

Position paper on the Extended Producer Responsibility proposed in the new Batteries Regulation¹

Our suggestions to policy-makers

1. EUROBAT supports the **legal basis** based on Article 114 of the Treaty on the Functioning of the European Union since it will allow harmonisation of measures across member states.
2. We welcome the harmonisation, update and strengthening of the **Extended Producer Responsibility (EPR)**, but some provisions of Article 47 need to be changed:
 - Producers should not be forced to organise the preparation for repurposing and remanufacturing of batteries, and to cover the costs of this activity: the decision to recycle or repurpose a battery should be left to the market, and all costs should be covered by the entity repurposing the battery.
 - The financial contributions paid to producer responsibility organisations (PROs) should only be based on the cost of collection and recycling, removing the reference to rechargeability and to the level of recycled content from Article 47.4.a: these features have no effect on the activities of the PROs.
 - The guarantee included in Article 47.7 should cover the net cost of recycling, and an “accounting reserve” should also be included as a guarantee.
3. Producers should take back only waste batteries that they have made available on the market.
4. The **minimum recycling efficiencies** included in Annex XII Part B seem to be reasonable, if based on the current methodology. However, they will have to be re-assessed once the new methodology is adopted: in this vein, at least 36 months will be needed between the adoption of the methodology and the entering into force of the new efficiencies.
5. The **levels of recovered materials** included in Annex XII Part C need refining:
 - a. Cobalt, copper, lithium and nickel should be grouped together in a single target, allowing recyclers to prioritise certain metals depending on the evolution of the market.
 - b. A 95% level of material recovery for cadmium should be included in Annex XII Part C.
 - c. The levels will have to be re-assessed once the methodology is adopted: in this vein, at least 36 months will be needed between the adoption of the methodology and the entering into force of the measure.
6. Article 58 on the **Shipment of waste batteries** should facilitate the import of spent batteries from non-EU countries. It should be developed coherently with the Waste Shipment Regulation and an ambitious timeline for the development of the criteria for equivalent conditions should be included.

¹ With this position paper, EUROBAT would like to provide its position on the proposal to regulate the Extended Producer Responsibility, as described in chapter 7, Articles 46-63 and Annex XII of the Proposal for a Regulation 2020/353 concerning batteries and waste batteries.

7. The **legislative framework for repurposed batteries** regulated in Article 59 needs to be strengthened to avoid market distortions:
 - a. Access to the BMS² should be explicitly limited to the parameters of Annex VII, and conditional to a contractual agreement.
 - b. **Repurposed batteries should report on performance and durability information** even if the first life battery was placed on the market before the applicability of the articles to avoid market distortions.
 - c. **“Remanufacturing” should be removed**: it has the same meaning of “repurposing” and is not defined in the text.
 - d. A more robust wording on the **transfer of EPR** to the repurposer is needed.
8. The **End-of-life information** covered in Article 60 should be streamlined:
 - a. In particular, the requirement of identifying hazardous substances is a duplication of **SCIP**³.
 - b. Article 60.5 requiring to show the **costs of recycling** should be removed: it is not possible to correctly assess these costs 10-15 years before the battery is actually recycled.
9. The **reporting obligations** included in Articles 61 and 62 are also a reason for concern:
 - a. Article 61 seems to foresee a **comparison between collected batteries and batteries placed on the market in the same year**: this comparison is obviously meaningless and it should not be included.
 - b. There is also a **risk of double-counting** of waste batteries from the interaction of Articles 61.2.b and 61.3, which should be avoided
 - c. It is not clear **how repurposed batteries will be counted**: the system also needs to take these batteries into account.
The **timeline** is also quite challenging since producers are required to provide data only 4 months after the end of the year.

1. EUROBAT supports the legal basis of Article 114 of the Treaty on the Functioning of the European Union since it will allow harmonisation of measures across Member States

EUROBAT believes that the legal basis of Article 114 will ensure the implementation of common rules and avoid market distortions. In this line, we have advocated for the past few years to have a regulation instead of a directive, since it would allow having common rules applied coherently across all EU Member States. In parallel, this legal basis could be seen as a step towards a level-playing field at EU level, reducing differences between national markets.

² BMS: Battery Management System, see Art. 2 (22) of the Proposal for a Regulation 2020/0353 concerning batteries and waste batteries.

