

RECHARGE

ADVANCED RECHARGEABLE & LITHIUM BATTERIES ASSOCIATION

Proposal for Batteries Regulation 2020/353 (COD), repealing Directive 2006/66/EC and amending Regulation (EU) No 2019/1020

RECHARGE statement to public consultation - 1 March 2021



GENERAL

The advanced rechargeable and lithium batteries value chain in Europe, as represented by RECHARGE, welcomes draft Regulation 2020/353 (COD), in short Batteries Regulation, as the next step in delivering on the 2018 Strategic Action Plan on Batteries and, thus, working towards the common goal of setting the standard for sustainable, innovative and competitive batteries made in Europe.

Repealing the current batteries framework, **the draft Batteries Regulation better recognizes the strategic role of batteries for decarbonization, strategic autonomy and societal prosperity, and generally incorporates important updates as concerns today's market structures.** The latter refers to battery segments and battery chemistries likewise. At RECHARGE, we welcome that **the Regulation has the clear objective of creating coherence with other EU policy areas and regulatory frameworks,** particularly with those pieces of legislation that were implemented after the initial Batteries Directive.

RECHARGE especially welcomes the inclusion of new key sustainability pillars as an important step forward:

1. **The requirement to calculate and report the carbon footprint of electric vehicle batteries and certain rechargeable industrial batteries**
2. **The mandatory setup of supply chain due diligence programs on corporate social responsibility performance**
3. **The creation of an electronic battery passport for electric vehicle batteries and certain industrial batteries**
4. **The introduction of a green public procurement mechanism**

Social due diligence and carbon intensity measures are paramount to the further development of the European battery sector as well as to the overarching climate-neutrality and industrial leadership objectives of the EU. At RECHARGE, we believe that **article 7 and article 39 have the potential to strengthen batteries that have been designed and manufactured with the highest environmental and social conditions in place – provided that these requirements and their scope are correctly implemented.**

Also, RECHARGE wants to stress the importance of the **modernization of the current batteries framework and transforming it into a European-wide regulation. This is a key step to ensure a high degree of predictability and clarity** for economic operators. European investment as well as cutting-edge innovation and product development will depend on such level of certainty for many years to come.

However, despite relevant updates and innovations, the draft Batteries Regulation does not fully meet its objective of creating a future-proof, supporting legislative framework. **A high level of complexity and critical overlaps risk jeopardizing the effectiveness of the Commission proposal.** With regards to creating coherence with other regulatory frameworks, **especially the introduction of a REACH-like restriction mechanism for battery substances is of high concern for our industry.** It is against this background, that RECHARGE - as the leading group of technical experts - wishes to bring forward proposals for harmonization and simplification. This paper also includes corrections to data or assumptions used in the inception impact assessment.

In light of “Better Regulation”, RECHARGE proposes to:

1. **ENSURE FEASIBLE TIMELINES:** Given the strategic importance of the battery industry, a timely yet robust implementation of the new EU rules is crucial for this cornerstone legislation.
 - a. As a general rule, the Batteries Regulation must include a **grandfather clause** to distinguish between new models of batteries that fall within the scope of the new requirements, as created by the Batteries Regulation, and products such as legacy spare parts or battery models introduced to the market before the entry into force of this Regulation.
 - b. Certain deadlines between the proposed Batteries Regulation and the respective implementing acts pose a real challenge to compliance. This is especially the case for establishing the technically challenging calculation methodologies for the carbon footprint, the recycled content or for the new recycling efficiencies – all subject to an early declaration obligation.
 - c. All provisions directly or indirectly impacting the production process shall include a minimum 24-month transition phase for proper implementation at manufacturing line level.
2. **STRENGTHEN ENFORCEMENT AND LEVEL PLAYING FIELD:** To ensure the effectiveness of the European battery rules, RECHARGE recommends **incorporating a dedicated paragraph on enforcement** and the necessary resources required at Member State level to sufficiently execute enforcement measures for EU and imported products alike. Several articles are prone to become paper tigers without relevant enforcement. In addition, for the Batteries Regulation to successfully set the standard for environmentally and socially responsible batteries, **all actors – inside or outside the European Union – must be subject to the same requirements**. Therefore, **third-party auditing bodies**, as applicable under article 39 (3b) for example, that are based outside the European Union, **shall ensure to apply the same standards - and potentially require an accreditation at EU level**.
3. **HOLD HIGH THE INDUSTRY’S EXTENSIVE SAFETY APPROACH:** Batteries are electro-chemical devices that have been carefully designed to meet the specific requirements of an application or equipment. To ensure their safety at all times, the European battery industry has established an extensive safety approach based on functional safety analysis and typically four main safety levels:
 - a. Cell and battery design
 - b. Battery-device optimization
 - c. Electric and electronics architecture
 - d. Battery Management System

The draft Batteries Regulation introduces wording pertaining to removability, remanufacturing, repair and repurposing that is of high concern to both the industry and consumer protection organizations. **With the goal of upholding the industry’s comprehensive safety proposition, we, therefore, call upon European policymakers to refrain from any wording in the final Batteries**

Regulation that would encourage unqualified persons to alter a battery, and that contradicts existing safety standards. Ultimately, any battery – first or second use – should be subject to product certification and safety testing alike.

