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Towards a future-proof Batteries Regulation: Policy Recommendations for the trilogue negotiations

With the aim of paving the way for **sustainable batteries for a circular and climate neutral economy**, the proposed Batteries Regulation is the next step in delivering on the European Strategic Action Plan on Batteries. **The Batteries Regulation has the real potential to translate the EU's battery vision into a meaningful legislative framework.**

Given the strategic role of batteries and the relevance of the Batteries Regulation to European industrial and sustainability policies, RECHARGE – the leading association representing the advanced rechargeable and lithium batteries value chain in Europe – would like to encourage the negotiating teams to pay particular attention to the industry concerns and recommendations outlined in this paper.

In a changed geopolitical context, **the EU must decrease its dependencies in strategic value chains** to ensure that potential future crises would not be a detriment to the bloc's ambitious climate objectives and its crucial industries. **Batteries are a key technology for the energy and digital transitions**, yet Europe is particularly dependent on imported batteries from non-EU countries, while the European battery manufacturing industry is still nascent.

The European battery value chain is making significant investments and has the potential to become one of the largest battery industries globally, as well as one of the most sustainable and innovative at the same time. However, the regulatory framework needs to support this ambition and ensure the sustainability objectives enable EU's competitiveness. **Only a strong and leading European battery industry will be able to set sustainability standards for the rest of the world.**

With this paper, RECHARGE proposes concrete recommendations based on an assessment of the Commission proposal and the two negotiation positions of the Council and the European Parliament which will allow the batteries value chain to deliver on enabling the energy and digital transitions, as well as the decarbonisation of our economy and society.

Key recommendations are presented in detail in the following pages and invite to:

1. Clarify definitions of battery, battery categories and battery model;
2. Allow the placing on the market of spare batteries for vehicles or appliances already in service, as well as the placing on the market of batteries designed before entry into force of this Regulation to equip newly manufactured mass-transit metro, train or aircrafts from existing designs;
3. Not to go against product and transport safety laws and hamper longevity with too prescriptive design requirements;
4. Ensure (waste) batteries are placed under the responsibility of the right actor;
5. Avoid that an enlarged scope combined with a lack of enforcement and market surveillance feasibility jeopardises the overall ambition and success of the Regulation;
6. Include strong review clauses and safeguard measures against the risks connected to ex ante specified minimum recycled content and material recovery targets;
7. Disregard the proposal for introduction of a mandatory review of all hazardous substances in batteries using criteria which are not aligned with the newly adopted restriction process and a date which is inadequate.

In addition to these seven key recommendations, we would like to raise the issue of a legal concern of the industry as in regards to the obligations as stated in Article 49 (take-back obligation of all waste batteries from the same type/category by producers) and Article 57 as in the Council text (obligation to accept all waste batteries for recycling by recyclers), and we strongly advise to get a legal opinion on these Articles by the Commission or Council legal services.

The following pages present a **concise overview of RECHARGE's concrete suggestions** in view of the Commission proposal and the two negotiation positions of the co-legislators and to further contribute to facilitate the debate:

1. Clarify definitions of battery, battery categories and battery model: The definition should refer to finished products which are **ready to use**. To ensure a high level of safety with regards to the repair and replaceability of a battery, definition (1) in Article 2 must **clearly define a battery as a final article ready for use** and include definitions for battery pack and battery model.

Furthermore, to avoid confusion attached to the definitions of 'battery', 'battery model' and 'categories', RECHARGE recommends to follow the **Council definitions** in Article 2 for 'batteries' (1), for the definition of categories of batteries – and in particular regarding the clarifications for 'portable batteries for general use' (8) and for 'light means of transport battery' (9), as well as the Council's 'battery model' definition (17). However, definition (1b) of 'battery modules' considered as batteries must be corrected.

