

Decree of

establishing rules relating to the notification on waste management and the use of certain dangerous substances in batteries and accumulators (Management of Batteries and Accumulators Decree 2008)

At the proposal of Our Minister of Housing, Spatial Planning and the Environment dated 6 May 2008, no. DJZ2008042473, Central Administrative and Legal Affairs Department, Legislation Division;

Having regard to Sections 10:15 to 10:18 of the Environmental Management Act;

Having heard the Council of State (recommendation of 11 June 2008, no. W08.08.0166/IV);

And having considered the detailed report of Our Minister of Housing, Spatial Planning and the Environment of 30 June 2008, no. BJZ2008065145, Central Administrative and Legal Affairs Department, Legislation Division;

Hereby approve and decree:

Article 1

1. For the purposes of this Decree, the following definitions shall apply:
 - a. battery: source of electrical energy generated by direct conversion of chemical energy and consisting of one or more primary battery cells or one or more secondary battery cells;
 - b. accumulator: source of electrical energy generated by direct conversion of chemical energy and consisting of one or more primary battery cells or one or more secondary battery cells;
 - c. placing on the market: supplying or making available, whether in return for payment or free of charge, to a third party in the Netherlands;
 - d. manufacturer: any person who manufactures a battery or accumulator;
 - e. producer: any person who, irrespective of the selling technique used, places batteries or accumulators, including those incorporated into

appliances or vehicles, on the market for the first time on a professional basis.

2. This Decree shall not apply to batteries and accumulators that are used in:

- a. equipment connected with the protection of the essential security interests of the Netherlands or one of the other Member States of the European Union, arms, munitions and war materials, with the exclusion of products that are not intended for specifically military purposes;
- b. equipment designed to be sent into space.

Article 2

1. Within thirteen weeks of the Management of Batteries and Accumulators Regulations 2008 becoming applicable to him, the producer or the manufacturer of batteries and accumulators shall notify Our Minister, using a form to be established by him, how he intends to implement the articles of those regulations referred to in that form, to the extent that they apply to him.

2. The notification shall require the approval of Our Minister.

3. Our Minister may make his approval of the notification contingent on conditions or restrictions.

4. Our Minister may modify or withdraw the conditions or restrictions referred to in paragraph 3 either by virtue of his office or in response to a request to that end.

Article 3

The Management of Batteries Decree is hereby repealed.

Article 4

In Article 2, paragraph 2 of the Management of End-of-life Vehicles Decree, “or by or by virtue of the Management of Batteries Decree” shall be substituted by: , the Management of Batteries and Accumulators Decree 2008 or the Management of Batteries and Accumulators Regulations 2008.

Article 5

In Article 1.2, paragraph 1 of the Mercury-Containing Products Decree (EHSA), “the Management of Batteries Decree” shall be substituted by: the Management of Batteries and Accumulators Regulations 2008.

Article 6

In the annex to Article 8 of the Notification of Commercial Waste and Hazardous Waste Decree, part c shall read as follows:

c. batteries and accumulators as referred to in Article 1, paragraph 1, part a and part b respectively, of the Management of Batteries and Accumulators Decree 2008.

Article 7

This Decree shall enter into force on 26 September 2008.

Article 8

This Decree may be cited as: Management of Batteries and Accumulators Decree 2008.

We order and command that this Decree and the accompanying explanatory memorandum be published in the Bulletin of Acts and Decrees.

The Minister of Housing,
Spatial Planning and the Environment,

EXPLANATORY MEMORANDUM

I. General

1. Introduction

The Decree establishing rules relating to the notification on waste management and the use of certain dangerous substances in batteries and accumulators (Management of Batteries and Accumulators Decree 2008) (referred to below as: the Decree) contains rules relating to the notification requirement for producers and manufacturers of batteries and accumulators. The Decree is closely connected with the Management of Batteries and Accumulators Regulations 2008 (referred to below as: the Regulations) which serve to implement 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) (referred to below as: Directive 2006/66/EC). Directive 2006/66/EC regulates the use of the dangerous substances mercury, cadmium and lead in batteries and accumulators and contains labelling rules for batteries and accumulators; the legal basis for these subjects in Directive 2006/66/EC is Article 95(1) of the EC Treaty. Directive 2006/66/EC also contains rules on the collection, treatment and reuse as material of waste batteries, as well as a requirement to provide information for the public; the legal basis for this is Article 175(1) of the EC Treaty.