4. HARMONIZE OVERLAPPING PROVISIONS WITH OTHER REGULATORY FRAMEWORKS: The Batteries Regulation has the clear objective of creating coherence with other regulatory frameworks. RECHARGE encourages EU policymakers to give priority to overarching, horizontal legislation, such as:

- a. **Chemicals Management:** With horizontal – and already overlapping – chemical management frameworks in place, the Batteries Regulation should **not create another layer of complexity by introducing a REACH-like restriction mechanism for battery substances only.** The assessment of substances used in batteries should remain subject to the horizontal chemicals management framework. In view of the opportunities created by the Chemicals Strategy for Sustainability, we call upon the European Commission to work towards a holistic chemicals management regime based on a robust risk management approach, including regulatory management option analysis (RMOA) and a socio-economic impact assessment.
- b. **Safety:** Safety is a key priority for the European batteries value chain and we, thus, welcome the underlying principle of article 12 to support the safety of all batteries (not just stationary battery energy storage systems) at all times. To that end, article 12 should be amended to **refer to the wide spectrum of applicable safety obligations and we call in Annex V for a technically strong CEN/CENELEC standardization mandate that can complement the existing standards,** as needed. With regard to best practice, Annex V should not substitute – or anticipate - the work established by European standardization bodies and should avoid any overlaps with horizontal requirements, such as described by the UN legislation on battery transport safety testing.

5. HARMONIZE OVERLAPPING PROVISIONS WITHIN THE BATTERIES REGULATION: We welcome that the Batteries Regulation is an ambitious piece of legislation, with the potential to support an equally ambitious value chain in the transition to a sustainability-focused market structure. **Certain provisions risk creating over-regulation and unnecessary overlaps,** however.

- a. **End-of-life management:** The draft Batteries Regulation features extensive waste management actions, such as second life, recycling efficiency targets, material recovery targets and a recycled content obligation. While all battery chemistries are suitable for recycling, circular economy measures should not overburden the industry, should take into consideration best available techniques not entailing excessive cost (BATNEEC) and must not create contradicting conditions or negative environmental impacts. A successful battery waste management scheme reflects the fast-paced, innovative profile of batteries and battery-containing equipment. Flexible solutions are expected to create greater effectiveness than too stringent - or overlapping - measures that risk blocking the market.

- b. **Information provisions:** The extensive information, labelling, declaration and auditing provisions under articles 13, 18, 60, 61, 64, 65 as well as article 7, 8 and 39 should be streamlined to **reduce administrative and procedural challenges – for both industry and authorities**. An electronic battery passport capable of respecting IP rights as well as the manufacturer’s safety chains, and with dedicated access levels for each stakeholder group, including end-users, recyclers, Member State authorities and the European Commission, represents a unique opportunity to simplify such obligations and to establish a central point of information, where possible.

6. REDUCE COMPLEXITY BY FOCUSING ON REAL-BENEFIT PROVISIONS: Batteries have been subject to a comprehensive regulatory framework since 2006. It is in this context, that RECHARGE promotes new legislative measures that bring a true benefit to the existing framework. The objective of this Regulation must be to work towards essential policy targets instead of creating an environment of control and obligations. Against this background, RECHARGE wants to point out **several provisions that do not withstand the effectiveness test under real-world conditions**.

- a. **Performance and durability criteria for industrial and electric vehicle batteries:** In a fast-paced, innovative industry, performance and durability criteria are likely to stall product development and hamper the necessary flexibility to meet the specific needs of different products and applications. A number of design criteria would clearly contradict design requirements, such as durability obligations in areas where fast charge is needed. In addition, **the parameters related to the electrochemical performance and durability, as defined in Annex IV Part A, are already incorporated in the calculation of the carbon footprint** (Annex II (3)). In connection with the internationally applicable durability requirements developed by the UNECE Working Group on Electric Vehicles and Environment, especially electric vehicle batteries should not be subjected to article 10 and its Annex IV, Part A and B. **Overall, it can be said that article 10 is redundant and should be deleted accordingly.**
- b. **Recycled content:** Because of the **limited environmental benefits and the disproportionate burden for European battery manufacturers, recycled content should start on a voluntary basis**. According to the inception impact assessment, the amount of available secondary materials will not reach significant levels before 2035. Beyond that, continuous developments in battery chemistry are expected to make (at least some) material targets obsolete. To that end, a regular review of targets is needed, taking into account evolutions in battery chemistry and waste volumes. **To drive the objective of high-quality recycling more effectively, an ambitious recycling quality definition should be introduced instead of the burdensome recycling content provision.**
- c. **Repair and second Life:** While it is important for the Batteries Regulation to define the legal basis for repair and second life, the general language of articles 11, 14, 59 (1) and 60 (1a) needs to be amended to prevent unqualified persons from altering a battery, and to avert potential safety risks.

- d. **Collection of waste portable batteries:** The significantly higher targets for collecting waste portable batteries are practically not achievable based on the existing calculation methodology. **An “available for collection” approach must be implemented to account for the long lifetime of batteries and losses caused by export, for example.** In general, article 48 must better recognize and strengthen the role that end users have in disposing of waste batteries.
7. **REDUCE COMPLEXITY FOR NICHE AND SMALL-SERIES BATTERIES:** Certain measures create a disproportionate administrative and cost burden on niche or small-series batteries that are produced in only a few thousand units per year, designed to meet very specific application needs and often must be brought onto the market within weeks. **Especially the scope of articles 7, 8, 59 and 65 – that were clearly established around the profile of mass-volume (EV) batteries - must be limited in view of the unique profile of these batteries.** Similarly challenging is article 57 for several (niche) battery technologies. The recycling efficiency for lithium-based batteries and, respectively, certain material recovery targets are too technology-specific to be operationally achievable for all battery chemistries. **The economic burden of complying with article 57 would basically drive such chemistries off the market.** Therefore, article 57 should enable a detailed differentiation between lithium-based chemistries, as well as a new concept for recycling targets based on WEEE and ELV.