2. Allow the placing on the market of spare batteries for vehicles or appliances already in service, as well as the placing on the market of batteries designed before entry into force of this Regulation to equip newly manufactured mass-transit metro, train or aircrafts from existing designs: to ensure a long use phase and avoid unnecessary early retirement of appliances and vehicles already in service, **end-users and professional repairers need to be able to source spare parts** which may not be redesigned to comply with the new requirements ("repair as produced"). Furthermore, mass transit systems such as air and rail transportation systems which require batteries to supply high reliability back-up power for emergency situations (said batteries are therefore a key component of passenger safety), designed before entry into force of this Regulation and manufactured after, must be able to be fitted with batteries as originally designed for this application.

A **grandfather clause** has to be drawn up to cover both these situations and a sufficient transition period has to be foreseen after entry into force to avoid millions of already produced batteries going straight to recycling without ever having been put into service.

The European Parliament (EP) intends to take this industry concern into consideration with the adopted **Amendment 117** which introduced the repair as produced clause. **RECHARGE recommends adopting this amendment into the final Regulation with an extension to all battery categories**, as otherwise replacement batteries for i.e. household appliances, power tools or light means of transport would not be covered.

A second part to this amendment 117 shall read: **"Industrial batteries designed before the entry into force of this Regulation may be placed on the market and are exempted from the requirements of chapter II and chapter IV insofar as (1) they are supplied to the manufacturer or the operator of an air or rail or underground mass-transportation system which has been designed before entry into force of this Regulation and (2) said batteries provide back-up power for the safety of the mass-transportation system and its passengers in an emergency situation"**.

RECHARGE also support the EP Amendment 86, exempting equipment specifically designed for the safety of nuclear installations as well as Amendment 87 serving as a grandfather clause for batteries produced before the entry into force of this Regulation.

3. Do not go against product and transport safety laws and hamper longevity with too prescriptive design requirements: The safety risks, which are attached to the Parliament's amendments on Article 11, are serious, particularly when it comes to the replacement of cells inside batteries. Nearly every unqualified change of components, such as the replacement of individual cells of a battery pack or the BMS, causes the loss of conformity with the safety tests. The Parliament's suggested proposals, such as replaceability of batteries outside the category of portable batteries of general use, repairability of battery packs and removability of cells put the safety control at risk.

Due to their energy releasing and chemical properties, batteries must fulfil a series of international, European and national safety requirements during their production, transport, storage, use and end-of-life management. Safety of the product and the consumer is, hence, a key priority for the European battery industry. Any requirements compromising the safety of batteries cannot be accepted. **Therefore, only batteries (packs) and not individual battery cells shall be subject to Art. 11.**

The proposed Parliament's Art. 11a 'Removability and replaceability of automotive batteries, electric vehicle batteries and industrial batteries' does not consider the broad variety of industrial batteries. Industrial back-up batteries are used in for example nuclear power plants, high speed trains, airplanes, offshore platforms, etc. and can have each very different requirements (duration of back-up, service life, ability to withstand temperature, shock and vibrations, ability to perform additional services). The design requirements for removability, replaceability and disassembly of the case, of individual battery cells or other key components of such batteries are simply not adequate.

Furthermore, the Parliament's proposal for a new Art. 11b 'Safety of repaired automotive batteries, industrial batteries, light means of transport batteries and electric vehicle batteries' suggests introducing non-destructive tests for repaired batteries – this goes directly against international and European safety legislation mandating UN type approval test series which include destructive tests. Moreover, "repair" is not defined and would give leeway to safety-critical operations on batteries by incompetent actors.

RECHARGE respectfully asks to consider debating this important issue during the negotiations and invites to remove safety-critical wording. RECHARGE is particularly concerned regarding the EP Amendments 162, 172, 173, 174 which create a clear safety issue and are going against the durability requirements of batteries.

RECHARGE welcomes the Council text on Article 11 Paragraph 1 excluding cells from the removability and replaceability requirements and 1a with the safety wording included and considerations for appliances designed to operate in wet environment.

Furthermore, RECHARGE also positively notes the Council text on a new Article 44a ensuring that economic operators comply with any relevant product, environmental and human health protection and transport safety requirements in other legislation.