The Regulations are based on Section 21.6, subsection 6 of the Environmental Management Act, because the Regulations only serve to implement Directive 2006/66/EC. The Decree regulates the notification requirement for the producer or manufacturer of batteries and accumulators and cannot be considered as direct implementation of the Directive. For this reason, the notification requirement is regulated in the Decree by virtue of the provisions of Section 21.6, subsection 6 of the Environmental Management Act.

Under the Management of Batteries Decree, an information requirement already existed for the producer of batteries weighing one thousand grams or less (Article 6 of the Management of Batteries Decree). The Decree extends the requirement to a larger group, namely all producers and manufacturers of batteries and accumulators; this change is being introduced to ensure the execution and enforcement of the rules that apply in

implementation of Directive 2006/66/EC. The weight of the battery or accumulator being placed on the market by the producer is therefore no longer a distinguishing criterion for the notification requirement. Directive 2006/66/EC distinguishes between three types of batteries and accumulators: portable batteries and accumulators, industrial batteries and accumulators and automotive batteries and accumulators. Depending on the type of battery or accumulator, its producer or manufacturer is subject to different rules governing the collection, treatment and reuse as material of waste batteries and accumulators when they are discarded. This distinction has been adopted in the Regulations. The content of the notification requirement therefore also differs for the three groups of producers or manufacturers.

The Decree and the Regulations together replace the Management of Batteries Decree and the Further Rules on the Designation of Batteries and Accumulators Containing Mercury, Cadmium or Lead.

2. Notification requirement

A notification requirement is an important instrument that enables the Regulations to be implemented and enforced correctly and, in particular, promptly. By requiring producers to submit a notification, it is possible to ensure that they start taking steps to meet the requirements arising from the Regulations promptly.

For the implementation of Directive 2006/66/EC it was decided to introduce a system of producer responsibility under which producers of batteries and accumulators are both materially and financially responsible for the management of batteries and accumulators as waste. The notification requirement is a way of supporting this, which is also adopted in other product decrees based on the Environmental Management Act, in order to ensure that businesses fulfil their obligations. Examples of this include the Management of Electrical and Electronic Equipment Decree, the Management of End-of-life Vehicles Decree and the Management of Packaging, Paper and Cardboard Decree. As a result of the Decree of 6 December 2007 amending the Management of Automotive Tyres Decree, the Management of End-of-life Vehicles Decree, the Management of Batteries Decree, the WEEE Management Decree and the Management of Packaging, Paper and Cardboard Decree in connection with the change to the reporting and notification period (unlimited validity of reporting and notification)¹, the notification requirement pursuant to, among other things, the Management of Batteries Decree (which entered into force on 1 April 2008) has been amended so that the notification now has unlimited validity, so it is no longer necessary to submit a new notification every few years. The unlimited validity of the notification is also assumed in the Decree.

The Decree stipulates that the producer or manufacturer of batteries and accumulators must notify the Minister of VROM about the manner in which he will be implementing the requirements imposed on him by the Regulations. A form will be agreed for submission of the notification, which will take the form of an action plan. The notification requirement does not stem directly from Directive 2006/66/EC, but is an

¹ Bulletin of Acts and Decrees 2007, 521.

obligation in national law designed to improve execution and enforcement of the regulations implementing Directive 2006/66/EC.

The information that must in any event be provided by the producer (or collective implementing body) in the notification is listed in a form being established by Ministerial Regulation. The notification on portable batteries and accumulators will include information on the measures relating to the placing on the market of batteries that do not contain mercury, cadmium or lead, what steps are being taken to ensure that the labelling rules are complied with, the measures designed to achieve certain collection targets specified in Directive 2006/66/EC in the corresponding years, what steps are being taken to ensure the collection, storage, processing and treatment of the collected batteries for reuse as material, how the waste management structure is financed, the measures taken or to be taken to ensure collection and further waste management if the producer ceases to place batteries on the market in the Netherlands, the measurement and monitoring system, and information on the method to be used to register the information stated in the notification. The notification on industrial batteries and accumulators at the very least relates to the steps to be taken to ensure the collection, treatment and reuse as material of these batteries and accumulators when they have been discarded. The notification on automotive batteries and accumulators relates in any event to the collection scheme and the system for treatment and reuse as material.