PROPOSALS

Article 2 – Definitions

In view of battery-specific operations and market structures, the following definitions require amendments:

- **Definition (1) *battery*:** The draft Batteries Regulation no longer differentiates between a battery and a battery pack. In view of completeness we recommend, *a battery means any source of electric energy generated by direct conversion of chemical energy and consisting of one or more non-rechargeable or rechargeable battery cells or of groups of them assembled for immediate use.*
- **Definitions (7) *portable battery*, (9) *light means of transport* and (12) *electric vehicle battery*:** To ensure high collection rates of batteries that are used in light electric vehicles, such as e-bikes, e-kick scooters or hoverboards, and disposed of by end-users, RECHARGE recommends amending the respective definitions accordingly.

- *Portable battery means any battery that is (1) sealed, (2) can be hand-carried, (3) is not designed for industrial purposes and (4) is neither an electric vehicle battery nor an automotive battery. Portable battery also includes batteries designed for light means of transport.*

RECHARGE encourages European policymakers to refrain from a weight threshold. Due to the innovation profile of batteries and battery-containing equipment, any weight criterion would be arbitrary with the risk of splitting battery types and impeding smooth collection. This is particularly true for the chosen 5kg-threshold, which does not reflect the pertinent UN ECE Transport and ADR legislation. **Therefore, RECHARGE proposes to maintain the current wording of *can be hand-carried*.**

Light means of transport should exclude the notion of *travelers are seated* since neither e-kick scooters nor hoverboards feature this option. To account for L1-categories currently established in the Two-Wheeler Directive 168/2013/EU, the watt limit should be increased. The objective must be a harmonized collection procedure for end-users of all light means of transport, including S-EPAC. Should a watt reference be required, it shall refer to the maximum continuous rated power, as used in the Two-Wheeler Directive.

- ***Electric vehicle battery should explicitly exclude batteries designed for light means of transport.***
- **Create a definition for *battery type*:** A definition of battery type as referred to in article 46 (2d) should be added in article 2.
- **Definition *remanufacturing*:** The draft Batteries Regulation refers to remanufacturing in several places, above all article 59. Since a definition is missing and the perimeters between remanufacturing and repair are vague, RECHARGE recommends replacing remanufacturing by either repair or repurposing, according to the context.
- **Definition (50) *recycling efficiency*:** In view of coherence and common practice, the definition of battery recycling efficiency should be conformed to the recycling target concept used in related

legislative frameworks, such as the WEEE Directive or the ELV Directive. This is especially relevant since the definition of recycling has changed, compared to the 2006 Batteries Directive, and is now aligned with the Waste Framework Directive.

- **The definition of *State of Health (SoH)* (25)**, and as referred to in article 14, shall be established by the industry standardization body CEN/CENELEC. To enable the assessment for second life, especially the method for life cycle testing must be clarified. We want to highlight that as such, SoH is not sufficient to assess the potential residual service of a used battery for a next usage.
- In support of the grandfather clause, the **definition of *placing on market*** (14) will need to be supplemented by transition dates for each relevant article. Annex I of this position paper provides a concrete proposal for implementation dates per relevant article, based on the date of placing on the market and the respective design, production or contractual conditions.

Article 6 – Restriction of hazardous substances and article 71 – Procedure for amending restrictions on hazardous substances

Generally, REACH recognizes batteries as articles that do not present a chemicals exposure risk to consumers or the environment. Subjecting battery substances to a product-specific scrutiny is therefore disproportionate and unjustified.

Additionally, with horizontal – and already overlapping – chemical management frameworks in place, the Batteries Regulation should not create another layer of complexity by introducing a REACH-like restriction mechanism for battery substances only. **The assessment of substances used in batteries should remain subject to the applicable horizontal chemicals management framework.**

In view of the opportunities created by the Chemicals Strategy for Sustainability, we call upon the European Commission to work towards a holistic chemicals management regime based on a robust risk management approach, including regulatory management option analysis (RMOA) and a socio-economic impact assessment.

Article 7 – Carbon footprint of electric vehicle and rechargeable industrial batteries

RECHARGE welcomes the inclusion of carbon intensity – calculated based on an **enhanced EU Product Environmental Footprint** methodology - in the draft Batteries Regulation. First, carbon footprint performance classes will allow consumers to identify batteries with a superior product profile more easily and give necessary signals to poorly performing industry actors to improve their carbon emissions. Second, it is an effective criterion for the quality and performance of a battery (see Annex II (3)). Third, we believe that the proposed step of implementing CO₂ thresholds is an important instrument to pave the way to low-carbon products. To further accelerate this transition, **CO₂ thresholds should be accompanied by positive measures for frontrunners.**

To ensure a meaningful differentiation between products and value chain steps, the secondary legislation process will have to ensure a robust implementation of the carbon footprint provision now:

- **Prerequisite is that the carbon footprint reflects real-world manufacturing operations and is calculated based on actual emissions for the whole supply chain, and not on averaged data of upstream suppliers and operations. Data agglomeration shall only be permitted at selected calculation and declaration steps.**
- **At the same time, confidentiality of the data must be ensured at all times.**
- **Including carbon emission data at the recycling stage may prove difficult, given that many recycling plants are only in the making. The relevance of this datapoint may need to be revisited in the respective delegated act.**