4. **Ensure (waste) batteries are placed under the responsibility of the right actor:** For batteries placed on the market in an appliance or vehicle, the definition should assign producer status to the appliance or vehicle original equipment manufacturers (OEM), irrespective of the location of the battery manufacturer. A serious deficiency of the proposed Regulation is the issue of the producer definition, which RECHARGE stressed on multiple occasions. The producer definition in the Commission proposal as well as Council text **creates discrepancies in the internal market due to uneven rules** with regard to the application of the extended producer responsibility (EPR) for battery producers selling to an OEM in the same or a different Member State (MS).

The producer definition as proposed by the Commission, as well as the revised definition in the Council text, create the following problem: battery manufacturers which sell batteries to OEMs located in their MS will have to report the products as placed on this market, irrespective of where the OEM places the end-product (vehicle or appliance) on the market. This **will lead to ill-reporting and skewed producer responsibility** for batteries within one Member State even if those reported batteries are no longer in the said MS. Furthermore, exported batteries will have to be reported again when placed on the market in another MS where they have been imported to, leading to double counting. Therefore, **producer responsibility needs to lie with the economic operator that knows where exactly the batteries are placed on the market for end-use.**

This issue needs to be addressed in the Commission's guidelines for implementation and a solution found whereby the EPR always lies with the economic operator that sells batteries to end-users either incorporated in vehicles or appliances, or as "naked objects". OEMs should take over end-of-life responsibilities as they are closer to the market where the vehicle or the appliance will be placed and are therefore in a better position to efficiently organise the end-of-life management.

We recommend maintaining the Commission proposal definition (37) 'producer'.

The Council proposal for the producer definition causes a problem in so far as batteries are not EEE products always intended for an end user.

5. Avoid that an enlarged scope combined with a lack of enforcement and market surveillance feasibility jeopardises the overall ambition and success of the Regulation: Since the Commission put forward its legislative proposal, RECHARGE has welcomed the sustainability leadership ambition overall and the proposed legislation addresses all necessary tools for this objective. It is important to consider that the carbon footprint (Article 7) and recycled content (Article 8) measures could become useless and merely paperwork if not implemented and enforced correctly at Member State level. The selection of the applicable scope when deciding about a sustainability measure is decisive. The size of the scope (the number of models to which the measure is applicable) must be understood to make sure that the measure can be applied and enforced correctly. **A too ambitious initial scope, which cannot be verified and controlled effectively (or which is technically not possible), can unintentionally encourage greenwashing.**

RECHARGE has published recently an analysis on the number of battery models placed on the EU market and the number of declarations needed for the sustainability requirements depending on the scope of the measure ([here](#)).

For Article 7, the scope, as proposed by the Commission, would already represent more than 20,000 battery models for which carbon footprint declarations would be required. **This scope should not be further extended without an impact assessment, especially given carbon footprint calculations are application dependent and cannot follow a one-size-fits-all approach.** In the same way, the Due Diligence scope should not be extended from the “supply chain” to the “value chain” without feasibility clarification.

RECHARGE welcomes the Council suggested changes to the Commission proposal regarding the staggered implementation timeline as well as the removal of the wording ‘batches’ (as the proposed scope of Article 7 is too burdensome to implement for all industrial batteries and manufacturing batches).

When it comes to the recycled content measure, battery waste, including production scrap, has reached significant volumes in Asia, making it easier for Asian companies to access recycled battery materials. Volumes of available secondary raw materials in Europe are low, and a too ambitious recycled content obligation would jeopardise the competitiveness of European batteries. In the next 10 to 15 years, a recycled content obligation will steepen EU dependency on third country (secondary) raw materials. Meaningful targets for recycled content should be assessed in a few years from now based on the future availability of secondary materials and driven by clear recycling targets as well as end-of-waste criteria.

Similarly to Article 7, **the scope of Article 8 needs to be carefully considered and the Commission’s scope should not be further extended**, especially given that no impact assessment has been done based on extension of the scope and levels of targets.

Also for Article 8 RECHARGE recommends following the Council’s suggested implementation timelines as well as the removal of the wording ‘batches’.

6. Include strong review clauses and safeguard measures against the risks connected to ex ante specified minimum recycled content (Article 8) and material recovery (Annex XII) targets: The proposed measures and targets should be designed to benefit the environment **without creating an uneven level playing field** and **without unduly increasing the carbon footprint** of batteries put on the market.

