrial batteries shall be solely collected through distributors, treatment facilities under Section 12 (2) and commercial battery waste management companies; compliance with the requirements under Section 14 shall also be ensured.

Section 12

Third-party delivery and recycling obligations

(1) Each operator of treatment facilities for waste equipment under the Electrical and Electronic Equipment Act shall make waste portable batteries from treatment available for collection by the Joint Collection Scheme.

(2) Each operator of treatment facilities for end-of-life vehicles under the End-of-Life Vehicles Ordinance shall make waste portable batteries from treatment available for collection by the Joint Collection Scheme.

(3) As an alternative to paragraphs (1) and (2), an operator may, for a period of at least one calendar year in each instance, enter into a binding commitment to withdraw from collection by the Joint Collection Scheme and instead give the waste portable batteries from treatment to one or more producer-specific collection schemes. The Joint Collection Scheme shall be given written notice of such withdrawal at least three months before the beginning of the period concerned.

(4) Section 9 (3) shall apply mutatis mutandis to waste automotive and industrial batteries from treatment under paragraphs (1) and (2)

Section 13

Participation by public waste management authorities

(1) Insofar as public waste management authorities participate in the collection of waste portable batteries, they shall make available the collected waste portable batteries for collection by the Joint Collection Scheme. As an alternative to sentence 1, public waste management authorities may, for a period of at least one calendar year in each instance, enter into a binding commitment to withdraw from collection by the Joint Collection Scheme and instead give the collected waste portable batteries to one or more producer-specific collection schemes. The Joint Collection Scheme shall be given written notice of such withdrawal at least three months before the beginning of the period concerned.

(2) Insofar as public waste management authorities participate in the collection of waste automotive batteries, they shall recycle the collected waste automotive batteries in accordance with Section 14.

Section 14

Recycling and disposal

(1) Where technically feasible and economically viable, all collected and identifiable waste batteries shall be treated and recycled using the best available techniques. The minimum requirements stipulated in subordinate legislation issued under Section 20 no. 2 shall be complied with. Identifiable waste batteries whose treatment and recycling is not technically feasible or economically viable, unidentifiable waste batteries and residues of waste batteries that have undergone proper treatment and recycling shall be disposed of using the best available techniques and in a manner compatible with the public interest.

(2) The disposal of waste automotive and industrial batteries by incineration or in a landfill is prohibited. This shall not apply to residues of waste batteries that have undergone proper treatment and recycling.

(3) Treatment and recycling under paragraph (1) may be undertaken outside the jurisdiction of this Act provided that the shipment of waste batteries is in compliance with Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste (OJ L 190, 12.7.2006, p. 1, L 318, 28.11.2008, p. 15), last amended by Regulation (EC) No 669/2008 (OJ L 188, 16.7.2008, p. 7) and as amended from time to time, and with the requirements of subordinate legislation issued under Section 20 no. 3.

(4) Waste batteries exported out of the Community in accordance with Regulation (EC) No 1013/2006 and Commission Regulation (EC) No 1418/2007 of 29 November 2007 concerning the export for recovery of certain waste listed in Annex III or IIIA to Regulation (EC) No 1013/2006 of the European Parliament and of the Council to certain countries to which the OECD Decision on the control of transboundary movements of wastes does not apply (OJ L 316, 4.12.2007, p. 6), last amended by Regulation (EC) No 740/2008 (OJ L 201, 30.7.2008, p. 36) and as amended from time to time, shall count towards the fulfilment of the obligations and efficiencies laid down in paragraph (1) only if there is sound evidence that the recycling operation took place under conditions equivalent to the requirements of this Act and of subordinate legislation issued under it.

Section 15

Reporting

(1) The Joint Collection Scheme shall submit to the Federal Environment Agency each year by the 30 April records providing information on:

1. The mass of portable batteries placed on the market within the jurisdiction of this Act and remaining within the jurisdiction of this Act in the preceding year, subdivided by chemical system and classification;
2. The mass of waste portable batteries collected by the Joint Collection Scheme in the preceding year, subdivided by chemical system and classification;
3. The mass of waste portable batteries recycled by the Joint Collection Scheme in the preceding year, subdivided by chemical system and classification, separately showing waste portable batteries exported and recycled outside the jurisdiction of this Act;
4. The collection rate, as defined in Section 2 (19), attained by the Joint Collection System in respect of portable batteries;
5. The recycling rate, as defined in Section 2 (20), attained by the Joint Collection System in respect of waste portable batteries;
6. The qualitative and quantitative recycling and disposal results;
7. The total prices paid for each of collection, sorting, recycling and disposal, subdivided by chemical system and classification.

