EU-Batteries Regulation: Four-Position-Paper

Positions of the EU Institutions and four NGOs (DUH - Environmental Action Germany/Deutsche Umwelthilfe e.V., *EEB* - European *Environmental* Bureau, ECOS - Environmental Coalition on Standards, Transport & Environment)

Currently, the main legal framework on batteries in the European Union (EU) is the Battery Directive (Directive 2006/66/EC on batteries and accumulators). This piece of legislation is more than a decade old (it dates back to 2006) and as such it fails to address new technologies and the environmental challenges associated with these. Aiming to address all these shortcomings, the European Commission adopted a proposal for a Regulation on batteries and waste batteries in December 2020: The first policy worldwide to cover the whole battery value chain.

Following votes in both the Parliament and the Council on their amended texts, the EU Batteries Regulation will soon be negotiated in trialogues between the three EU institutions the Council, Parliament and Commission, with a final text expected to come into force at the end of 2022/beginning of 2023. This regulation will apply directly in all member states and upon economic operators and will determine the legislation regarding batteries in the EU for the next decades. It also represents a pioneering blueprint for international legislation. Therefore, it is crucial to ensure that the batteries of the future are as sustainable as possible and that the EU Batteries Regulation is carefully drafted and ensures the highest possible level of environmental and consumer protection.

With this position paper, we compare the positions and amendments of the three EU institutions: the proposal put forward by the Commission in December 2020, the amendments of the Parliament voted on in March 2022 and the compromise text agreed upon by the Council from March 2022. We have compared these positions to the Environmental NGOs point of view aiming for the highest level of environmental ambition.

Supported with funds by Familie Blank Stiftung

	EU-Commission	EU-Parliament	EU-Council	NGO
CO_2 Footprint (Art. 7)	Subject: Batteries placed on the market must be accompanied by a CO_2 footprint declaration; be classified according to a performance class; have a CO_2 footprint lower than specified in a Delegated Act (DA). Scope: Electric vehicle (EV) and industrial batteries with a capacity above 2 kWh Timeframe: CO_2 footprint declaration 1.7.2024; performance class requirements 1.1.2026; lower CO_2 footprint 1.7.2027	Subject: same as Commission Scope: **Light means of transport (LMT),** EV and industrial batteries with a capacity above 2 kWh Timeframe: CO_2 footprint declaration 1.7.2024; performance class requirements 1.7.2025; lower CO_2 footprint 1.1.2027	Subject: same as Commission Scope: **All EV batteries (without a kWh threshold**) and industrial batteries with a capacity above 2 kWh Timeframe: Same as Commission for EV batteries (at the earliest) Commission timeline + 2 years for industrial batteries (at the earliest)	Subject: The maximum CO_2 footprint emission thresholds must require the **use of green energy** in battery production. Prior to this, incentives should be offered to promote the use of green electricity as much as possible. Manufacturers should only be able to claim the **use of renewable energy** if they can **prove** this via direct connection to the renewable energy plant or a contract demonstrating a temporal (in real time or at least every hour) and geographical link between energy supply and use. Contracts such as Guarantees of Origin alone should not be accepted as valid evidence. Scope: **LMT, all EV and industrial batteries** Timeframe: **As proposed by Parliament**
Recycled content (Art. 8)	Subject: Requiring minimum shares of materials recovered from waste present in active materials. Scope: Industrial batteries, EV, and automotive batteries with internal storage and a capacity above 2 kWh Timeframe and shares: From 1.1.2030: 12 % cobalt 85 % lead 4 % lithium 4 % nickel From 1.1.2035: 20 % cobalt 85 % lead 10 % lithium 12 % nickel	Subject: Same as Commission Scope: **Portable except portable batteries of general use, LMT,** industrial, EV and automotive batteries**.** Timeframe and shares: same as Commission.	Subject: Same as Commission Scope: industrial batteries (with a capacity above 2 kWh), EV, automotive and **SLI batteries (lead-acid starting lighting and ignition car battery) (without kWh threshold)** Timeframe: 2030 (at the earliest) Shares: Same as Commission	Subject: Only recycled material derived from **post-consumer waste batteries** (without production waste and material from other waste streams) should be used for recycled content targets Scope: **Portable, EV, industrial and automotive batteries** Timeframe: Documentation from 2023: Producers should start collecting data on recycled contents the first full year and report on the results six months later. Recycled content targets should be set at minimum level to be achieved 1-2 years after the reporting obligation is put in place and then be revised upwards based on the information that is obtained and studies carried out on the availability and feasibility.