To that end, the industry has started to update the Product Environmental Footprint Category Rules (PEFCR). The current calculation methodology was established in 2013 and needs to be transposed into a method that is fit for a European-wide regulation now. The goal is a robust, comparative and consistent approach. **Generally, the carbon footprint requirement must be proportionate and feasible before it can come into force.** It is in this context that we want to point to the following shortcomings in the draft Regulation text:

- **To date, PEFCR have only been established for rechargeable EV batteries.** Considering the much broader scope of article 7, all other battery chemistries and categories shall only become subject to the carbon intensity requirement after the establishment of their PEFCR.
- The inception impact assessment only analyzed the impact for EU car manufacturers and neglected related costs such as additional manpower. **Consequently, the carbon footprint is particularly burdensome for niche and small-series batteries that are produced in only a few thousand units per year, designed to meet very specific application needs and often must be brought onto the market within weeks.** Subjecting these batteries to the extensive internal and bureaucratic processes of the carbon footprint requirement would substantially limit their necessary market reactivity. Therefore, **article 7 should only apply to batteries for electric vehicles and large energy storage systems as initially intended.** For example, batteries produced up to 1,000 units per year, batteries below 20 kWh, or any model production representing less than 20 MWh p.a. should be excluded accordingly.
- In view of feasibility, article 7 should **refrain from the term ‘batch’** and base the carbon footprint declaration on significant variations of the following points instead:
 - Manufacturing plant
 - Battery model
 - Supply chain configuration

Article 8 – Recycled Content in industrial, electric vehicle and automotive batteries

At RECHARGE, we welcome that the Commission has partially considered the industry’s concerns regarding the alleged benefits and burdens stemming from article 8, and introduced a stepwise implementation of the recycled content obligation as well as an amendment mechanism in paragraph 4:

- At a time when volumes of available secondary raw materials in Europe are low, the burdens on the European industry to implement a recycled content obligation would have jeopardized the

competitiveness of European batteries. **The inception impact assessment clearly concluded that the European battery market is not yet mature enough for a meaningful recycled content obligation.**

- The amendment mechanism is important to better reflect real-world waste streams and developments in battery chemistry. Especially the latter is expected to make certain recycled content targets marginal or obsolete even before the implementation date of article 8. **The amendment mechanism should be altered to a review clause, therefore. Especially the later 2035 targets should only be set following an extensive assessment.** Finally, the economic impact of a new mandatory requirement must be assessed, too. Referring to the inception impact¹, this was not the case for the recycled content provision.

With regards to the inception impact assessment's concluding remarks on the **limited environmental benefits of recycled content for batteries, it must be stated that the recycled content obligation currently remains an unjustified burden on the industry. Even more so because non-European battery manufacturers benefit disproportionately from article 8.** Battery waste, including production scrap, has reached significant volumes in Asia, making it easier for Asian companies to access recycled battery materials.

Against this background, RECHARGE recommends establishing article 8 as a voluntary provision first. Especially a clear and robust definition of recycled content would be required before defining potential targets. In a similar vein, criteria for end-of-waste and end-of-recycling must be further developed to ensure high-quality recycling and to allow for a clear definition of what can be considered as recycled content. **In fact, an ambitious definition of end-of-recycling could effectively replace the burdensome recycled content provision. Together, the material recovery targets and a new end-of-recycling definition would boost recycling quality in those areas where market mechanisms have not taken effect yet** (see our proposal for article 57).

All in all, the scope of article 8 should be limited to batteries for electric vehicles and large energy storage systems. The administrative cost would overburden niche and small-series batteries disproportionately (also see proposal for article 7).

Article 10 – Performance and durability requirements for rechargeable industrial and electric vehicle batteries

In view of coherence and to reduce complexity as well as overlaps, **article 10 should be removed from the Batteries Regulation:**

- At UN level, performance and durability criteria are currently being developed for electric vehicle batteries. **The Batteries Regulation should not overlap or contradict horizontal and internationally applicable legislation.**

¹ See Annex 9, page 244

- Article 7 already requires a test of life duration, and Annex II (3) explicitly incorporates the electrochemical performance and durability parameters as set out in Annex IV Part A. **Additional performance and durability requirements would result in clear overregulation.**
- Industrial batteries and batteries for electric vehicles are sold to OEMs and not to end users. These OEMs have strict quality and technical protocols in place for the components (including batteries) they purchase.

Besides the high degree of redundancy and overregulation, **article 10 really is a threat to product development and the competitiveness of our industry.** Regulated design requirements are expected to hamper the capability of battery manufacturers to meet the specific needs of the products or applications they serve. It must be highlighted that a number of design criteria would clearly contradict OEMs' design requirements. For example, durability applications would be developed at the expense of applications where fast charge is needed, since fast charge typically reduces durability.

Article 11 – Removability and replaceability of portable batteries and article 59 – Requirements related to the repurposing and remanufacturing of industrial batteries and electric vehicle batteries

Safety must take precedence over the ability to alter a battery. Currently, articles 11 and 59 do not sufficiently protect against potential safety risks.

