



Position Paper

Proposal for a Regulation concerning batteries and waste batteries

Eucobat welcomes the Commission's initiative¹ to adapt and modernise the legal framework for the entire life cycle of batteries in the framework of Europe's growth strategy that aims to transform the European Union into a fair and prosperous society, with a modern, resource-efficient and competitive economy, as defined in the Green Deal.

Batteries are one of the key enablers for sustainable development and green mobility, clean energy and climate neutrality. It is expected that the demand for batteries will grow substantially in the coming years, in particular the demand for batteries for electric vehicles, include electric, hybrid and plug-in hybrid vehicles, as well personal cars as buses and trucks.

However, the market size of these batteries and their characteristics require another approach than the traditional portable batteries.

1. Definitions – Classification of batteries (Article 2.7 - 2.13)

The European Commission's proposal distinguishes four categories of batteries:

- *'automotive battery': any battery used only for automotive starter, lighting or ignition power;*
- *'electric vehicle battery' means any battery specifically designed to provide traction to hybrid and electric vehicles for road transport;*
- *'portable battery': any battery that:*
 - *is sealed;*
 - *weighs below 5 kg;*
 - *is not designed for industrial purposes; and*
 - *is neither an electric vehicle battery nor an automotive battery;*
- *'industrial battery': any battery designed for industrial uses and any other battery excluding portable batteries, electric vehicle batteries and automotive batteries.*

Furthermore, the proposal defines:

- *'portable batteries of general use' means portable batteries with the following common formats: 4,5 Volts (3R12), D, C, AA, AAA, AAAA, A23, 9 Volts (PP3);*
- *'light means of transport' means wheeled vehicles that have an electric motor of less than 750 watts, on which travellers are seated when the vehicle is moving and that can be powered by the electric motor alone or by a combination of motor and human power;*

¹ Proposal for a Regulation of the European Parliament and of the Council concerning batteries and waste batteries, repealing Directive 2006/66/EC and amending Regulation (EU) No 2019/1020 (https://ec.europa.eu/environment/waste/batteries/pdf/Proposal_for_a_Regulation_on_batteries_and_waste_batteries.pdf)

- *'stationary battery energy storage system'* means a rechargeable industrial battery with internal storage specifically designed to store and deliver electric energy into the grid, regardless of where and by whom this battery is being used.

As different rules apply to the batteries during their entire life cycle, from design, production, distribution, use, collection, reuse, repurposing to recycling, and the liabilities and responsibilities of all concerned actors in the value chain differ per category, it is essential that all actors are able to classify the different batteries in the right category.

The definitions of the proposal are not always clear and undisputable.

- It is not clear what could be considered a "light means of transport". According to Whereas 12, *"light means of transport, such as ebikes and scooters, are classified as portable"*. The criterion of 750 W and the requirement that travellers should be seated, limits the scope of the definition of "light means of transport", while the weight limit of 5 kg in the definition of portable batteries excludes the batteries of appliances considered in general as "light means of transport". As examples, we can refer to steps and hoverboards (traveller is not seated).
- For the electric vehicle batteries, the term "vehicle" is not defined, nor "road transport". We would propose a separate definition of "vehicle" with clear reference to the different types of vehicles according to the legislation on the "type approval" of vehicles.
- The term "designed for industrial purposes (or industrial uses) is not appropriate to distinguish portable batteries from industrial batteries. It should be clarified that only batteries that are "designed for exclusively industrial or professional uses" should be considered "industrial" (as in the actual directive

For these reasons, we would propose the following amendments to the definitions in the Commission's proposal:

1. *'automotive battery'*: any battery used only for automotive starter, lighting or ignition power;
2. *'electric vehicle battery'* means any battery specifically designed to provide traction to hybrid and electric vehicles ~~for road transport~~;
3. *'portable battery'* means any battery that:
 - is sealed;
 - weighs below 5 kg;
 - is not designed for exclusively industrial or professional uses; and
 - is neither an electric vehicle battery nor an automotive battery;
4. *'industrial battery'* means any battery designed for exclusively industrial or professional uses and any other battery excluding portable batteries, electric vehicle batteries and automotive batteries;
5. *'vehicle'* means any vehicle designated as UNECE categories M1,2,3,-N1,2,3 and L1-7 and the T categories for the non-road mobile machinery, as defined in the EU-legislation:

- a) Regulation (EU) 2018/858 of the European Parliament and of the Council of 30 May 2018 on the approval and market surveillance of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles, amending Regulations (EC) No 715/2007 and (EC) No 595/2009 and repealing Directive 2007/46/EC
 - b) Regulation (EU) No 168/2013 of the European Parliament and of the Council of 15 January 2013 on the approval and market surveillance of two- or three-wheel vehicles and quadricycles
 - c) Regulation (EU) No 167/2013 of the European Parliament and of the Council of 5 February 2013 on the approval and market surveillance of agricultural and forestry vehicles
 - d) Regulation (EU) 2016/1628 of the European Parliament and of the Council of 14 September 2016 on requirements relating to gaseous and particulate pollutant emission limits and type-approval for internal combustion engines for non-road mobile machinery, amending Regulations (EU) No 1024/2012 and (EU) No 167/2013, and amending and repealing Directive 97/68/EC)
6. *Portable batteries of general use' means portable batteries with the following common formats: 4,5 Volts (3R12), D, C, AA, AAA, AAAA, A23, 9 Volts (PP3);*
7. *'light means of transport' means wheeled vehicles that have an electric motor of less than 750 watts, ~~on which travelers are seated when the vehicle is moving and~~ that can be powered by the electric motor alone or by a combination of motor and human power;*
8. *'stationary battery energy storage system' means a rechargeable industrial battery with internal storage specifically designed to store and deliver electric energy into the grid, regardless of where and by whom this battery is being used.*

2. Definitions – Manufacturer/Importer/Producer (Article 2.27 – 2.37 – 2.53 - 2.54 – Article 46)

In order to avoid administrative burdens, a complete harmonization is thus required between the extended producer responsibility legislation on respectively batteries and WEEE.

As the current WEEE Directive complies best with the evolution of the market, Eucobat proposes to align the producer definition with the WEEE Directive and to introduce also the concept of the 'authorised representative of the producer' in the Batteries Regulation (to be clearly distinguished from the 'authorised representative of the manufacturer'.

As a consequence, the definition of 'producer' in article 2(37) could read as follows:

"any natural or legal person who, irrespective of the selling technique used, including distance communication within the meaning of Directive 2011/83/EU² :

- (i) is established in a Member State and manufactures batteries under his own name or trademark, or has batteries designed or manufactured and makes them available for the first time on the market under his name or trademark within the territory of a Member State;*
- (ii) is established in a Member State and makes available for the first time on the market within the territory of a Member State, under his own name or trademark, batteries produced by other suppliers, a reseller not being regarded as the 'producer' if the brand of the producer appears on the batteries, as provided for in point (i);*
- (iii) is established in a Member State and makes available on the market of that Member State, on a professional basis, batteries from a third country or from another Member State; or*
- (iv) sells batteries by means of distance communication directly to private households or to users other than private households in a Member State, and is established in another Member State or in a third country."*
- (v) is established in a Member State and acquires batteries in another Member State or in a third country for his own professional use in the Member State where he is established;*

Article 46 of the Commission's proposal, concerning the registration requirements should provide the following provision:

"Producers supplying batteries by means of distance communication as defined in Article X (iv) shall be registered in the Member State that they sell to. Where such producers are not registered in the Member State that they are selling to, they shall be registered through their authorised representatives as referred to in Article Y (2)."

