

2000

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TRANSLATION OF THE DUTCH TEXT OF THE

Decision of November 8, 2000, on amendments to the Decree on Battery Disposal.

We, Beatrix, by the grace of God, Queen of the Netherlands, Princess of Oranje-Nassau, etc. etc. etc.

Upon the recommendation of Our Minister of Housing, Urban Planning and Environment dated September 4, 2000, no. MJZ2000107997, Central Department of Legal Affairs, Division of Legislation;

Having regard to Commission Directive no. 98/101/EC of December 22, 1998 regarding adapting to the technical progress since Council Directive 91/157/EEC on batteries containing hazardous materials, and also to Articles 10.4, paragraphs 1 and 2, subsection a, and 10.6 of the Environmental Protection Act;

Having heard the Council of State (opinion of October 5, 2000, no. W08.00.0411/V);

Having regard to the supplementary report delivered by Our Minister of Housing, Urban Planning and Environment of November 2, 2000, No. MJZ2000131802, Central Department of Legal Affairs, Division of Legislation;

Have approved and understood:

ARTICLE I

The Decree on Battery Disposal¹ is amended as follows.

A

Article 2 is replaced by the following:

Article 2

1. It is prohibited to manufacture, import, make available to others, or stock any batteries containing more than 0.0005 percent mercury by weight, including all devices containing such batteries.
2. Button cells and batteries composed of button cells that contain no more than 2 percent mercury by weight are exempted from the paragraph 1 ban.

B

In Appendix 1, in the column labeled "value", the text concerning mercury levels is replaced by: 0.0005 percent by weight per battery.

¹ Stb. 1995, 45.

ARTICLE II

This Decision shall enter into force on the first day of the second calendar month following the publication of the Law Gazette in which it appears.

The Hague, November 8, 2000

Beatrix

The Minister of Housing, Urban Planning and Environment,
J.P. Pronk

Published November 23, 2000

Minister of Justice,
A.H. Korthals

Explanatory Memorandum

1. General

Introduction

On March 18, 1991, the Council of European Communities established a Directive with the goal of harmonizing the member states' laws governing the recovery and controlled disposal of spent batteries that contain hazardous materials (91/157/EC). The Directive covers a ban on marketing certain batteries, labeling obligations, separate collection to ensure reuse and controlled disposal, and disposability of batteries, and allows for a deposit system to be initiated.

The Decree on Battery Disposal implements the Directive.

Commission Directive

The purpose of Commission Directive no. 98/101/EC of December 22, 1998 regarding adapting to technical progress since Council Directive 91/157/EEC concerning batteries containing hazardous materials (PbEC L 199/1), is to adapt Article 3 and Appendix I of the Council Directive to reflect the reduced mercury content of batteries.

Since 1985, the mercury content of batteries has been steadily declining. The battery industry has developed products such as lithium and zinc-air batteries to replace batteries with a high mercury content. Existing legislation must be made to reflect this situation.

When Austria and Sweden joined, it was agreed that within four years from the date of entry, that is, before December 31, 1998, the Directive's provisions for the mercury content of batteries would be adapted to conform with the stricter standards of those countries. This adaptation was accomplished through the Commission Directive.

As a result of the continued reduction in the mercury content of batteries, the environment is guaranteed better protection. The metal is prevented from entering the environment, the cost of waste management is reduced, and environmentally friendly recycling is promoted.

In Article 3 of the Directive, concerning the ban on marketing certain batteries, the limit on mercury content is reduced from 0.05 to 0.0005 percent mercury by weight.

The marketing ban is also expanded to include appliances that contain such batteries.

The existing exemption for button cells and batteries composed of button cells remains, but the limit for mercury content in these batteries is set at 2 percent by weight.

Furthermore, batteries containing more than 0.0005 percent mercury by weight, and that are marketed after January 1, 1999, are added to the list in Appendix I, namely which batteries are covered by the Directive.

Procedure

The draft of this Decision was presented for comments to the Stichting Batterijen (Stibat). Stibat found no reason to comment on the draft Decision.

Prepublication

The draft was also published in the Government Gazette (Stcrt, 1999, 246 of December 21, 1999). The public was given the opportunity to comment on the draft. No such comments were made.

