

## Notes on the new German Battery Act

**The First Act to amend the German Battery Act (BattG2) was published in the Federal Law Gazette I No. 50 of November 09, 2020 ([link](#)). This act changes the Battery Act of 2009. The amendments will come into force on January 01, 2021. In the following we have listed changes that we believe are of particular importance for battery manufacturers.**

Note: Despite the greatest possible care, no liability can be accepted for the accuracy, completeness and timeliness of the information.

### Definition of authorised representative:

Article 2, paragraph 15a defines the authorized representative. It is a natural or legal person whom a manufacturer without a branch in Germany can commission to fulfil all manufacturer obligations from the Battery Act in his own name. However, unlike in the Electrical and Electronic Equipment Act (ElektroG), an authorized representative does not have to be commissioned. Foreign manufacturers can also register themselves, even if they do not have a German branch. In any case, a separate registration or the registration of an authorized representative is required to be allowed to place batteries on the market.

### Registration of manufacturers<sup>1</sup>:

The previous obligation to notify the Federal Environment Agency (UBA) is no longer applicable. It is replaced by the registration of manufacturers. Before a manufacturer places batteries on the market, the manufacturer is obliged to register with the “Stiftung elektroaltgeräte register” / Register of electrical and electronic equipment ([stiftung ear](#)) with the brand and the respective battery type. Manufacturers can submit new registration applications from January 01, 2021 (not earlier). This is done via the ear internet portal, similar to the registration of old electrical appliances. An overview of the ear test portal, without the functions for the Battery Act, can be found at <https://www.stiftung-ear.de/de/service/testumgebung-ear-system> (in German).

Manufacturers who already have an account with stiftung ear (registration of old electrical equipment) can also use this account to apply for registration according to the Battery Act. If a manufacturer of batteries is not yet registered as manufacturer of electrical and electronic equipment in the ear portal, a manufacturer account with company data, main contact person etc. has to be set up in the ear portal first.

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<sup>1</sup> A manufacturer is anyone who, regardless of the distribution method, commercially places batteries on the market for the first time within the scope of the act.

Afterwards the following additional information for registration application according to the Battery Act must be entered:

- the brand (for further information see <https://www.umweltbundesamt.de/service/uba-fragen/welche-marke-ist-anzugeben-wenn-der-hersteller>),
- Battery type and
- the necessary information related to the selected battery type, i.e.
  - (i) for portable batteries, the details of a take-back system,
  - (ii) for automotive and industrial batteries, a declaration that a return facility has been set up and that those entitled to return the batteries have reasonable and free access.

Manufacturers located abroad can register themselves or appoint an authorized representative located in Germany.

For battery manufacturers the functions for the registration according to the Battery Act will be activated in the ear portal on January 01, 2021. On the same day the new Battery Act will come into force. An explanatory video and corresponding support by stiftung ear will be available for this purpose.

#### **Transition period:**

Manufacturers who have already notified UBA of the placing of batteries on the market must **re-register** with stiftung ear by January 01, 2022 at the latest. There is no automatism for this, i.e. the UBA data is not automatically transferred to stiftung ear. It should be noted that this transitional period only applies if there are no differences between the data previously filed with the UBA and the data for registration with stiftung ear. In the event of discrepancies regarding brand, type of battery or company data, the obligation to register will apply directly when the new Battery Act comes into force on January 01, 2021. **Manufacturers should therefore check once again whether the data previously filed with the UBA is still correct.** If necessary, the data should be adjusted in the UBA register before December 31, 2020.

#### **Take-back for portable batteries:**

Due to the omission of the former article 6, the possibility of establishing a joint take-back system does no longer exist. The take-back is carried out by take-back systems set up and operated by one or more manufacturers. When registering, manufacturers must indicate the take-back system they have commissioned (see above).

In future, the establishment and operation of take-back systems must be approved by stiftung ear, which will be possible from January 01, 2021.

**Transitional period:** take-back systems already approved by the competent state authorities before the end of December 31, 2020, will continue to be considered approved until December 31, 2021 at the latest. In this case, it is recommended for take-back systems to submit the application for approval to stiftung ear in quarter 3/2021, with effect from January 01, 2022, via the stiftung ear portal.

At this point we would also like to refer to the quantities collected. The take-back systems must collect spent portable batteries free of charge within 14 days from the collection points affiliated with them, provided that a collection quantity of 90 kg is reached. In the case of public waste

management companies, a collection quantity of 180 kg applies. Other quantities can be agreed between collection systems and collection points. However, they may not exceed the specified collection quantities.

### **Take-back for automotive and industrial batteries:**

Manufacturers of automotive and industrial batteries must offer distributors and treatment facilities a reasonable and free take-back option for their batteries placed on the market. However, they can also make deviating agreements. There is no obligation of the distributors or treatment facilities to hand over the spent batteries to the manufacturers or their authorized representatives.

What is new is that the manufacturers of automotive and industrial batteries or their authorized representatives are obliged to provide the financial and organizational means to fulfil their obligations. In view of the rather vague wording, we have asked for a non-binding assessment from the Federal Ministry for the Environment:

*The Federal Ministry for the Environment assumes that the manufacturers are already taking precautions at this stage with regard to the provision of the necessary financial and organizational means to fulfil their obligations according to article 5 in conjunction with article 8 para. 1 sentence 1 of the Battery Act, in particular their take-back and recovery obligations. In addition, they must already comply with the requirements of commercial and corporate law under the current legal situation. This also includes any provisions due to the obligation to take back and dispose of the batteries. However, in view of the numerous possible, different forms of organization of the manufacturers, the regulation leaves it to their own responsibility how they ensure the availability of the necessary financial or organizational means. Provisions can of course be an adequate means for this.*

### **Notice and information duties:**

Producers are obliged to inform end-users, among other things, about waste prevention measures, possibilities for reuse, possible effects of the substances contained in batteries on the environment and human health, in particular about the risks involved in handling batteries containing lithium or the importance for the environment and health of separate collection and recycling of spent batteries.

The take-back systems for portable batteries have additional information obligations. The systems must jointly commission a third party for this purpose. This third party shall set up an advisory board, in which representatives of the public waste management authorities, consumer protection organizations, manufacturers' and trade associations, the waste management industry as well as the federal and state governments shall participate.

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