

Decree No 2009-1139 of 22 September on the placing on the market of batteries and accumulators and on the disposal of waste batteries and accumulators and amending the Environmental Code (regulatory provisions)

NOR: DEVP09007756D

The Prime Minister,

On the report of the Minister of State, Minister for Ecology, Energy, Sustainable Development and Town and Country Planning,

Having regard to Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste;

Having regard to 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 and, in particular, Notification No 2009/0017F and the comments from the Commission ;

Having regard to Directive No 2006/66/EC of the European Parliament and of the Council of 6 September 2006 on batteries and accumulators and waste batteries and accumulators;

Having regard to Directive No 2008/103/EC of the European Parliament and of the Council of 19 November 2008 amending Directive 2006/66/EC on batteries and accumulators and waste batteries and accumulators as regards placing batteries and accumulators on the market;

Having regard to the Penal Code,

Having regard to the General Code for the Territorial Authorities;

Having regard to the Consumer Code,

Having regard to the Customs Code;

Having regard to the Environmental Code

Having regard to the Highway Code, and particularly chapter VIII of Title I of Book III of its regulatory part;

Having regard to Decree No 97-34 of 15 January 1997 amended on the decentralisation of individual administrative decisions;

Having regard to Decree No 97-1204 of 19 December 1997 amended regarding application to the Minister for Territorial Development and the Environment of 1 of Article 2 of Decree No 97-34 of 15 January 1997, as amended by Decree No 2007-1467 of 12 October 2007

Having heard the Council of State (public works section),

Hereby decrees:

Article 1

Section VII of chapter III of Title IV of Book V of the regulatory part of the Environmental Code is replaced by Section VII hereinafter, worded thus:

Section VII

Batteries and accumulators

Sub-section 1

Sphere of Application and Definitions

Article R. 543-124

I. This section applies to all types of batteries and accumulators, regardless of their shape, volume, weight, component materials or use.

II. Excluded from the sphere of application of this section are:

1° Batteries and accumulators used in equipment related to the protection of the essential interests of State security, weapons, munitions and military equipment, if they are intended for specifically military purposes;

2° Batteries and accumulators used in equipment intended for launch into space.

Article R. 543-125

For the purposes of this section:

1° Considered to be batteries or accumulators are all sources of electrical energy obtained by direct transformation of chemical energy, constituted by one or more (non-rechargeable) primary elements or by one or more (rechargeable) secondary elements;

2° Considered to be a battery assembly is any series of batteries or accumulators interconnected or enclosed in a box to form one and the same complete entity that the end user is not supposed to dismantle or open;

3° Considered to be a portable battery or accumulator is any battery, button cell, battery assembly or accumulator which is sealed and likely to be carried by hand, and which is furthermore neither an industrial battery or accumulator nor an automobile battery or accumulator;

4° Considered to be an automobile battery or accumulator is any battery or accumulator intended to power a starting, lighting or ignition system;

5° Considered to be an industrial battery or accumulator is any battery or accumulator designed for exclusively industrial or professional purposes or used in any type of electrical vehicle;

6° Considered to be a button cell is any portable battery or accumulator in the form of a small disc, the diameter of which is greater than its height.

7° Considered to be a producer is any person who, for professional purposes, either manufactures or imports or introduces to France for the first time batteries or accumulators intended to be sold on the national territory using any selling technique whatsoever, including those which are incorporated in electrical and electronic equipment as defined in Article R. 543-172 or in vehicles as defined in Article R. 543-154. In the case of batteries or accumulators sold only under the brand of a retailer, the retailer is considered to be the producer.

8° Considered to be a distributor is any person who, regardless of the distribution technique used, including by distant communication, supplies batteries or accumulators for commercial purposes to the person who is going to use them.

Sub-section 2

Placing batteries and accumulators on the market

Article R. 543-126

I. Subject to Article R. 318-10 of the Highway Code, batteries and accumulators placed on the market, including those which are incorporated in electrical and electronic equipment as defined in Article R. 543-172 of this Code, shall not contain more than 0.0005% mercury by weight, with the exception of button cells in which the mercury content shall be less than 2% by weight and portable batteries and accumulators shall not contain more than 0,002% Cadmium by weight.