On demand from the Federal Environment Agency, the records shall be submitted in a version that has been audited and confirmed by an independent expert. With the exception

of the information sentence 1 no. 7, the Joint Collection Scheme shall publish the records to be submitted under sentence 1 on its website within one month of submission to the Federal Environment Agency.

(2) Paragraph (1) sentence 1 nos. 1 to 6, sentence 2 and sentence 3 shall apply mutatis mutandis to producer-specific collection systems; paragraph (1) sentence 1 shall be applied such that the records shall be submitted to the Federal Environment Agency and to the authority which issued approval under Section 7 (1).

(3) For distributors of automotive and industrial batteries, paragraph (1) sentence 1 nos. 1 to 6, sentence 2 and sentence 3 shall be applied such that the reported information shall relate to the collection, take-back and recycling of automotive batteries. Producers of automotive and industrial batteries may present joint records for multiple distributors.

(4) The Federal Environment Agency may publish recommendations for the format and structure of the records under paragraphs (1) and (2) in the Federal Gazette.

Section 16

Collection targets

The Joint Collection System and the producer-specific collection systems shall each achieve the following on an ongoing basis in their own system for waste portable batteries:

1. A minimum collection rate of 35 percent by no later than 26 September 2012.
2. A minimum collection rate of 45 percent by no later than 26 September 2016.

Part 3

Labelling and information

Section 17

Labelling

(1) Each producer shall mark batteries before first placing them on the market with the symbol shown in the Annex in compliance with the requirements under paragraphs (2), (4) and (5).

(2) The symbol under paragraph (1) shall cover at least three percent of the area of the largest side of the battery or battery pack and shall have a maximum size of five centimetres long by five centimetres wide. If the object to be labelled is cylindrical, the symbol under paragraph (1) shall cover at least 1.5 percent of the surface area of the object and shall have a maximum size of five centimetres long by five centimetres wide.

(3) Each producer shall, before placing batteries on the market containing more than 0.0005 percent of mercury by mass, more than 0.002 percent of cadmium by mass or more than 0.004 percent of lead by mass, mark the batteries with the chemical symbols (Hg, Cd, Pb) of the metals for which the limit is exceeded, in compliance with the requirements under sentences 2 and 3 and under paragraphs (4) and (5). The chemical symbols under sentence

1 shall be printed beneath the symbol under paragraph (1). Each chemical symbol shall cover an area of at least one-quarter of the size of the symbol under paragraph (1).

(4) If the symbol under paragraph (1) or chemical symbol under paragraph (3) covers an area of less than half a centimetre long by half a centimetre wide, the battery or battery pack need not be marked. Instead, the wheeled bin symbol under paragraph (1) and the chemical symbols under paragraph (3) shall be printed on the packaging and shall have a size of at least one centimetre long by one centimetre wide. In cases where it is not technically feasible to label a battery, sentences 1 and 2 shall apply mutatis mutandis.

(5) The symbol under paragraph (1) and the chemical symbols under paragraph (3) shall be printed visibly, legibly and indelibly.

(6) Each producer shall mark automotive and portable batteries before first placing them on the market with a visible, legible and indelible indication of their capacity. The requirements on the measurement of capacity and on the appearance of the capacity indication shall be complied with as stipulated in subordinate legislation under Section 20 no. 4.

(7) Additional voluntary labelling shall be permitted provided that it does not conflict with the labelling under paragraphs (1), (3) or (6).

Section 18

Information

(1) Distributors shall inform their customers by means of clearly visible and legible written or pictorial signs in the direct field of vision of the main customer flow:

1. That used batteries can be returned at the point of sale at no charge;
2. That the end-user is under a statutory duty to return waste batteries;
3. Of the meaning of the symbol under Section 17 (1) and the chemical symbols under Section 17 (3).

Where batteries are supplied to end-users by mail order, the information under sentence 1 shall be provided in the presentation media used or be included in written form with the delivered goods.

(2) Each producer shall inform end-users of the provisions of paragraph (1) sentence 1 nos. 1 to 3, the potential effects on the environment and human health of the substances used in batteries, and the importance to the environment and human health of separate collection and recycling of waste batteries.

(3) If the Joint Collection Scheme conducts information campaigns under paragraph (2), producers of portable batteries not participating in the Joint Collection Scheme shall share in the costs of the campaigns in proportion to their market share of new portable batteries placed on the market. Insofar as they do so, the obligation under paragraph (2) shall be deemed to be complied with.

(4) If producers not participating in the Joint Collection Scheme are required under paragraph (3) to share in the costs of information campaigns conducted by the Joint Collection Scheme, the information campaigns shall be competitively neutral.

Part 4

Commissioning of third parties; authorisation to issue subordinate legislation; enforcement

Section 19

Commissioning of third parties

Parties with obligations under this Act may commission third parties with compliance with those obligations; Section 16 (1) sentences 2 and 3 of the Closed Substance Cycle and Waste Management Act shall apply mutatis mutandis. The Joint Collection Scheme may be such a third party.