The environmental benefits of the recycled content provision are too low, an economic assessment is not possible at this point of time, access to secondary raw materials is uncertain for the next years and the battery chemistries are still developing too diversely. Hence, a very cautious approach is necessary, including strong review clauses and safeguard measures against the risks connected to ex ante specified minimum recycled content targets. Too early high recycled content targets might bring shortages of battery raw materials in the EU resulting in production stops in the EU or forcing European manufacturers to source secondary raw materials from non-European producers, or unnecessarily push to recycling of batteries potentially usable in a second life. Any eventual future extension of this obligation requires a thorough impact assessment.

Although RECHARGE has advocated for the recycled content to be implemented on a voluntary basis first, **we welcome that the targets have not been increased compared to the Commission proposal by none of the co-legislators. The Council furthermore established a reasonable implementation timeline proposal.**

As for the metals recovery targets, these must be carefully balanced. Excessive requirements beyond the optimised recovery targets increase the global carbon footprint, as they imply additive resource-intensive (energy, water, solvents) chemical recycling processes. Mandating much higher targets will always increase resource use, with a reduced marginal benefit for the circular economy. Recycling targets should be defined based on state of the art and optimised criteria.

The newly proposed lithium recovery targets in the EP Amendments 487 and 488 risk going beyond the optimum point when the material recovery from the recycling process has a positive environmental impact, and we recommend to maintain the Commission and Council proposed targets.

7. Disregard the proposal for introduction of a mandatory review of all hazardous substances in batteries using criteria which are not aligned with the newly adopted Restriction process and a date which is inadequate: The EP Amendments 122 requires the Commission to conduct by December 31st, 2025 a review of all hazardous substances in batteries. However, criteria proposed to conduct this review are misaligned (“potential risks” and “availability of suitable alternatives”) with the requirements of the newly adopted restriction process spelled out in Article 6(2) (“unacceptable risk” and “need to be addressed on a Union-wide basis”). For this reason, this amendment should be rejected as it creates confusion regarding the situations the Restriction process is supposed to address.

Likewise, EP Amendment 4 should be rejected for the following two reasons: (1) it introduces further requests to the Commission review which are even more remote to the Restriction process than those introduced in Amendment 122, and (2) it also targets a subset of substances which have been widely studied and regulated, and for which no unacceptable risk level requiring that they be addressed on a Union wide basis could be demonstrated.

A process for Restriction dossiers as well as criteria for dossier selection have already been spelled out in the draft Regulation. Therefore, there is no need to entrust the Commission with the task of generating a report using criteria that are inconsistent with the Restriction process already established in the appropriate chemical legislation. For this reason, RECHARGE recommends the rejection of EP Amendments 4 and 122 of the European Parliament.

The window of opportunity is short, as the next three to five years will be vital for developing a strong and competitive European batteries value chain. The new Batteries Regulation will set the legislative framework and conditions.

In 2020, in the context of the EU Industrial Strategy update, the European Commission reviewed a number of areas that can be considered strategic for Europe’s interests: Lithium batteries were identified as one of the strategic areas of interest for the EU. The industry is ready to deliver, provided the Regulation sets an enabling framework.

This paper is intended to support policymakers' efforts to achieve a final text that supports the EU's climate and competitiveness objectives.

RECHARGE is the leading industry voice of the advanced rechargeable and lithium batteries value chain in Europe. Founded in 1998, it is our mission to promote advanced rechargeable batteries as a key technology that will contribute to a more empowered, sustainable and circular economy. RECHARGE’s unique membership covers all aspects of the advanced rechargeable battery value chain in Europe: From suppliers of primary and secondary raw materials, to battery, equipment and original equipment manufacturers, to logistic partners and battery recyclers.

To receive the **complete RECHARGE amendments** to the proposed Batteries Regulation, please contact: ktimaru-Kast@rechargebatteries.org.

You can read the **RECHARGE position paper** [here](#) and find further related information as well as recent papers [here](#).