3. Implementability and enforcement

A notification on waste batteries and accumulators is an action plan which describes how the producer (or collective implementing body) intends to implement the collection and treatment of the waste batteries and accumulators, and how this will be financed. The notification requires the approval of the Minister of Housing, Spatial Planning and the Environment. In practice, SenterNovem is tasked with the assessment. This takes the form of a preliminary check. The assessment of the notification involves checking whether the collection, treatment and financing are being organised. This assessment does not include an effectiveness check or a check to confirm that related targets, such as the specific collection rate for waste portable batteries and accumulators to be achieved in a particular year, are being achieved. Approval of the notification is not a guarantee that the approach proposed by the producer will work. A producer must always meet the requirements imposed on him by the regulations; an approved notification does not detract from that. In addition to enforcement of the notification requirement, enforcement also takes place on the basis of the ultimate results achieved.

Enforcement of the notification requirement will take place on the premises of the producers and manufacturers of batteries and accumulators. Producers and manufacturers can opt to meet the notification requirement applicable to them collectively, either by joining an existing collective implementing body or by establishing a new one. If the notification submitted by this implementing body is approved, its member producers and manufacturers will have met their notification requirement pursuant to the Decree. Experience has shown that enforcement of the notification requirement can be achieved with limited manpower, since producers that fail to submit a notification are liable to be

reported to the Inspectorate for Housing, Spatial Planning and the Environment by its competitors, enabling the Inspectorate to take targeted action. Contrary to what was stated in the letter to the Lower House concerning the reassessment of the regulations², it was decided to introduce a notification requirement for batteries and accumulators rather than a reporting requirement because of the likelihood that there would be more free riders if a reporting requirement were to be introduced than with a notification requirement, and because of the enforcement problems that could arise with a reporting requirement.

4. Administrative burdens for citizens and businesses

The Decree does not result in any administrative burdens for citizens.

The notification requirement increases the administrative burden on businesses compared with the situation under the Management of Batteries Decree. This is due to the fact that more businesses are subject to the notification requirement because it is no longer limited to producers of portable batteries weighing less than 1000 grams. However, it is likely that there will in fact be a reduction in the administrative burden from 1 April 2008, because from that date the notification requirement will no longer have to be renewed every three to five years as a consequence of the entry into force of the Decree of 6 December 2007 (see paragraph 2).

The administrative burdens imposed by the notification requirement differ for the producers of the three different categories of batteries. For producers of portable batteries and accumulators, it will amount to €75,000 (500 hours @ €150). It is assumed that the current collective body will continue to submit one collective notification as it is doing at present; virtually all producers of this type of battery or accumulator are members of the collective implementing body. Of course, individual notifications can also be submitted. Because the administrative burden is calculated on the basis of the original situation under the Management of Batteries Decree, the individual notifications for this type of battery or accumulator are not included in the calculation of the administrative burden. The cost per notification for automotive batteries and accumulators is estimated to be €1800 (40 hours @ €45). This amounts to €45,000 in total, assuming a maximum of 25 expected notifications. The administrative burden for submitting a notification for industrial batteries is estimated at €360 (8 hours @ €45). This is estimated to involve 1665 producers. This works out at an increase of €599,400 in the administrative burden for this type of battery or accumulator.

If collective implementing bodies are formed for automotive batteries and accumulators and for industrial batteries and accumulators, as is already the case for portable batteries and accumulators, the administrative burden will be lower.

The total administrative burden resulting from the notification requirement amounts to: €719,400, which is a one-off expense.

² Parliamentary Documents II 2003/04, 29 200 XI, no. 7.

The cost to businesses of familiarising themselves with the regulations has been calculated as €216,000; this includes familiarisation with the Regulations (assuming 2400 businesses spending two hours on this at an hourly rate of €45).

A draft of the Decree was submitted to the Dutch Advisory Board on Administrative Burdens (Actal) for review. Actal has not selected this Decree for a recommendation.

5. Environmental impact

It is expected that the notification requirement, which applies to all producers and manufacturers of batteries and accumulators, will have a positive impact on compliance with the ministerial regulation implementing Directive 2006/66/EC. It should result in fewer batteries and accumulators ending up in the environment and in the residual waste stream. Compliance with the rules on treatment and reuse as material should also have a positive effect on the environment.