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Performance and durability (Art. 9 & 10)	Subject: Performance and durability requirements for portable batteries (Art. 9) Scope: Portable batteries of general use Timeframe: From 1.1.2027 Assessment of feasible measures to phase out non-rechargeable portable batteries of general use by 2030.	Scope: **All Portable batteries** Timeframe: From 1.1.2027 Assessment of feasible measures to phase out non-rechargeable portable batteries of general use by **2027.**	Scope: Portable batteries of general use Timeframe: 2028 at the earliest. Assessment of feasible measures to phase out non-rechargeable portable batteries of general use **2031 (at the earliest)**.	Scope: Performance and durability requirements for all batteries (portable, LMT, industrial and EV, independent of capacity) Timeframe: As Commission and Parliament Phase out of non-rechargeable portable batteries must be promoted by a **Levy placed on single-use batteries**. Assess the feasibility of a phase-out by **2025.**
	Subject: Performance and durability requirements for non-portable batteries (Art. 10) Scope: Industrial and EV batteries with internal storage and a capacity above 2 kWh. Timeframe: From 1.1.2026	Scope: **LMT, EV and industrial batteries (without kWh threshold)** Timeframe: Same as Commission	Scope: **LMT and industrial with a capacity above 2 kWh and EV batteries (without kWh threshold)** Timeframe: 2026 (at the earliest)	
Removability, replaceability and repairability (Art. 11)	Subject: Portable batteries incorporated in appliances shall be readily removable and replaceable by the end-user **or** by independent operators. Scope: Portable batteries Timeframe: not given	Scope: Portable **and LMT** batteries Subject: Portable batteries Portable batteries shall be removable and replaceable **by the end-user** and batteries for LMT shall be removable and replaceable by the **end-users or by independent operators**. Timeframe: By 1.1.2024 **Including the availability as spare parts of the equipment they power for a minimum of 10 years.**	Scope: Portable **and LMT** batteries Subject: Portable batteries and LMT batteries shall be readily removable and replaceable by the end-user **or** by independent operators Timeframe: 2024 (at the earliest) Removability and replaceability requirements **only apply to battery packs as a whole and not individual cells** or other parts included in the battery pack.	Scope: Portable **and LMT** batteries Portable batteries incorporated in appliances **and** LMT shall be readily removable and replaceable by the **end-user and by independent operators** during the lifetime of the appliance. Industrial and EV batteries shall be readily removable and replaceable by independent operators. Batteries, as well as their main components, such as cell packs, casing and mainboard, should be available for the expected lifetime of the application as **spare parts** with a reasonable and non-discriminatory price **for independent operator**s. Batteries containing several cells packs must be **modular** in design. For **batteries with a control software,** the manufacturer should provide **software updates** for the expected lifetime of the product that ensure the safe use of the battery without limiting its functionality, or otherwise publish the source code.