II. A joint Order by the Ministers responsible for ecology and industry shall establish the list of cases in which the provisions of I. of this Article do not apply.

Article R. 543-127

I. The marking systems shall be the following:

1° Batteries, accumulators and battery assemblies placed on the market shall be marked with the symbol shown in I. of the table below, which also stipulates the conditions under which such symbol is displayed.

2° Batteries, accumulators and button cells placed on the market, which contain more than 0.0005% mercury, more than 0.002% cadmium or more than 0.004% lead, shall be marked with the corresponding chemical symbol: Hg, Cd or Pb. The conditions under which such symbols are displayed are laid down in II. of the table below.

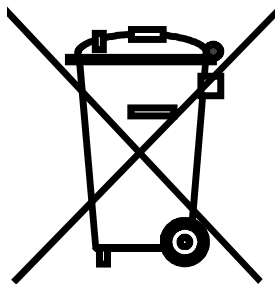
3° The capacity of portable and automobile batteries and accumulators placed on the market shall be indicated in accordance with the terms laid down by a joint Order of the Ministers responsible for ecology, industry and consumption.

II. The Order referred to in I. 3° of this Article shall, where needed, determine the cases in which the provisions of this Article do not apply.

Table for Article R. 543-127

I. The symbol referred to in I. 1° of Article R. 543-127 shall respect the following conditions of display:

1° The symbol indicating that waste batteries, accumulators and battery assemblies are subject to selective refuse collection is the crossed out dustbin on wheels, as shown below:



2° Such symbol shall cover at least 3% of the surface area of the largest side of the battery, accumulator or battery assembly, but shall not exceed the dimensions of 5 cm x 5 cm. For cylindrical elements, the symbol shall cover at least 1.5% of the surface area of the battery or accumulator, but shall not exceed the dimensions of 5 cm x 5 cm. If the size of the battery, accumulator or battery assembly is such that the surface area of the symbol would be less than 0.5 cm x 0.5 cm, marking on the battery, accumulator or battery assembly shall not be required, but a symbol of at least 1 cm x 1 cm shall be printed on the packaging.

3° Such symbol shall be printed so as to be visible, legible and indelible.

II. The symbols referred to in I. 2° of Article R. 543-127 shall respect the following conditions of display:

1° Such symbols shall be printed under the symbol of the crossed out dustbin on wheels.

2° Such symbols shall cover a surface area equal to at least 25% of the surface area covered by the symbol of the crossed out dustbin on wheels.

3° Such symbols shall be printed so as to be visible, legible and indelible.

Sub-section 3

Disposal of waste portable batteries and accumulators

Paragraph 1

Portable batteries and accumulators

Article R. 543-128-1

The distributors of portable batteries and accumulators shall take back free of charge, and without obligation to purchase new batteries or accumulators, waste portable batteries and accumulators of the same type as those that they market, which are brought to them by users. They shall inform users of the option of returning waste portable batteries and accumulators to their points of sale. The containers put at the disposal of users for this purpose shall be clearly marked and easily accessible.

Article R. 543-128-2

Distributors, municipalities, groupings thereof and competent mixed syndicates or other holders, particularly the operators of installations for dismantling electrical and electronic equipment, that carry out the selective collection of waste portable batteries and accumulators shall store them under conditions that allow them to be removed, sorted, selectively processed and recycled and prevent the danger to the environment and human health related to such storing.

Article R. 543-128-3

I. Producers of portable batteries and accumulators shall collect or have collected, and then process or have processed the waste portable batteries and accumulators selectively collected under the conditions and by the persons mentioned in Articles R. 543-128-1 and R. 543-128-2. These obligations shall be shared between producers proportionally to the tonnages of portable batteries and accumulators that they place on the market on the national territory each year.

Producers shall meet the obligations incumbent upon them either by becoming members of an approved body or by putting an approved individual system in place.