Batteries are electro-chemical energy storage devices that have been carefully designed to meet the technical specifications of a certain application or equipment. **At RECHARGE, we are particularly concerned about the general language in the draft Batteries Regulation (see articles 11, 14, 59, 60), widely encouraging the unconditional altering of batteries.** The draft Regulation does not provide for any technical framework for repair, remanufacturing and repurposing that is aligned with well-defined intermediate product quality, product responsibility and certification, production process control, transport safety aspects as well as safety testing of batteries. **It is for that reason that the Batteries Regulation should refrain from any wording that will encourage the altering of a battery by an unqualified person. Concretely:**

- Article 11 does not differentiate between battery packs within the appliance and cells within a battery pack. **To ensure a high level of safety, replaceability options must be restricted to batteries and modules, and shall never include individual cells within a battery pack.**
- Furthermore, in article 11 it should be specified that said article does not lay down requirements concerning the repurposing, altering, changing or replacing of parts of portable batteries or any other batteries outside the class of *portable batteries of general use*.
- **Under no circumstances should non-original battery packs or uncertified sub-units thereof be allowed** in any application after the exchange of certain parts such as the battery cells.

In general, the draft Batteries Regulation should better recognize the role of integrated batteries as an important design decision to protect against water, dust or direct light exposure, and to consequently ensure higher performance, durability and safety.

Article 12 – Safety of stationary battery energy storage systems

Article 12 should be amended to refer to the wide spectrum of applicable safety obligations and we call in Annex V for a technically strong CEN/CENELEC standardization mandate that can complement the existing standards, as needed. With regard to best practice, Annex V should not substitute – or anticipate - the work established by European standardization bodies and should avoid any overlaps with horizontal requirements, such as described by the UN battery safety testing legislation.

Article 13 – Labelling of batteries, Article 14 – Information on the state of health and expected lifetime of batteries, Article 60 – End-of-life information, 61 – Reporting to the competent authorities, Article 64 – Electronic exchange system and Article 65 – Battery passport

General comments:

- RECHARGE welcomes a consistent information giving approach. To reduce overlaps and minimize administrative burdens, information requirements under article 13, 14, 60, 61, 64, 65 as well as declaration obligations under article 6, 7 and 39 should be streamlined and digitized as much as possible.
- Currently, the draft Batteries Regulation does not provide any clarity on the purpose of the different information provisions and how the different systems shall interoperate. This should be a main objective for a legislation designed to be fit-for-purpose.
- Redundancies, as is the case between articles 61, 65 and Annex XIII, must be avoided. To that end, we also want to point to the duplications between the information required in form of a label and as part of the QR code in article 13.

The following points can be underlined as examples:

- An electronic battery passport with relevant access levels for each stakeholder offers a unique opportunity to simplify labelling, information exchange and declaration obligations. The QR code should serve as an identifier to link to a database here. Due to the technical limitations, the QR code should not be used to “store” information, however. According to their authorization, users may then obtain complete or partial information from the database.
- In view of necessity, technical feasibility and data protection, some of the listed information requirements in Annex VI must be revisited. We want to explicitly point to the example of *minimum average duration*, which depends on the use and user profile and cannot be defined beforehand. This term can only be used for *non-rechargeable portable batteries of general use* but not for *rechargeable portable batteries*.
- The Producer should be allowed to place the QR code anywhere on the product and not necessarily print it on the label. This is to enable more advanced labelling options such as engraving or molding.
- Finally, article 13 must determine the appearance of symbols with regards to legibility. To ensure that symbols are visible on all types of applications and products, a high contrast between the

background and the symbol is required. Also, no specific colors should be prescribed since these will depend on the application design. A mandatory color scheme would heavily impact product design and user expectations.

Article 14 – Information on the state of health and expected lifetime of batteries

Article 14 should clearly exclude industrial batteries that do not have a battery management system, such as lead-acid and nickel-based batteries. Those batteries are not suitable for second life and a State of Health information provision would not be meaningful. **RECHARGE proposes to amend article 14 (1) to “exclude chemistries other than lithium batteries” and to limit the scope to batteries for large energy storage systems and electric vehicles.**

Generally, in view of the development of internationally applicable State of Health parameters in the UNECE EVE GTR, no additional battery management system (BMS) parameters should be defined for electric vehicle batteries. **Annex VII, Part SoH, should be deleted or amended with a reference accordingly. In turn, the UNECE requirements should be added to the list of data provided in the battery passport, with a respective methodology for regular updates.**

We also want to point out that **article 14 requires a clear implementation date.** Currently, such provision is missing, and the Regulation’s general implementation date of 2022 is technically not feasible. A lead time of at least 3 years is required to adapt the processes on the BMS and the vehicle accordingly.

Article 16 - Common specifications

RECHARGE and its members have a long track record of successfully developing standards and we, therefore, want to stress the role that European standardization organizations have in establishing technically robust and broadly acceptable industry standards.

Against this background, the industry is particularly concerned that article 16 deviates from current practices and especially from the existing European standardization Regulation (EU) No 1025/2012. Article 16 should be amended accordingly, and the focus must be on industry standardization organizations, in particular CEN/CENELEC, to develop technically feasible standards. **We call upon the European Commission to ensure a clear, meaningful standardization request within applicable technical perimeters.**

Article 18 – EU declaration of conformity

To improve traceability and better enable the demonstration of compliance, Annex IX, as referred to in article 18, should be amended to enable an electronic declaration of conformity and harmonization with the information provisions under articles 13, 65 and 64.

To design a conformity assessment practice that is manageable for both the industry, authorities and conformity assessment bodies, the scope should be limited to certain battery types. Also, article 18 requires further clarifications as to how often a conformity assessment must take place (validity). Especially the notion of *product changes* needs to be defined in this context.

Article 22 – Notifying authorities, Article 23 – Requirements relating to notifying authorities, Article 25 – Requirements related to notified bodies, Article 32 – Challenge of the competence of notified bodies and Article 41 – Obligations of importers

A just and comparable conformity assessment is pivotal to the effectiveness of the Batteries Regulation.