Section 20

Authorisation to issue subordinate legislation

The Federal Ministry of the Environment, Nature Conservation and Nuclear Safety shall be authorised to issue subordinate legislation which does not require the approval of the German Bundestag and which:

1. Stipulates the data required under Section 4 (1) sentence 1 on the notifier's identity and unique identifiers, notifier's contact data, data on the notifier's product responsibility compliance, and which of these data items are for publication under Section 4 (3) sentence 1;
2. Stipulates minimum requirements for the treatment and recycling of waste batteries, the recycling efficiencies to be achieved and requirements for their computation;
3. Lays down implementing rules under Article 15 (3) of Directive 2006/66/EC;
4. Stipulates requirements on measuring the capacity of automotive and portable batteries and on the appearance of the capacity indication;
5. Permits exceptions from Section 17 (1) to (6).

Section 21

Enforcement

(1) The Federal Environment Agency may issue orders to the Joint Collection Scheme as necessary to ensure ongoing compliance with the requirements under Section 6 (3) and the recycling requirements under Section 14.

(2) Section 8 (2) to (10) of the Equipment and Product Safety Act [Geräte- und Produktsicherheitsgesetz] of 6 January 2004 (BGBl. I p. 2), last amended by Article 3 (33) of the Act of 7 July 2005 (BGBl. I p. 1970), Section 7 of the Energy-Using Products Act [Energiebetriebene-Produkte-Gesetz] of 27 February 2008 (BGBl. I p. 258) and Sections 21

and 40 of the Closed Substance Cycle and Waste Management Act shall apply mutatis mutandis in the enforcement of this Act. The basic right of inviolability of the home (Article 13 (1) of the German Basic Law) shall be restricted to the corresponding extent.

Part 5

Administrative offences; concluding provisions

Section 22

Penalties

(1) An administrative offence is committed by anyone who deliberately or negligently:

1. Places batteries on the market in contravention of Section 3 (1) sentence 1 or (2) sentence 1;
2. Places batteries on the market in contravention of Section 3 (3);
3. Supplies batteries to end-users in contravention of Section 3 (4);
4. In contravention of Section 4 (1) sentence 2 read in conjunction with secondary legislation issued under Section 20 no. 1, fails to give notification or does not give correct, complete and timely notification;
5. In contravention of Section 5 (1) sentence 1 read in conjunction with Section 14 (1) sentence 1 or sentence 2 read in conjunction with subordinate legislation issued under Section 20 (2), each additionally read in conjunction with Section 5 (2), fails to recycle or does not properly or completely recycle the waste batteries referred to in the provisions concerned;
6. In contravention of Section 5 (1) sentence 2 read in conjunction with Section 14 (1) sentence 3, each additionally read in conjunction with section 5 (2), fails to dispose of or does not properly or completely dispose of the waste batteries referred to in the provisions concerned;
7. In contravention of Section 6 (1) sentence 2, fails to provide information or does not provide correct, complete and timely information;
8. In contravention of Section 6 (1) sentence 3, fails to give notification or does not give correct, complete and timely notification;
9. In contravention of Section 9 (2) sentence 1 or Section 12 (1) or (2), fails to make available waste portable batteries for collection by the Joint Collection Scheme;
10. In contravention of Section 9 (4), separately shows the costs referred to in that provision;
11. In contravention of Section 10 (1) sentence 1 or sentence 2, fails to collect or refund a deposit;

12. In contravention of Section 14 (2) sentence 1, disposes of automotive or industrial batteries by incineration or in a landfill;
13. In contravention of Section 15 (1) sentence 1 nos. 1 to 6, each read in conjunction with Section 15 (2) or (3) sentence 1 or sentence 3, or in contravention of Section 15 (1) sentence 1 no. 7, fails to submit records or does not submit correct, complete and timely records;
14. In contravention of Section 17 (1) sentence 1 or (3) sentence 1, fails to label a battery or does not label a battery correctly or by the stipulated time;
15. In contravention of Section 17 (6) read in conjunction with subordinate legislation issued under Section 22 no. 4, fails to mark an automotive or portable battery with an indication of its capacity or does not do so correctly, completely or by the stipulated time;
16. In contravention of Section 18 (1) sentence 1 or sentence 2, fails to provide the required information or include it with the delivered goods or does not provide it or include it with the delivered goods correctly or in the stipulated manner;

(2) Administrative offences under paragraph (1) nos. 1 to 6, 9, 12 and 13 shall be punishable with a fine of up to fifty thousand euros; the remaining administrative offences shall be punishable with a fine of up to ten thousand euros.