³ SCIP: database for information on Substances of Concern In articles as such or in complex objects (Products) established under the Waste Framework Directive (WFD)

2. We welcome the harmonisation, update and strengthening of the Extended Producer Responsibility, but some provisions of Article 47 need to be changed

Some provisions included in Article 47 could create administrative burdens and increase costs. For instance, producers should not be forced to organise the preparation for repurposing and remanufacturing of batteries and cover the costs of these activities. The decision to recycle or repurpose a battery should be left to the market and to the economic actors involved once a battery has reached its end of life stage in the application they had been initially designed for.

The remanufacturer will benefit directly from this activity, and should therefore cover the cost of this activity. This could also result in a waste of resources: not all batteries will be suitable for second life, and it does not make sense to force all producers to cover unnecessary costs.

Besides, the financial contributions paid to producer responsibility organisations (PROs) should only be based on the net cost of collection and recycling: rechargeability and recycled content have no effect on these costs and should therefore be removed from Article 47.4.a. The inclusion of features not directly related to recycling would go beyond the role of PROs. It is also worth mentioning that participation in PROs is not compulsory, and this measure could have unintended consequences on the decision to participate in such schemes.

Finally, the guarantee included in Article 47.7 should cover the net cost of recycling, and an “accounting reserve” should also be included as a guarantee.

3. Producers should take back only waste batteries that they have made available on the market

Right now, Article 49.1 suggests that the producer will have the responsibility of taking back batteries of the “respective type” that they have made available on the market. Article 49 should instead state that producers should take back only waste batteries that they have introduced into the market. The producer cannot expand its responsibility to third actors, so should only be responsible for the product that it has made available on the market.

Besides, Article 49 does not include the provision included in Article 16.5 of the Batteries Directive, which allowed producers and users of industrial and automotive batteries to conclude agreements stipulating financing arrangements on collection, treatment and recycling. This provision granted an important element of flexibility and adaptability to specific situations, and it should be included in the new Batteries Regulation.

4. The minimum recycling efficiencies included in Annex XII Part B seem to be reasonable, if based on the current methodology

Annex XII Part B includes new recycling efficiency levels for lead-acid, lithium and other waste batteries. These levels seem to be reasonable for some batteries technologies but need to be reconsidered for those lithium batteries which have a low rare metals content. With such targets,

manufacturers which place these products on the market would be penalized by a significantly more elevated recycling cost with little environmental value, if any. Moreover, the recycling of such batteries will generate a limited revenue from the resale of recycled materials. There is furthermore an important caveat: the target levels for all waste batteries will have to be re-assessed once the new methodology is adopted. If the new methodology will include changes in how the recycling efficiency levels are calculated, then the levels included in the Annex should be reconsidered. In addition, we should foresee a reasonable amount of time to adapt. Changes to the methodology might require changes to the recycling processes, which would require serious planning and application for new permits. In this vein, at least 36 months will be needed between the adoption of the methodology and the entering into force of the new recycling efficiencies.

5. The levels of recovered materials included in Annex XII Part C need refining

EUROBAT supports a “grouped” target for cobalt, copper, lithium and nickel instead of individual targets. The target could be supplemented with a weighting system in the calculation to give more relevance to specific metals. This approach would allow the possibility to develop new recycling processes without picking a winner. Certain processes allow a higher share of a particular metal over others, and recyclers should be granted the flexibility to prioritise their targets or achieve higher specialisation. This flexibility would enable innovation and make the proposal adaptable to future evolutions in the battery chemistry, as well as in relation to market demand.

In addition, a 95% level of material recovery for cadmium should be included in Annex XII Part C. Nickel-cadmium batteries are used in several industrial applications because of their specific features that make them the preferred choice for some niche applications. It is of course paramount to collect and recycle these batteries, since cadmium has hazardous properties. Such a recovery target for cadmium would make sure that this metal is properly managed across the entire value chain.

Finally, the levels will have to be re-assessed once the methodology has been adopted, also considering that this is a completely new measure. In this vein, at least 36 months will be needed between the adoption of the methodology and the entering into force of the measure.