6. Effects on businesses

In their notification producers and manufacturers are required to explain what form the collection of batteries and accumulators will take and how collection targets, if applicable, are to be achieved. Distributors of batteries and accumulators (such as retailers and garage operators) also have a role to play in this. They collect the batteries and accumulators, after which the producers and manufacturers must organise their further collection and treatment. There is already a collection and treatment chain in place for batteries and accumulators weighing up to one kilogram. Collection and treatment chains for heavier batteries and accumulators also exist in practice, but these have not been compulsory in the past.

7. Responses to the draft Decree

The draft Decree was submitted to both chambers of the Dutch Parliament in accordance with the provisions of Section 21.6, subsection 4 of the Environmental Management Act. The VROM Permanent Committee submitted a number of questions on it³. These questions were answered in the letter of 2 April 2008⁴. The answer to the written questions was discussed in a general consultation with the VROM Permanent Committee on 16 April 2008. The questions put by the Permanent Committee and in the general consultation did not result in any amendments to the Decree.

The draft Decree was also pre-published in the Government Gazette of 13 February 2008 (Government Gazette: 31). This prompted a response from Stichting Batterijen (the Battery Foundation, referred to below as: Stibat) and a joint response from RAI Vereniging, BOVAG and Auto Recycling Nederland.

³ Parliamentary Documents II 2007/2008, 29383, no. 87.

⁴ Parliamentary Documents II 2007/2008, 29383, no. 98.

In their joint response RAI Vereniging, BOVAG and Auto Recycling Nederland asked for the Regulations to be pre-published alongside the Decree.

As already stated, pre-publication of the Decree was required under the Environmental Management Act. The Regulations only serve to implement a European Directive, namely Directive 2006/66/EC, and for this reason it is based on Section 21.6, subsection 6 of the Environmental Management Act. Pre-publication of the Regulations is not required and will therefore not take place. The parties requesting this were, however, informed regularly and extensively about the content of the Regulations in the preparation phase.

In both responses the organisations stated that the descriptions of the terms “place on the market” and “producer” contained in Article 1 of the pre-published draft decree would cause confusion with regard to the scope of the draft decree. The description of the two terms in the draft decree was taken from Directive 2006/66/EC. As the description of these terms in the Directive did not make it clear which territory – that of the European Community or that of the Member State – was decisive for the interpretation of the term “producer”, it was decided to adapt the term “place on the market” to make it apply to certain transactions within the Member State, the Netherlands. The term “place on the market” impacts on the term “producer”. The amendment of the description of the term “place on the market” has eliminated the ambiguity referred to in the responses.

As a result of the responses, the definition of “distributor” has been removed from the draft Decree. That term has no significance for the Decree.

The RAI Vereniging, BOVAG and Auto Recycling Nederland are of the opinion that the Decree should not apply to motor vehicle importers who only import vehicles fitted with automotive batteries and accumulators and who therefore do not import separate batteries or accumulators into the Netherlands. For this purpose, reference is made to Article 2 of Directive 2006/66/EC, on the basis of which such a vehicle importer would be exempted from the requirement to set up a collection scheme under the Directive.

The view that Article 2 of Directive 2006/66/EC implies an exemption is not shared, because Article 2 of Directive 2006/66/EC makes it clear that this Directive applies in full to all batteries and accumulators whether or not they are incorporated into a vehicle. The vehicle importer who places a vehicle with incorporated batteries or accumulators on the market for the first time can be considered to be the “producer” within the meaning of the Decree. He is therefore required to submit a notification under the provisions of the Decree. In addition, he is also required to set up a collection system for the automotive batteries and accumulators he places on the market by virtue of the Regulations. In practice an automotive battery or accumulator can be collected at the same time as the end-of-life vehicle through the collection scheme that must be in place pursuant to the Management of End-of-life Vehicles Decree. However, the requirements concerning the collection, treatment and reuse as material under the Regulations will apply in full. In order to prevent overlap between the regulations on end-of-life vehicles and those on batteries and accumulators, Article 2, paragraph 2 of the Management of End-of-Life Vehicles Decree (see Article 4 of the Decree) stipulates that an automotive battery or

accumulator fitted in a motor vehicle always falls within the scope of the regulations on batteries and accumulators. It should also be noted that when the Management of Batteries Decree was in force there was a similar separation between that decree and the regulations on end-of-life vehicles.