(3) In the case of administrative offences under paragraph (1) nos. 2, 4, 7 and 13, the administrative authority within the meaning of Section 36 (1) no. 1 of the Administrative Offences Act [Gesetz über Ordnungswidrigkeiten] shall be the Federal Environment Agency.

(4) In the cases referred to in paragraph (3), fines imposed in court proceedings and amounts whose forfeiture is imposed by a court shall go to the Federal Treasury, which shall also meet any costs the state may be instructed to pay.

Section 23

Transitional provisions

(1) Section 3 (1) and (2), Section 17 (1) and (3) and (6) sentence 1 shall not apply for batteries first placed on the market in a Member State of the European Union before the entry into force of this Act.

(2) When refunding deposits under Section 10 (1) sentence 2, deposits collected before 1 January 2002 shall be subject to the conversion rates stipulated in Article 1 of Council Regulation (EC) No 2866/98 of 31 December 1998 on the conversion rates between the euro and the currencies of the Member States adopting the euro (OJ L 359, 31.12.1998, p. 1), last amended by Council Regulation (EC) No 694/2008 (OJ L 195, 24.7.2008, p. 3) and as amended from time to time.

(3) When determining the collection rate under Section 15 (1) sentence 1 no. 4, (2) and (3), Section 2 (19) shall apply for the 2009 calendar year such that the mass of waste batteries collected in that calendar year shall be divided by the mass of batteries placed on the market for the first time in that calendar year.

(4) For the 2010 calendar year, paragraph (3) shall apply such that the mass of waste batteries collected in the 2010 calendar year shall be divided by the average mass of batteries placed on the market for the first time in each of the years 2009 and 2010.

(5) Paragraphs (3) and (4) shall, regardless of the then current calendar year, apply mutatis mutandis to the first two years of operation of a producer-specific collection scheme.

Annex
(to Section 17)



Article 2

Amendments to the Electrical and Electronic Equipment Act

The Electrical and Electronic Equipment Act of 16 March 2005 (BGBl. I p. 762), last amended by Article 3 of the Act of 19 July 2007 (BGBl. I p. 1462) is amended as follows:

1. Section 2 (3) sentence 2 is amended as follows:

After the words “Waste Management Act”, the word “and” is replaced by a comma and after the words “Ordinance on Transport Licences (TgV)” the following words are inserted: “, Section 8 (2) to (10) of the Equipment and Product Safety Act (GPSG) of 6 January 2004 (BGBl. I p. 2), last amended by Article 3 (33) of the Act of 7 July 2005 (BGBl. I p. 1970) and Section 7 of the Energy-Using Products Act [Energiebetriebene-Produkte-Gesetz] of 27 February 2008 (BGBl. I p. 258)”.

2. Section 4 is amended as follows:

- a) After sentence 1, the following sentence is inserted:

“Electrical and electronic equipment that is fully or partly powered by batteries or accumulators shall be designed in such a way that batteries and accumulators can be readily removed.”

- b) After sentence 3, the following sentence is inserted:

“Sentence 2 and Section 13 (7) shall not apply to electrical and electrical equipment 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.”

3. Section 12 (4) no. 2 letters b and c are replaced by the following letter b:

“Commission Regulation (EC) No 1418/2007 of 29 November 2007 concerning the export for recovery of certain waste listed in Annex III or IIIA to Regulation (EC) No 1013/2006 of the European Parliament and of the Council to certain countries to which the OECD Decision on the control of transboundary movements of wastes does not apply (OJ L 316, 4.12.2007, p. 6), last amended by Regulation (EC) No 740/2008 (OJ L 201, 30.7.2008, p. 36) and as amended from time to time.”

4. Section 13 is supplemented with a paragraph (7) as follows:

“(7) Electrical and electronic equipment incorporating a battery or accumulator shall be accompanied by a notice providing the user with information on the type or chemical system of the battery or accumulator and instructions on how it can be safely removed.”

Article 3

Entry into force; repeals

(1) Without prejudice to paragraphs (2) and (3), this Act shall enter into force on 1 December 2009. The Battery Ordinance [Batterieverordnung] as published on 2 July 2001 (BGBl. I p. 1486), last amended by Article 7 of the Act of 9 September 2001 (BGBl. I p. 2331), and the Act on Public Participation in the Preparation of Battery Programmes [Gesetz über die Beteiligung der Öffentlichkeit bei der Aufstellung von Batterieprogrammen] of 9 December 2006 (BGBl. I p. 2819, 2824) shall be repealed on the same date

(2) Article 1 Section 2 (15) sentences 2 and 3, Article 1 Section 3 (3) and Article 1 Section 22 shall enter into force on 1 March 2010.

(3) Article 1 Section 20 shall enter into force on 1 July 2009.