The European battery industry is particularly concerned about potential [illegal and unfair third-party verification practices](#). Unfortunately, article 41 (2) does not sufficiently clarify how the conformity assessment procedures carried out by non-EU manufacturers can meet the requirements as laid out in articles 25 (3-11). **To level the playing field, a mechanism should be put in place to ensure that notifying bodies can make their assessments based on the same standards and level of trust, independent of the country of origin.**

With regard to the modernization ambition of the Batteries Regulation, new means of traceability and automated self-verification systems (such as blockchain or equivalent) for traceability demonstration should be mentioned in Annex VIII-B-4 to enable flexibility for the development of the supervised verification processes.

Article 37 – Coordination of notified bodies

Currently, the coordination of notified bodies misses a sufficient level of coherence between the Member States. Article 37 is an important step forward. In addition to the current wording, we call for a clarification of the herein mentioned coordination measures and encourage a strong enforcement of article 37.

Article 38 – Obligations of manufacturers

Article 38 (6) should be simplified by limiting “changes in the production process” to major process modifications. Those modifications should be defined as relevant for the creation of new models of batteries.

Note: Article 38 (7) is in repetition of article 38 (1b) and should be removed.

Article 39 – Obligation for economic operators that place rechargeable industrial and electric vehicle batteries with internal storage and a capacity above 2kWh on the market to establish supply chain due diligence policies and Article 72 – Supply chain due diligence industry schemes

Paramount to the further development of our industry, and as a matter of fact of all sectors, is social responsibility. RECHARGE and our members especially welcome that the Commission has incorporated our call for human as well as social and labor rights. **Unfortunate is the limitation to the raw materials sector, however.** A responsible and sustainable battery market, covering all relevant actors and value chain steps, is a key objective of the European advanced rechargeable batteries industry - and an important competitive differentiator.

In view of better regulation, we appreciate that the due diligence provision makes a clear reference to the existing OECD Due Diligence Guidance and recognizes the value that existing industry schemes have

created to date (article 72). **To avoid overlaps, article 39 should be extended to capture horizontal EU due diligence legislation such as the Conflict Minerals Regulation, too.**

Article 47 - Extended Producer Responsibility

In article 47(4a), the **modulation of the financial contribution to collective producer responsibility organizations should, if at all, only be based on transparent environmental – such as CO2 performance classes - and waste treatment costs, and not on arbitrary performance or design criteria.**

First, the environmental benefits of recycled content are limited. Making recycled content a criterion for financial benefits is unjustified, hence. Second, batteries are designed and developed to meet the technical requirements of a specific equipment or application. Some batteries are built to charge fast or to achieve certain service ranges, others must provide for immediate power. Depending on the technical requirements, these factors will affect the rechargeability of a battery. **Design options based on customer needs shall, therefore, not be penalized.**

Article 48 – Collection of waste portable batteries, Article 53 – Participation of public waste management authorities and Article 55 – Collection rates for waste portable batteries

Article 48 (4) presumes that attaining and maintaining the collection target for waste portable batteries is the sole responsibility of the Producer, or the respective Producer Responsibility Organization (PRO). **Under such conditions, Producers cannot achieve the truly ambitious collection targets.** As a matter of fact, the collection of waste portable batteries depends on three criteria:

1. **Availability of waste batteries:** Portable batteries are a strongly growing market and battery lifetimes have increased significantly over the past years. A calculation methodology referring to the quantities placed on the market in the past three years is, therefore, not adequate for batteries.
2. **Collection infrastructure:** To enable collection, RECHARGE fully supports the Producer's responsibility to set up collection infrastructures collectively through Producer Responsibility Organizations. Extensive collection networks have been established across Member States in the last decade.
3. **Waste holders:** Waste can only be collected if the battery owner chose to dispose of their product. Consequently, Producers cannot be solely responsible for achieving the collection targets as they depend on the end-user to return and dispose of their batteries properly.

Therefore, RECHARGE proposes:

- To deduce appropriate collection targets in our industry, **Annex XI needs to be amended to introduce a sound calculation methodology based on an application-dependent “available for collection”.** Again, basing the annual collection target on the number of batteries placed on the market in the past three years is not meaningful for batteries. Furthermore, the proposed increase of the 2025 collection target by 20 percentage points (as compared to 2023) is not realistic and cannot be achieved by our industry within the current calculation approach.

- **In article 55, collection targets must be set at Member State level to meet the policy target of higher collection rates.**
- Finally, proper collection and recycling of waste batteries remains an educational topic. Besides the many industry initiatives, Member States should commit to foster education in this regard and sponsor information campaigns to reinforce article 51.

Article 50 – Obligations of distributors, Article 51 – Obligations of end users, Article 52 – Obligations of treatment facilities

We welcome articles 50 to 52 as important steps to counteract the improper disposal of waste portable batteries. To ensure that waste portable batteries end up in the correct collection and recycling streams, **distributors should be obligated to hand over waste portable batteries to the respective Producer or Producer Responsibility Organization (PRO)**. The supply of waste portable batteries to non-authorized third parties must be forbidden.

In the interest of end-users, municipal collection points should be obliged to take back waste portable batteries **and** to hand them over to the respective Producer or PRO, as well.