The RAI Vereniging, Bovag and Auto Recycling Nederland are of the opinion that fact that there is no mention of the administrative burdens arising from the requirement to report annually in the draft Decree creates a false impression. The administrative burdens arising from the reporting requirement are not included in the draft Decree because the reporting requirement is included in the Regulations. The administrative burdens arising from this requirement are included in the calculation of the administrative burdens in the Regulations. In any case, annual reporting was already compulsory under the Management of Batteries Decree.

The comment from the RAI Vereniging, BOVAG and Auto Recycling Nederland on the official title of the regulation (addition of the year) has been adopted.

In its response Stibat recommends making the exclusion provision (Article 1, paragraph 2 of the Decree) contingent not on the use of the battery or accumulator but rather on the purpose for which that battery or accumulator is designed. The formulation of the exclusion provision was adopted from the Directive. The formulation of the exclusion provision determines the scope of the Decree, so it was considered important to follow the text of the Directive. Stibat rightly pointed out that it is not always possible in the waste stage to check the purpose for which the battery or accumulator was used. The exclusion provisions relate to batteries and accumulators used in equipment intended for specifically military purposes or in equipment designed for space travel. The fact that it is not always possible to check in the waste stage what type of equipment the batteries and accumulators were used in will now be less of a problem because batteries and accumulators used in this type of equipment are usually presented as waste in specific places.

In its response Stibat asks whether there will be any transitional arrangements for notifications made under the Management of Batteries Decree. The answer to this is negative. The Management of Batteries Decree served to implement Directive 91/157/EEC. This Directive is being superseded by Directive 2006/66/EC, which the Regulations serve to implement. Directive EC 2006/66 EC imposes more, and different, requirements than did Directive 91/157/EEC. The notifications submitted under the Management of Batteries Decree will therefore not provide an accurate and complete picture of how the Regulations implementing the Directive are being complied with.

In its response Stibat expresses concerns about the enforcement of the notification requirement contained in the Decree. Under the Management of Batteries Decree, Stibat had to submit a collective notification for virtually all producers to whom the notification requirement applied under that decree. Because the scope of the Decree is wider than that of the Management of Batteries Decree, it is likely that in addition to the collective Stibat notification, notifications by individual producers will be submitted, either in combination with the collective notification or not. For this reason Stibat envisages

practical problems for the enforcement of the notification requirement, because both Stibat and the Inspectorate for Housing, Spatial Planning and the Environment might obtain a less clear picture of the extent of coverage of the notifications submitted. Under Article 2, paragraph 2 of the Decree, a notification form is being established for submitting the notifications. In that form it will be necessary to state to which batteries and accumulators the notification relates. It will also be necessary to state whether any other individual or collective notification has been or is being submitted in addition to the notification for which the form is being used. This is intended to prevent the Inspectorate for Housing, Spatial Planning and the Environment from obtaining an unclear picture of the level of coverage of the notification.

II. Notes on the individual articles

Article 1

Paragraph 1 contains a number of definitions. Where these definitions coincide with the definitions in the Regulations, they are identical. The definitions in Article 3 of Directive 2006/66/EC were adopted wherever possible. Although the term “manufacturer” is used in Directive 2006/66/EC, it is not defined there. In the Directive the term “manufacturer” is used in the rules for the person who manufactures the battery or accumulator. In the Decree it was decided for the sake of clarity to include a definition of this term and to make the manufacture of the battery or accumulator decisive in the description of this term. It is possible that a legal or natural person must be considered as a manufacturer and as a producer if he manufactures batteries or accumulators and places batteries or accumulators on the market for the first time.

Paragraph 2 contains the exemptions to the scope of the Decree; these are adopted from Directive 2006/66/EC (Article 2(2) of the Directive).

Article 2

This provision was given shape by analogy with the notification requirement for producers of electrical and electronic equipment (Article 4 of the WEEE Management Decree). Article 2 of the Decree stipulates that the producer or manufacturer must submit notification about how he intends to meet the requirements applicable to him under the Regulations. A form will be established for submitting this notification.

Articles 4, 5 and 6

Articles 4, 5 and 6 adapt some other Orders in Council to the new regulations on the management of batteries and accumulators. Neither the Management of End-of-life Vehicles Decree nor the Mercury-Containing Products Decree applies where rules in this regard have been laid down in the Regulations.

Article 7

The date on which the Decree enters into force coincides with the implementation date of Directive 2006/66/EC, 26 September 2008.

Article 8

An official title that is sufficiently different from the Management of Batteries Decree has been chosen.

The Minister of Housing,
Spatial Planning and the Environment,