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Collection (Art. 48 & 55)	Scope: Portable batteries Subject: Collection targets for Producer responsibility organisations (PRO) (Art. 48): 45 % by 2023 56 % by 2025 70 % by 2030 Targets for Member States (Art. 55): 45 % by 2023 65 % by 2025 70 % by 2030	Scope: Portable batteries, **LMT batteries added as extra category** Waste portable batteries targets for PROs (Art. 48): **45 % by 31.12.2023** **70 % by 31.12.2025** **80 % by 31.12.2030** **(most ambitious targets proposed so far)** **LMT battery targets for PRO (Art. 48a):** **75 % by 31. December 2025;** **85 % by 31. December 2030** Annex XI (1): Calculation of collection rates includes LMT batteries.	Scope: Portable batteries, **LMT batteries added as extra category** Portable batteries targets for PRO (Art. 48): 45 % by **2024** (at the earliest) 65 % by **2028** (at the earliest) 70 % 2030 (at the earliest) **LMT battery targets for PRO (Art. 48a)**: **54 % 2030 (at the earliest)** Annex XI (1): Calculation of collection rates includes LMT batteries. Every five years the Member States shall carry out a compositional survey of collected to determine the share of waste portable batteries therein. Targets shall be altered on the basis of the information obtained.	Scope: portable, **LMT, industrial, EV and automotive batteries** Targets for portable batteries: **85 % from 1.1.2030** Targets for LMT batteries: **90 % from 1.1.2025** A **deposit return system** for lithium-based portable batteries (primary and rechargeable) and LMT batteries should be introduced. Batteries with deposit should also be permanently labeled as such, whereby the labeling must enable vending machine supported take-back. There should be an ambitious collection target or at least an incentive for returning **industrial, automotive and EV batteries.**
Reuse and second-life batteries (repurposing and remanufactu-ring) (Art. 14 & 59)	Scope: Industrial batteries and EV batteries (Art. 14 and 59) Access to **battery management** of batteries by independent operators for the purpose of assessing and determining the state of health and to perform repurposing and remanufacturing operations (Art. 14 and 59).	Scope: Industrial batteries and EV-batteries, **LMT batteries added as extra category** (Art. 14 and 59) **Read-only** access to battery management of batteries by independent operators for the purpose of assessing and determining the state of health and to perform repurposing and remanufacturing operations (Art. 14 and 59). **Mandatory assessment** for determination of readiness for reuse, repurposing or remanufacturing (Art. 59 1a). Operators placing repurposed or remanufactured batteries on the market shall be considered the new producer of the battery (Art. 59 2a).	Scope: Industrial batteries and EV batteries, **LMT batteries added as extra category** (Art. 14 and 59) **Read-only** access to battery management of batteries by independent operators for the purpose of assessing and determining the state of health and to perform repurposing and remanufacturing operations (Art. 14 and 59). **Economic operators that carry out preparing for reuse, preparing for repurpose or repurposing, or remanufacturing are considered as manufacturer (Art. 38 12a).**	Scope: industrial batteries, EV batteries and LMT batteries Before an industrial, automotive or EV battery is recycled, it must be **tested for the possibility of reuse**. In those cases where reuse is technically possible, economically feasible and where there is a market for the reused battery, the battery must be reused. If the assessment shows that they are not suitable for reuse, but suitable for repurposing or remanufacturing, they shall be repurposed or remanufactured (Art. 59). **Battery Management System** (no 2KhW restriction) in all types of batteries should be readable by end-users, and independent qualified personnel should be able to modify them for the goal of repurposing (Art. 14). **Reuse operators shall not be defined as manufacturers** to promote reuse of batteries (as proposed by Parliament and Council).

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Recycling (Art. 56 & 57)	Scope: All waste batteries concerning targets All waste batteries collected shall enter a recycling process (Art. 57) Removal: Batteries incorporated in an appliance shall be removed (Art. 56) **Recycling efficiencies (Annex XII):** 75 % for lead-acid batteries by 1.1.2025 65 % for lithium-based batteries by 1.1.2025 50 % by average weight of other waste batteries by 1.1.2025 80 % for lead-acid batteries by 1.1.2030 70 % for lithium-based batteries by 1.1.2030 **Recovered Materials (Annex XII):** 90 % cobalt by 1.1.2026 90 % copper by 1.1.2026 90 % lead by 1.1.2026 **35 % lithium by 1.1.2026** 90 % nickel by 1.1.2026 95 % cobalt by 1.1.2030 95 % copper by 1.1.2030 95 % lead by 1.1.2030 **70 % lithium by 1.1.2030** 95 % nickel by 1.1.2030	Scope: Same as Commission concerning targets All waste batteries collected shall **undergo preparation for reuse, preparation for repurposing or** a recycling process (Art. 57). Removal: Same as Commission **Member states may set higher targets (Art 56 4a)** **Recycling efficiencies (Annex XII):** Same as Commission + **85 % for nickel-cadmium batteries by 1.1.2025** **+85 % for nickel-cadmium batteries by 1.1.2030** **70 % for other waste batteries by 1.1.2030** **Recovered Materials (Annex XII):** Same as Commission + **70 % lithium by 1.1.2026** **90 % lithium by 1.1.2030**	Scope: Same as Commission concerning targets **Permitted facilities shall ensure that all** waste batteries **that are offered to that facility will be accepted for** recycling **and treatment (Art. 57)**. Removal: Batteries **incorporated in EV and LMT** shall be removed (Art. 56) **Recycling efficiencies (Annex XII):** Same as Commission + **75 % for nickel-cadmium batteries** Timeline **+ 3 years (see additional implementation period for Chapter VII in Art 79.3)** **Recovered Materials.** Targets same as Commission but **timeline + 2 years (see additional implementation period for Chapter VII in Art 79.3)**	Scope: Same as Commission **All waste batteries** collected shall enter a **preparation for reuse and if not reusable enter a** recycling process (focus on all batteries and not on facilities as proposed by Council). Removal: Same as Commission (no limited scope) **Agree with Parliament's position that member states must be allowed to set higher targets.** **Recycling efficiencies (Annex XII):** Targets and timeline same as the Parliament **Recovered materials:** Targets and timeline same as the Parliament
Battery passport (Art. 65)	Scope: Industrial and EV batteries with a capacity above 2 kWh Access: Online, through electronic system	Scope: Industrial and EV **and LMT** batteries (**without kWh threshold**) Access: **+ via QR code** **Include information on the state of health of the battery.**	Scope: Industrial **and LMT** batteries with a capacity above 2 kWh and EV batteries	Scope: Industrial, EV and LMT batteries (**without kWh threshold)** Access: **Same as Parliament** **Also, state of health information should be included as Parliament proposed.**