Article 49 – Collection of waste automotive batteries, industrial batteries and electric vehicle batteries

In article 49 (1), *“Where waste industrial batteries require prior dismantling at the premises of private, non-commercial users, the obligation of the Producer to take back those batteries shall include covering the costs of dismantling and collecting waste batteries at the premises of those users”* is covered by the obligation of the distributor in article 50 and should be removed entirely. **As a general rule, the take-back obligation on industrial batteries must be limited to the products that a Producer has placed on the market and must not include products that were placed on the market by other Producers.**

In view of the complex marketing structures of non-portable batteries, article 49 should **reintroduce the flexibility mechanism of Batteries Directive 2006/66/EC, article 16 (5)**.

Article 57 – Recycling efficiencies and material recovery targets

The draft Batteries Regulation features multiple measures intended to strengthen the circular economy in the battery industry. With regard to updates in WEEE and ELV, and the technical specifics of batteries, including in Commission Regulation 493/2012 (Recycling Efficiency), RECHARGE is currently establishing a more holistic proposal for implementing circular economy policy objectives. A dedicated paper on how to better align the objectives of the recycled content, recycling efficiency and material recovery measures will be issued shortly.

Additional comments to the proposed recycling efficiencies in article 57:

1. At RECHARGE, we welcome a separate recycling category for lithium-based batteries, which better reflects today’s market structures and will further drive innovation in recycling processes. **We do regret that the new category does not sufficiently reflect the multiple – and substantially different – lithium chemistries, however.** Certain lithium-based batteries, such as LFP (lithium iron

phosphate), would not be capable of meeting the recycling efficiencies. **Aside from the negative environmental impact, the economic burden of achieving the target of 65% and 70% respectively would drive these chemistries off the market.** Therefore, article 57 requires a modification enabling a detailed differentiation between lithium-based chemistries.

2. Important for the further harmonization of legislative frameworks is to **conform now the concept of battery recycling efficiency to the concept of recycling targets as implemented in related sectors, such as WEEE and ELV.** Article 2 (50) will need to be amended accordingly.

Additional comments to the proposed material recovery targets in article 57:

1. Industry analysis confirms the selection of metals applicable to the recovery targets as relevant for driving high-quality recycling. For completeness, **RECHARGE recommends adding a material recovery target of 95% for cadmium.**
2. Article 57 misses a paragraph on preconditions for material-specific recovery targets. It must be highlighted that recovery targets shall only apply:
 - If they do not create negative effects on the environment. This is especially the case if required energy and solvents exceed the environmental benefits of a recovery target.
 - Generally, **recovery targets must not overburden the battery sector.** To that end, article 57 (5) should be amended to **include an environmental and economic impact assessment. Especially the 2030 material recovery targets should be subjected to a mandatory review** based on the best available recycling techniques and actual flows of product chemistries sent to recycling.
3. Eventually, following our recommendation in article 8, robust definitions for end-of-waste, end-of-recycling and - complementing the former - for recycling quality must be established first to correctly determine the point of material recovery. **In fact, an ambitious definition of end-of-recycling would effectively replace the costly and burdensome recycled content target:** if battery materials are recycled to a reference quality from which new battery materials can be made, the risk of down-cycling is averted.

Article 58 – Shipments of waste batteries

Article 58 refers to the option to recycle waste outside the European Union if equivalent conditions apply. Nevertheless, a definition for equivalent conditions is missing. **Article 58 (3) should provide for a clear definition, therefore, or incorporate a deadline by when criteria for the assessment of equivalent conditions must be established.**

With regard to our call to extend article 39 to all value chain steps, including waste treatment, equivalent conditions must cover both environmental standards as well as workers protection, and social and human rights.

Article 59 – Requirements related to the repurposing and remanufacturing of industrial and electric vehicle batteries

With regard to safety and liability, the precondition for article 59 **must** be a sound repurposing framework that accounts for:

- product quality,
- product responsibility and certification,
- production process control,
- transport safety aspects and
- safety testing of batteries.

We, therefore, recognize article 59 as a first step towards legal clarity and advise following additions:

- The draft Batteries Regulation does not provide a definition of *remanufacturing*. Since perimeters between remanufacturing and repair are vague, **RECHARGE recommends replacing remanufacturing by either repair or repurposing, according to the context.**
- **Repurposed batteries need to be certified and meet all technical standards and tests. Before they are placed on the market, they need to comply with the same requirements as new products.** In article 59 (3) and (4), “shall ensure” needs to be replaced by “shall meet” relevant product requirements, accordingly.
- Article 59 (4) should be amended to ensure that **second life operators are subject to the same standards as first Producers.** Corporate due diligence policies shall apply to both first and second life Producers, except if the grandfather clause applies.
- With respect to property rights, and more specifically **intellectual property**, additional provisions need to be made to regulate the transfer of data from the battery management system (BMS). Currently, **the article does not sufficiently protect the initial manufacturer’s intellectual value.** In fact, the industry fears that articles 59 (1) and (2) even permit second life at the expense of the first manufacturer. Therefore, **access to BMS data must be subject to a contractual basis between the initial Producer/manufacturer and the subsequent economic operator.**
- **Original manufacturers shall not be held liable for products in second life** (including producer responsibility requirements).
- Additionally, the Batteries Regulation should **refrain from any wording that encourages unqualified persons to alter a battery.** Operating an electrochemical device, such as batteries, requires adequate technical expertise. It is in this context, that article 59 (1) and (2) as well as articles 14 and 60 (1a) need to be amended to avert potential safety risks, clearly mentioning that **the safety information provided for handling and testing does not guarantee the safety of the battery in case of repurposing.** Instead of enabling blanket access to the battery management system (BMS), a possible solution could be to make very specific BMS data available via the Electronic Exchange System (article 64).
- Article 59 (5) defines the initial status of batteries for subsequent repurposing as waste. To facilitate the collection and sorting of such batteries, **non-operative battery holders (sorting or collection**

operators before waste treatment or repurposing activities) should be exempted from waste treatment facility obligations under certain conditions.