II. The bodies or individual systems shall be approved by joint Order of the Ministers responsible for ecology and industry for a maximum period of six years renewable and have to have the technical and financial capacities to respond to the series of specifications that, in particular, lay down:

1° The conditions of pick up and processing of waste portable batteries and accumulators selectively collected on the national territory and held at the disposal of producers under the conditions laid down in Article R. 543-128-1 and R. 543-128-2;

2° The recycling objectives of waste portable batteries and accumulators according to their chemical composition;

3° The objectives as regards studies intended to optimise collection, pick up and processing systems for waste portable batteries and accumulators;

4° The means put in place to inform the users of portable batteries and accumulators, in particular by media campaigns, of the collection and recycling systems at their disposal and of the importance of not disposing of waste portable batteries and accumulators with unsorted municipal waste, with a view to processing and recycling them, and of the meaning of the symbols referred to in I. and II. of the table in Article R. 543-127 and of the potential effects of the substances used in batteries and accumulators on the environment and human health;

5° The obligation to provide the Minister responsible for ecology with an annual activity report intended to be made public.

Article R. 543-128-4

Should an approved body or individual system fail to abide by the clauses in the specifications appended to his approval, the Minister responsible for ecology may, after consulting the Minister responsible for industry, serve such holder with official notice to meet his obligations within a period of time which shall not be less than two months.

Should the holder fail to comply with his obligations within such period of time, the Ministers responsible for ecology and industry may decide to withdraw approval after the holder has been required to present his observations.

Paragraph 2

automobile batteries and accumulators

Article R. 543-129-1

The distributors of automobile batteries and accumulators shall take back free of charge, and without obligation to purchase new batteries or accumulators, waste automobile batteries and accumulators of the same type as those that they market, which are brought to them by users. They shall inform users of the option of returning waste automobile batteries and accumulators to their points of sale.

Article R. 543-129-2

Distributors, municipalities, groupings thereof and competent mixed syndicates or other holders, particularly the operators referred to in Article R. 543-156, that carry out the selective collection of waste automobile batteries and accumulators shall store them under conditions that allow them to be removed, sorted, selectively processed and recycled and prevent the danger to the environment and human health related to such storing.

Article R. 543-129-3

I. Producers of automobile batteries and accumulators shall collect or have collected, and then process or have processed the waste automobile batteries and accumulators selectively collected under the conditions laid down in Articles R. 543-129-1 and R. 543-129-2 that the persons mentioned in Article R. 543-129-2 request them to remove. Producers may make other provisions through direct agreements with users, other than households, on the automobile batteries and accumulators that they place on the market on the national territory. In the latter case, the agreements shall lay down the conditions under which the user shall be responsible for all or part of the disposal of such waste under the conditions laid down in Article R. 543-131.

The obligations of collection and processing shall be shared between the producers proportionally to the tonnages of automobile batteries and accumulators that they place on the market on the national territory each year and as regards which they have not concluded a direct agreement with the user of automobile batteries and accumulators.

Producers shall meet their obligations by becoming members of an approved body or by putting an approved individual system in place.

II. The bodies or individual systems shall be approved by joint Order of the Ministers responsible for ecology and industry for a maximum period of six years renewable and have to have the technical and financial capacities to respond to the series of specifications that, in particular, lay down:

1° The conditions under which producers shall cover the net costs resulting from the collection and processing of waste automobile batteries and accumulators selectively collected on the national territory and held at their disposal under the conditions laid down in Article R. 543-129-1 and R. 543-129-2;

2° The conditions of pick up free of charge of waste automobile batteries and accumulators selectively collected on the national territory and held at the disposal of producers under the conditions laid down in Article R. 543-129-1 and R. 543-129-2;

3° The conditions of processing free of charge of waste automobile batteries and accumulators selectively collected on the national territory and held at the disposal of producers under the conditions laid down in Article R. 543-129-1 and R. 543-129-2;

4° The recycling objectives of waste automobile batteries and accumulators according to their chemical composition;

5° The objectives as regards studies intended to optimise collection, pick up and processing systems for waste automobile batteries and accumulators;

6° The means put in place to inform the users of automobile batteries and accumulators, in particular by media campaigns, of the collection and recycling systems at their disposal and of the importance of not disposing of waste automobile batteries and accumulators with unsorted municipal waste, with a view to processing and recycling them, and of the meaning of the symbols referred to in I. and II. of the table in Article R. 543-127 and of the potential effects of the substances used in batteries and accumulators on the environment and human health;

7° The obligation to provide the Minister responsible for ecology with an annual activity report intended to be made public.