A specific article should then add provisions to the concept of **authorised representative defined in Article 2(53)**:

"Article Y – Authorised representative of the producer (or other term, as the text already uses this for the "authorised representative of the manufacturer)

- 1. Each Member State shall ensure that a producer as defined in Article X (i) to (iii) established in another Member State is allowed, by way of exception to Article X (i) to (iii), to appoint a legal or natural person established on its territory as the authorised representative that is responsible for fulfilling the obligations of that producer, pursuant to this Regulation, on its territory.*
- 2. Each Member State shall ensure that a producer as defined in X (iv) and established on its territory, which sells batteries to another Member State in*

² Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council

which it is not established, appoints an authorised representative in that Member State as the person responsible for fulfilling the obligations of that producer, pursuant to this Regulation, on the territory of that Member State.

3. *Appointment of an authorised representative shall be by written mandate.*"
The responsibility of the marketplaces should be clearly defined:

"Marketplaces, facilitating the online sale of products, should be jointly and severally liable for all the legal obligations (operational and financial) of the producers, in case the producer doesn't comply."

3. Definition of "remanufacturing"/"repurposing" (Article 2.26)

While the proposal contains a definition of repurposing, a clear definition of "remanufacturing" is missing.

According to us, this definition is essential, as the term "remanufacturing" is used at several points in the text.

We would like to propose the following definitions:

- *'repurposing' means any operation that results in parts or the complete battery being used for a different purpose or application than the one that the battery was originally designed for;*
- *'remanufacturing' means any operation that results in the complete battery being used for the same purpose or application than the one that the battery was originally designed for;*

As a consequence:

- Repurposing is considered a waste treatment operation. Repurposed (second life) batteries are considered new products which have to comply with the product requirements when they are placed on the market. The person who repurposes the battery is considered the manufacturer/producer of this battery, with all linked responsibilities (including the traceability in the national register), and with the exceptions foreseen in article 59(4).
- Remanufacturing (e.g. replacement of cells, modules, stacks,..., so the battery can be used further on for the same purpose or application) is not considered a waste treatment operation. The original manufacturer/producer of the battery remains manufacturer/producer.

4. Removability/Removal of batteries (Articles 11 – 51 – 56)

Eucobat esteems that removability and disassembly requirements for producers, end-users and waste operators are essential for environmental and safety reasons.

All batteries should be removable, except when continuity of power supply is necessary and a permanent connection between the appliance and the portable battery is required for safety, performance, medical or data integrity reasons.

To that end, Eucobat welcomes **Article 11, that** requires that manufacturers should design appliances, in which portable batteries are incorporated, in such a way that waste batteries can be readily removed and replaced by the end-user or by independent operators. (A battery is readily replaceable where, after its removal from an appliance, it can be substituted by a similar battery, without affecting the functioning or the performance of that appliance.)

Exception can only be made when continuity of power supply is necessary and a permanent connection between the appliance and the portable battery is required for safety, performance, medical or data integrity reasons.

Eucobat also welcomes the Articles 51 and 56 concerning the effective removal of portable batteries from waste appliances and vehicles.

Article 51 states that end users have to discard waste batteries (including readily removable batteries from WEEE) separately from other waste streams, including from mixed municipal waste, in designated separate collection points set up by the PRO.

In case of waste batteries incorporated in vehicles or appliances and that are not readily removable by the end-user, they shall be discarded by the end user in accordance with ELV or WEEE Directives.

Article 56 states that batteries that are collected while still incorporated in a waste appliance/ELV, shall be removed from the collected waste appliance/ELV in accordance with the requirements laid down in the ELV/WEEE Directive.

Nonetheless, in order to ensure that all batteries are removed from electrical and electronic appliances, and to prevent safety risks, Eucobat proposes that the provisions of the WEEE Directive and/or the European standard EN 50625-1 should be amended in such a way that:

- all batteries have to be removed from any separately collected WEEE prior to treatment of WEEE or during the treatment process provided that this process can ensure that batteries can be separated in a distinct stream and that the batteries remain undamaged,

(The only exception could be the batteries that are intended to ensure a continuity of power supply for safety, performance, medical or data integrity reasons),

- the integrity of the batteries should be maintained during the removal process, and
- quantified objectives should be imposed on the WEEE dismantlers for the removal of batteries from the WEEE categories 5 (small equipment) and 6 (small IT and telecommunication equipment), as defined in annexes III and IV of the WEEE Directive.