2. Contents of this Decision

This amendment to the Decree on Battery Disposal implements Directive no. 98/101/EC.

Because of the structure of the Decree, the amendment to Appendix I of the Decree only affects the labeling obligations that are set forth in Article 3.

The obligations imposed by the Decree on Battery Disposal apply to batteries that are not covered by the Directive as well as those that do. The present amendment does not alter the scope of the Decree on Battery Disposal, but that is not the case for the amendments in Article 2 and the appendix to this decision.

For a description of the scope of the Decree, please see the Explanatory Memorandum to the Decree on Battery Disposal.

3. Financial factors

The amendment does not affect the expense arising from battery disposal and collection obligations. The expense of labeling will increase slightly with the increase in scope for this obligation. For a description of the financial consequences of this Decision, please see the Explanatory Memorandum to the Decree on Battery Disposal.

4. International factors

The measures in this Decision apply (in part) to batteries as defined in Directive 91/157/EEC. It will consequently be sent to the European Commission, in compliance with Article 11 of that Directive.

Since this Decision applies in part to batteries that are not covered by the Directive, the draft was presented on March 22, 2000 to the European Commission, in compliance with Article 8, paragraph 1 of Directive no. 98/34/EC of the European Parliament, and the Council of the European Union of June 22, 1998 concerning a procedure for the provision of information in the field of standards and technical regulation of information society services (OJEC L 204), as amended in Directive no. 98/48/EC of July 20, 1998 (OJEC L 217). Following this notification, Germany commented that industry should be given the opportunity to sell the mercury-containing batteries that are in stock when this Decision comes into force. The same regulations must hold across the European Union for batteries covered under Directive 91/157/EEC, as amended, for substances regulated by the Directive. Considerations such as those raised by Germany were dealt with when the Directive was drafted. The Directive states that member states must tighten restrictions on marketing batteries at the latest by January 1, 2000. For certain batteries, a transition plan has been provided in the Directive. These are zinc carbon batteries that were introduced into the market between September 18, 1992 and January 1, 1999, containing less than 25 mg of mercury, and alkaline batteries that were introduced in the same period, containing less than 250 ppm mercury. Since batteries have a limited shelf life, retailers sell them off within one year. This means that such batteries will no longer be available for sale when the amendment to the Decree comes into force. A transition plan, even if could be enforced, would for this reason be unnecessary.

Furthermore, ample notice of the tightening of restrictions has been given, so that the sector can prepare. Moreover, since 1995, batteries made for the European market by European manufacturers have contained less than 5 ppm mercury, which is the new limit set by the Directive.

It follows from the above that if the present amendment to the Decree has any financial consequences for the industry, they are insignificant.

5. Enforcement

The amendment does not affect enforcement. For the enforcement aspects of the Decree on Battery Disposal, please see the Explanatory Memorandum to the Decree.

6. The Articles

Part A

The amendment to Article 2 of the Decree on Battery Disposal implements the ban on marketing certain batteries, as required by the Directive. The ban covers batteries that contain more than 0.0005 percent by weight of mercury, with the exception of button cells and batteries composed of button cells that contain no more than 2 percent mercury by weight.

The wording for the ban was adapted to the terminology used in Article 10, paragraph 4 of the Environmental Protection Act, as is also the case for the present amendment. Consequently, the article defines a ban on manufacturing, importing, making available to others, and stocking batteries.

In accordance with the Commission Directive, the ban no longer applies just to batteries as such, but also to appliances that contain such batteries. This means that the scope of the ban has been widened.

Part B

The amendment to the appendix.

Since Article 3 contains the only reference to Appendix I, the amendment to Appendix I of the Decree only affects the obligation set forth in Article 3 of the Decree on Battery Disposal, namely that labels must be applied to batteries that exceed the stated amounts of certain substances.

The amendment to Appendix I of the Decree corresponds to the amendment of Directive 91/157/EEC in Appendix I. Also, as with the previous version of Appendix I of the Decree, no specific dates are stated, so the labeling obligation begins when this Decision comes into force, independent of when the batteries are introduced into the market.

This means that batteries that were brought into the market earlier, and that contain more than 0.0005 percent mercury by weight, must also be provided with a label.

Minister of Housing, Urban Planning and Environment
J.P.Pronk