Article R. 543-129-4

Should an approved body or individual system fail to abide by the clauses in the specifications appended to his approval, the Minister responsible for ecology may, after consulting the Minister responsible for industry, serve such holder with official notice to meet his obligations within a period of time which shall not be less than two months.

Should the holder fail to comply with his obligations within such period of time, the Ministers responsible for ecology and industry may decide to withdraw approval after the holder has been required to present his observations.

Paragraph 3

Industrial batteries and accumulators

Article R. 543-130

I. Producers of industrial batteries and accumulators shall put return systems in place whereby the users of the industrial batteries and accumulators that they place on the market on the national territory and the operators of installations for dismantling electrical and electronic equipment in which such industrial batteries and accumulators are incorporated to relieve them of such industrial batteries and accumulators free of charge once used. Such return

systems shall provide for the provision of voluntary depositaries for such users and operators, or any other equivalent system.

II. Producers of industrial batteries and accumulators shall inform the users of industrial batteries and accumulators by any appropriate means of the collection systems which they put in place under Article R. 543-136-4. Producers of industrial batteries and accumulators shall also inform the users of industrial batteries and accumulators by any appropriate means of the importance of selectively collecting such waste with a view to processing and recycling, and of the meaning of the symbols referred to in I. and II. of the table in Article R. 543-127 and of the potential effects of the substances used in the batteries and accumulators on the environment and human health.

III. Producers of industrial batteries and accumulators shall handle the disposal of waste industrial batteries and accumulators of which the users and operators of installations for dismantling electrical and electronic equipment dispose under the conditions laid down in I. of this Article.

IV. Producers of industrial batteries and accumulators may create structures collectively to meet the obligations incumbent upon them in application of I. to III. of this Article.

V. Producers of industrial batteries and accumulators may satisfy all or part of the obligations incumbent upon them under this article by making direct agreements with the users of the industrial batteries and accumulators that they place on the market on the national territory. Such agreements shall lay down the conditions under which users shall be responsible for all or part of the disposal of such waste under the conditions laid down in Article R. 543-131.

Sub-section 4

Processing waste batteries and accumulators

Article R. 543-131

I. The processing of waste portable, automobile and industrial batteries and accumulators shall be done in installations operated pursuant to Title I of Book V of the Environmental Code in accordance with the best techniques available and satisfying the technical requirements laid down by Order of the Minister responsible for ecology. Such Order shall also lay down the minimum efficiency of recycling processes for waste batteries and accumulators and, where needed, the methods for calculating such efficiency.

II. Such waste may be processed in any other installation authorised for this purpose in another Member State of the European Union or in another State, where the transfer of such waste out of the national territory is done pursuant to the provisions of the Regulation of EC n° 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste.

Sub-section 5

Register

Article R. 543-132

A register will be set up, maintained and exploited by the Agency for the Environment and Energy Management at which the producers of batteries and accumulators and the persons who process waste batteries and accumulators, export them or dispatch them outside the national territory with a view to processing shall have to register. The producers will declare the quantities and types of batteries and accumulators that they place on the market, that they collected or had collected and processed or had processed. Persons who process waste batteries and accumulators, export them or dispatch them outside the national territory with a view to processing shall, in particular, declare the type of waste batteries and accumulators concerned and the corresponding quantities.

A joint Order by the Ministers responsible for ecology and industry shall lay down the procedures on inscription in and declaration of such register, the nature of the information contained therein and the methods whereby such information is communicated.