5. Collection (Article 49-50)

Articles 49-50 state that distributors/producers of industrial, automotive and EV batteries are obliged to take back these batteries free of charge and without an

obligation on the end user to buy a new battery, nor to have bought the battery from them.

Given the long lifespan of the electric vehicle, industrial and automotive batteries, and the high cost of collection and recycling, the take-back obligation for these respective types of batteries, irrespective of the brand/producer of the concerned battery, is not realistic..

At multiple times, the proposal stipulates that distributors, collection points, WEEE recyclers would have the possibility to hand the collected waste batteries to waste operators.

For portable batteries, we propose that there would be a mandatory handover to the producers or the PRO's, or at least a mandatory and free of charge reporting of the waste operators.

6. Collection Target (Article 55)

- The concept of a collection target in relation to the volume placed on the market, as defined in Annex XI and articles 48 and 55 of the proposal, is not appropriate for (waste) batteries. In most cases, there is no correlation between the quantities of batteries recently put on the market (PoM) and waste batteries that are effectively available for collection. Indeed, most batteries are not available for collection within three years of the date they've been put on the market. Therefore, targets based on PoM might be unachievable as they would be higher than the real amounts available for collection.
- As a consequence, a collection target can only be adequate if it is related to the quantities of **waste batteries available for collection**. In this regard, the impact assessment report of the Commission³ underlined the need to update the current methodology for the calculation of collection rates and stressed that the results of the Available for Collection methodology will present more reliably the waste stream by clarifying the mass flows and will allow operators to better plan their activities.
- We welcome the inclusion of the possibility to introduce the principle of the target in function of the batteries available for collection, but the timeline for the study and elaboration of this is not acceptable (2030), and should be put on the agenda immediately after the publication of the regulation.
- According to the studies of Möbius (EoL study – AfC study)⁴, only 65% of the weight of the batteries POM during a certain year are available for collection.

³ p. 152-155, SWD(2020) 335, Commission Staff Working Document, Impact Assessment Report accompanying the document Proposal for a Regulation of the European Parliament and of the Council concerning batteries and waste batteries, repealing Directive 2006/66/EC and amending Regulation (EU) 2019/1020 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=SWD:2020:335:FIN>

⁴ <https://www.eucobat.eu/sites/default/files/2019-01/Eucobat%20-%20Mobius%20-%202018%20-%20Batteries%20Available%20for%20Collection.pdf>

- We propose that from the entry into force of the Regulation on, Member States should report to the European Commission the amount of waste batteries available for collection, estimated according at 65% of the average of the amount of batteries put on the market for the first time in this Member State⁵ during the three preceding years.
- The Commission should then, no later than 31 December 2023, adopt a delegated act in accordance with Article 73 to supplement this Regulation by establishing the methodology to calculate the amount of batteries available for collection.
- Awaiting the elaboration of the methodology for the calculation of the batteries available for collection, Eucobat proposes a **more realistic target of 45% in function of the batteries POM for 2023**.
- If the Regulation would include a collection target in function of the batteries POM, it should take into account the batteries put on the market during the three preceding years (X-3 – X-2 – X-1) as in the WEEE directive, not the year of collection plus two preceding years (X-2 – X-1 – X). Otherwise, the target for the running year would only be known at the end of this year.

Annex XI requires some clarifications:

- The word “sell” should be replaced by “make available on the market (2 times)
- Repurposed batteries are made available on the market.
- What with second-hand batteries (loose or integrated in products) imported or purchased intra-community in a member state (by an individual or by a professional?)
- What with remanufactured/reused batteries (imported or not)?
- Issue of export (POM or not in country where battery is imported. (Reimbursement in original country?) => Inquiry members (distinction sold to consumers or not)
- Statistical method for the calculation of the collection rate seems dangerous.

7. Recycling (Articles 56-57)

Eucobat pursues a future-oriented recycling strategy, taking into account the full environmental impact of the recycling process and the economic value of the materials contained in the batteries, and this in the framework of the circular economy package.