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Illegal imports (Art. 46 & 50)	**No definition** and **no obligations** for online marketplaces. Fulfilment Service Providers shall ensure that, for batteries that they handle do not jeopardize sustainability and safety (Chapter II) as well as labeling and information requirements (Chapter III) (Art. 46).	Fulfilment service providers, **including online marketplaces** shall ensure that, for batteries that they handle do not jeopardize Sustainability and safety requirements (Chapter II), labeling and information requirements (Chapter III) **and measures regarding end-of-life management of batteries (Chapter VII) (Art. 46)**. **Fulfilment service providers** shall verify that the EU declaration of conformity and technical documentation have been drawn up (Art. 40 (4a)) and cooperate with national authorities at their request (Art. 40 (4d)). **Producers shall provide to online marketplaces information** about their registration or authorised representative in the Member States they sell to (Art 46 (4a)).	Online marketplaces **defined as economic operators (Art. 2 (19)).** **Online marketplaces shall only offer for sale** in a Member State batteries, including those incorporated in appliances, light means of transport or vehicles, from producers registered in that Member State **in accordance with register of producers (Art. 46**) and which comply with the **extended producer responsibility requirements and obligations (Art. 47) (Art 50 (4b)).** Fulfilment service providers shall ensure that, for batteries that they handle do not jeopardize Sustainability and safety requirements **(Chapter II, except Art. 11 (Removability and replaceability of portable batteries and LMT batteries) (Art. 46).**	If no other actor is located in the EU and liable to consumers, online marketplaces and fulfilment service providers must **take full responsibility for the products** of which they enable the sale. To this end, online marketplaces and fulfilment service providers must be actors in the supply chain by legal definition - for example as an importer. **We support the proposition of the Council** in which online marketplaces shall only offer for sale batteries from producers that are registered and comply with the extended producer responsibility requirements and obligations.
Due Diligence (Art. 39, 45a & b, Annex X)	Scope: EV and industrial batteries Due diligence regime**:** Based on OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (Art. 39) Timeframe: 12 month implementation period (Art. 39) Scope of raw materials: Cobalt, natural Graphite, Lithium, Nickel (Annex X (1)) Limited scope of environmental risk categories (Annex X (2))	Scope: All batteries Due diligence regime: Based on **UN Guiding Principles and OECD for Multinational Guidelines**, thereby covering all types of human rights violations. (Art. 39 (2b)) Timeframe: Same as Commission. Does have a **liability regime** in place for victims to access remedy (Art. 39 (3a)). Scope of raw materials: Cobalt, natural Graphite, Lithium, Nickel, **Iron, Copper, Bauxite** (Annex X (1)) More comprehensive scope of environmental risk categories, including climate change (Annex X (2)).	Scope: Same as European Commission Due diligence regime: Based on **UN Guiding Principles and OECD for Multinational Guidelines**, thereby covering all types of human rights violations. (Art. 45b (b)) Timeframe: 36 month implementation period (two additional years compared to the Commission timeline) (Art. 45a (1)) Scope of raw materials: Cobalt, natural Graphite, Lithium, Nickel (Annex X (1)) More comprehensive scope of environmental risk categories, including climate change (Annex X (2)).	Scope: All batteries Scope of raw materials: Cobalt, natural Graphite, Lithium, Nickel, **Iron, Copper, Bauxite** Timeframe: Should be kept in line with Commission proposal The Regulation should include an obligation for Member States to have in place a liability regime under which economic operators can be held liable and provide remediation for any harm from impacts that they, or undertakings under their control, have caused or contributed to by acts or omissions. Full disclosure of audit reports for all certificates.

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19.04.2022