Sub-section 6

Penal sanctions

Article R. 543-133

I. Punished by the fine laid down for offences of the 3rd class is the fact:

1° Regarding a producer:

- a) Of placing a battery or accumulator on the market without respecting the provisions laid down in Article R. 543-127;
- b) Of not communicating the information laid down in Article R. 543-132;

2° Regarding a distributor, of not taking back a waste battery or accumulator under the conditions defined in Articles R. 543-128-1 and R. 543-129-1;

3° Regarding a person who processes, exports or dispatches outside the national territory with a view to processing waste batteries and accumulators, of not communicating the information laid down in Article R. 543-132.

II. Punished by the fine laid down for offences of the 5th class is the fact:

1° Regarding a producer:

- a) Of placing a battery or accumulator on the market without respecting the provisions laid down in Article R. 543-126;
- b) Of not picking up or having picked up, processing or having processed a waste portable battery or accumulator pursuant to Article R. 543-128-3;
- c) Of not picking up or having picked up, processing or having processed a waste automobile battery or accumulator pursuant to Article R. 543-129-3;
- d) Of not taking back or handling the disposal of a waste industrial battery or accumulator under the conditions defined in Article R. 543-130.

2° Regarding the persons referred to in Article R. 543-131 of not processing or having processed a waste battery or accumulator under the conditions laid down in this article.

Article 2

The following two paragraphs are added to Article R. 543-176 of the Environmental Code:

"Electrical and electronic equipment shall be designed in such a way that the batteries and accumulators included therein can be easily removed. Electrical and electronic equipment placed on the market shall be accompanied by instructions explaining how to remove batteries and accumulators safely and informing the user of the type of battery or accumulator incorporated therein.

The provisions of the previous paragraph shall not apply where, for reasons of safety or operation, medical reasons or for the purposes of data integrity, continuous operation is essential and requires a permanent connection between the appliance and the battery or accumulator."

Article 3

The Environmental Code shall be amended as follows:

1° In Article R. 543-175, the words "Community after 1 July 2006" are added between "electrical and electronic equipment under I of Article R. 543-172, with the exception of that mentioned in categories 8 and 9, placed on the market" and "must not contain lead, mercury, cadmium, hexavalent chromium, polybromobiphenyls (PBB) or polybromodiphenylethers (PBDE)."

2° In Article R. 543-204, the word "Community" is added between "the provisions of Article R. 543-175 shall not apply to spare parts intended for the repair of equipment placed on the market" and "before 1 July 2006 or to the re-use of such equipment."

Article 4

In the final paragraph of Article R. 541-45 of the Environmental Code, the words "of Article R. 543-130" are replaced by the words "of Articles R. 543-132, R. 543-136-4 and of II. of Article R. 543-136-1".

Article 5

The Decree of 19 December 1997 mentioned above is amended as follows:

The following title and table are added to 1° of Title II to the Annex:

Section VII on batteries and accumulators of chapter III of Title IV of Book V of the regulatory part of the Environmental Code

1	Approval of bodies responsible for picking up and processing waste portable batteries and accumulators	Article R. 543-128-3 (II)
2	Approval of bodies responsible for picking up and	Article R. 543-129-2 (II)

	processing waste automobile batteries and accumulators	
3	Approval of individual systems intended for the pick up and processing of waste portable batteries and accumulators	Article R. 543-128-3 (II)
4	Approval of individual systems intended for the pick up and processing of waste automobile batteries and accumulators	Article R. 543-129-3 (II)

Article 6

The Prime Minister, the Minister of State, Minister for Ecology, Energy, Sustainable Development and Town and Country Planning, the Minister for the Economy, Industry and Employment, the Minister of the Interior, Overseas France and Territorial Communities, the Keeper of the Seals, Minister of Justice and the Minister of State responsible for Ecology shall be responsible, each for his own part, for the implementation of this Decree, which shall be published in the *Official Journal* of the French Republic.

Done at Paris, on 22 September 2009

By the Prime Minister:

François FILLON

The Minister of State,
Minister for Ecology, Energy,
Sustainable Development
and Town and Country Planning

Jean-Louis BORLOO

The Minister for the Economy,
Industry and Employment,

Christine LAGARDE

The Keeper of the Seals,
Minister of Justice

Rachida DATI

*The Minister of State
responsible for Ecology*

Nathalie KOSCIUSKO-MORIZET