The recycling targets should be realistic, measurable and **value-based instead of mass-based**, and should ensure the recycling of hazardous and valuable materials to the highest degree that is technically feasible while avoiding excessive costs.

⁵ excluding batteries that have left the territory of that Member State in that year before being sold to end user

Eucobat proposes that the responsibility for the reporting of the recycling efficiencies would lie with the first recyclers, that would have to report to the Member State where they are located, and that this information would be made available for information to all other Member States where these batteries were collected.

Double recycling targets (general target plus target for some CRM) will lead to increasing cost, as in most cases a recycling process that allows to achieve a high general recycling target is in most cases not compatible with a high recycling target for specific materials.

According to Annex XII, the recycling targets for NiCd batteries are the same as for alkaline batteries, without any target for the recycling of the cadmium. We suppose this is not intentional.

The recycling target does not seem realistic for some types of batteries, e.g. lithium primary batteries, for which even 50% is a very ambitious target.

8. Financing – Visible fee (Article 60.5)

Separately invoicing the net collection and recycling costs related to waste batteries will benefit the environment, consumers, authorities and all economic actors involved in the distribution of the new batteries.

In particular, it guarantees the financing of the development of a collection network with a sufficient density for effective collection of all batteries and of the required communication campaigns to create consumer awareness of this collection network, and it simplifies the market surveillance activities of the national authorities, without having an impact on the commercial relations between the economic actors.

Eucobat proposes **to require a visible compliance fee to be mentioned on invoices within the distribution chain, from producers to retailers of batteries**. The visible compliance fee shall include all costs for collection, sorting, treatment, monitoring, reporting, communication, sensibilisation and management incurred by the producers or by third parties acting on their behalf. The costs mentioned shall not exceed the best estimate of the actual costs incurred. The mandatory visible compliance fee applies only to batteries for which producers actively organize collection.

The provision in the proposal is not specific enough.

9. Financing – Guarantees

Extended producer responsibility (EPR) involves a shift in financial and operational responsibility to producers for the collection, recycling and responsible end-of-life disposal. This means in particular that each producer is responsible for the financing of the end-of-life management of the products that he has put on the market. He should be able to choose to fulfil this obligation either individually or by joining a collective scheme.

As batteries in electrified vehicles are composed of multiple modules, stacks or cells, that can be removed during repair, remanufacturing or repurposing of the battery, producers also need to ensure the financing of the collection and recycling of these modules, stacks and cells. In order to enable this financing, a marking of the individual cells of the batteries with the registration information of the producer is required.

The Batteries Regulation should describe the requirement to create and maintain appropriate take-back structures for these stacks, modules and cells, and strictly avoid improper disposal of them through collection schemes for portable batteries.

Given the long lifespan of the batteries in electrified vehicles, and the high cost of collection and recycling, each producer should, when placing a battery on the market, provide a financial guarantee to prevent costs for the management of waste from orphan products from falling on society or the remaining producers.

The requirements financial guarantees should be subject of an implementing act.

10. Reporting to the Member States (Article 61)

Producers of portable batteries or PRO's have to report to the national competent authority for each calendar year the information according to the battery chemistry, a number of data. within 4 months of the end of the reporting year for which the data are collected

Given the considerable amount of data to be collected, controlled and compiled, it is not possible to deliver such report within 4 months of the end of the reporting year. At least, it should be extended to 6 months.

11. The battery passport (Article 65)

The information on the status of the battery (waste/not waste/repurposed, EPR responsibility) should be available in the Battery Passport.

It is essential that the producer responsibility organizations have access to the information on the Battery Passport, and that they can change the content if required.

12. Labelling of the batteries

The information on label of the batteries (Annex VI) should include the weight of the battery.



13. About Eucobat

Eucobat aisbl is the European association of national collection schemes for batteries. They assure that all waste batteries are collected and recycled in an ecological sound way, and contribute this way to a better environment.

Eucobat aisbl
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