Article 60 – End-of-life information

In accordance with paragraph 1 (a), Producers shall make available to end users the following information: “...extending use phase and possibilities of preparation for reuse”. **In view of safety, the Batteries Regulation should refrain from any wording that encourages unauthorized, not qualified persons to alter a battery**, including for repair and repurposing (see article 59).

To reduce overlaps and minimize administrative burdens, paragraph 3 should **refer to the Electronic Exchange System under article 64 and the battery passport** under article 65. As regards information on chemical substances, **article 60 (3b) should be streamlined with the already applicable disclosure requirements** (SCIP database) under REACH.

Article 61- Reporting to competent authorities

Based on the experience with the current Batteries Directive, RECHARGE welcomes the intention of this new article to clarify the reporting and to create more transparency regarding the flows of collected and recycled batteries. Unfortunately, **article 61 translates into data lacks and inconsistency in reported figures and should be amended accordingly:**

- In paragraph 1 and 2, Producers (or alternatively Producer Responsibility Organizations) report the amount of collected battery chemistries by weight. On the contrast, waste operators report directly collected batteries by chemistry and type of battery in paragraph 3. The different parameters reported, and the lack of harmonized identification, will distort reporting numbers.
- Paragraph 2(a) is practically not feasible for battery manufacturers who sell to OEMs since the information on the fraction of exported quantities is not available to them.
- Additionally, paragraph 3 does not clarify if the data reported by waste operators integrates product flows already declared by the Producer (or alternatively by a Producer Responsibility Organization). In that case, data would be reported twice.

ABOUT RECHARGE



Representing the battery industry of the future, RECHARGE is the industry association of the advanced rechargeable and lithium batteries value chain in Europe. Advanced rechargeable batteries are a strategic key technology that contribute to a more empowered, sustainable and circular economy by enabling decarbonized electricity and mobility. Founded in 1998, RECHARGE’s unique membership covers all aspects of the battery value chain: From suppliers of primary and secondary raw materials to battery and original equipment manufacturers (OEMs), to logistic partners and battery recyclers. For more information, visit www.rechargebatteries.org or follow us at [@RechargeEurope](https://twitter.com/RechargeEurope).

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Annex I - Grandfather clause

Implementation proposal for new articles, based on the dates of design, production and first placing on the market of a battery. Due to the complexity and specifics of the articles, RECHARGE recommends dedicated implementation dates.

Condition (proposals in <i>italic</i>):	Date of PoM of battery	Art 6	Art 7	Art 8	Art 9	Art 10	Art 11	Art 13	Art 14	Art 18	Art 39
Dates proposed for all Batteries in the new Regulation	After Jan23	Jul 23	Jul 24	Jan 30	Jan 27	Jan 24 Jan 26	Jan 23	Jul 23	Jan 23	Jan 23	Jan 24
<i>Designed and produced² after Jan 2023 (proposal)</i>	<i>After Jan 23</i>	<i>Jul 23</i>	<i>Jul 24</i> <i>Jul 25</i>	<i>Jan 30</i>	<i>Jan 27</i>	<i>Jan 27</i> <i>Jan 29</i>	<i>Jan 27</i>	<i>Jul 23</i>	<i>Jan 24</i>	<i>Jan 24</i>	<i>Jan 24</i>
<i>Designed before Jan 23, In production after Jan 23</i>	<i>Before Jan 28</i>	<i>Jul 23</i>	<i>Jul 25</i>	<i>N.A</i>	<i>Jan 27</i>	<i>Jan 27</i> <i>Jan 29</i>	<i>N.A</i>	<i>Jul 23</i>	<i>N.A.</i>	<i>Jan 24</i>	<i>Jan 24</i>
<i>Designed before Jan 23, In production before Jan 23</i>	<i>Before Jan 25</i>	<i>Jul 23</i>	<i>N.A.</i>	<i>N.A</i>	<i>N.A</i>	<i>N.A</i>	<i>N.A</i>	<i>Label</i>	<i>N.A</i>	<i>N.A.</i>	<i>N.A</i>
<i>Designed before Jan 23, In production before Jan 23</i>	<i>After Jan 25</i>	<i>Jul 23</i>	<i>Jul 25.</i>	<i>N.A</i>	<i>Jan 27</i>	<i>Jan 27</i> <i>Jan 29</i>	<i>Jan 27</i>	<i>Jul 23</i>	<i>N.A</i>	<i>Jan 24</i>	<i>Jan 27</i>
<i>Replacement/maintenance of battery (by contract)</i>	<i>After Jan 23</i>	<i>Jul 23</i>	<i>N.A.</i>	<i>N.A</i>	<i>N.A</i>	<i>N.A</i>	<i>N.A</i>	<i>Label</i>	<i>N.A</i>	<i>N.A</i>	<i>N.A</i>
<i>Replacement/maintenance of battery components</i>	<i>After Jan 23</i>	<i>Jul 23</i>	<i>N.A.</i>	<i>N.A</i>	<i>N.A</i>	<i>N.A</i>	<i>N.A</i>	<i>Label</i>	<i>N.A</i>	<i>N.A</i>	<i>N.A</i>

² “produced” means date of first battery of this model placed on the market