6. Article 58 on the Shipment of waste batteries should facilitate the import of spent batteries from non-EU countries

We believe that the Batteries Regulation and the Waste Shipment Regulation need to be better aligned to the principles of the circular economy, above all regarding the end-of-life management and recycling of spent batteries in low- and middle-income countries, which currently have sub-standard installations for these purposes.

For the recycling of automotive and industrial batteries with a ‘hazardous waste’ status, such as lead-based and nickel-cadmium batteries, sound management is required. Hence, importing spent batteries with a ‘hazardous waste’ status into the EU needs to be simplified for batteries coming from those low- and middle-income countries without proper domestic recycling infrastructure. Allowing

imports of spent batteries into the EU for recycling will also reduce the potential adverse effects on the environment and public health in areas that currently have no recycling infrastructure. As manufacturers, we know that today, in certain cases, recycling of batteries outside of the EU takes place in unregulated facilities. This means that those batteries are manufactured with poor environmental, health and safety practices. Besides, it will help recyclers in improving their business case. It is paramount, therefore, to develop coherent legislation between this proposal and the Waste Shipment Regulation to facilitate imports of waste batteries into the EU.

In addition, it will be paramount to clearly define the criteria for the assessment of equivalence. The Regulation requires the Commission to adopt a delegated act on this subject, but it does not include a deadline. This is a key point of the Regulation, and an ambitious timeline should be included.

7. The legislative framework for repurposed batteries regulated in Article 59 needs to be strengthened to avoid market distortions

In line with Article 14, Article 59 grants access to the BMS to independent operators without any clear restriction. Such unrestrained access to the BMS is problematic from several points of view, first and foremost for safety reasons and for the need to protect intellectual property. For these reasons, only the parameters listed in Annex VII should be accessible.

In addition, the exceptions listed in paragraph 4 are problematic, since they effectively create a system where certain batteries can disregard key requirements. We of course understand that a repurposed battery cannot possibly report information on carbon footprint, recycled content or due diligence, if this information is not available for the first life battery. However, the assessment of performance and durability of repurposed batteries is not related to the first battery, and can be assessed.

Not including this information could create a market distortion between these repurposed batteries and the new batteries that will be placed on the market. To avoid any disruptions of the market and to boost fair competition, we advocate that repurposed batteries should report on performance and durability information even if the first life battery was placed on the market before the applicability of the articles. Repurposed batteries shall anyway not be eligible for Green public procurement tenders as laid down in Article 70 if they don't share the same information requested to other batteries.

In addition, the entire article refers to "repurposing and remanufacturing". The two terms have a similar meaning, but "repurposing" is defined in Article 2.26, whereas remanufacturing is not defined. Therefore "remanufacturing" should be removed from the entire Regulation to avoid confusion.

Finally, the transfer of EPR in the case of repurposing is not particularly clear. It should be clarified that in the case of repurposing, the EPR is transferred to the entity repurposing the battery.

8. The End-of-life information covered in Article 60 should be streamlined

Some of the requirements risk creating a high administrative burden for the industry as it can create duplications and extra costs.

In particular, in paragraph 3, the requirement of identifying the hazardous substances in a battery is a clear duplication of the **SCIP database** to which companies already (as from 5 January 2021) have to submit the information on articles containing substances of very high concern (SVHCs).

Paragraph 5 implies the requirement to show the **costs of recycling** to the end-of-user. This part should be removed. The main reason is that from the industry side, it is simply not possible to correctly assess the costs of recycling 10-15 years before the battery is recycled.

9. The reporting obligations included in Articles 61 and 62 are also a reason for concern

The extensive reporting requirements provided in Article 61 will result in a **comparison between collected batteries and batteries placed on the market in the same year**. However, this comparison is obviously meaningless since it compares different things. Batteries collected in a given year were placed on the market up to 10-15 years before, and the number of batteries placed on the market in a given year can be very different.

Article 61.2.b mandates producers to report the number of waste batteries collected and delivered for treatment. A similar provision is included in Article 61.3 for waste management operators, but there is no clear demarcation between the two, with a consequent risk of **double counting**. Similarly, it is not clear how repurposed batteries will be counted, since these batteries will be collected but not recycled. The system also needs to take these batteries into account.

Finally, the timeline demanded to provide the data on waste batteries is extremely challenging: 4 months is not enough to collect and provide these data.