

Batteries Regulation Producer definition for batteries incorporated in vehicles or appliances: clarity needed!

Key messages:

- The producer definition included in the Batteries Regulation should clearly, coherently, and unequivocally identify the producer in the case of batteries incorporated in vehicles or appliances
- Under the existing Batteries Directive, in the case of batteries incorporated in vehicles or appliances, battery manufacturers are correctly not considered as the producers (in most situations). This is appropriate as battery manufacturers have no information on the geographical market where the battery will be made available to customers, and are therefore unable to comply with the Extended Producer Responsibility (EPR) requirements, particularly the take back obligation
- Using WEEE-like definitions for the producer responsibility is not suitable for automotive, industrial and EV batteries. This would result in allocating EPR to the wrong economic operators
- The current definition assigns producer status differently in the very unique situation where the battery manufacturer and the OEM (Original Equipment Manufacturer) are located in the same Member State. This disparity should be addressed by assigning producer status to the OEM irrespective of the location of the battery manufacturer

The Extended Producer Responsibility (EPR) is a key pillar to ensure that batteries are correctly collected and recycled at the end of their life. However, to be truly effective, the responsibilities of each actor should be clearly identified in an unequivocal way, respecting the specificities of the product, the way it is placed on the market and how its end-of-life is managed.

The key issue related to the producer definition is the lack of consistency regarding the identification of the producer in a very common case: batteries manufactured by a battery manufacturer with its own brand and then incorporated into a finished appliance or a vehicle produced by another company. The starter batteries of vehicles, the traction batteries of forklift trucks or other motive power equipment, and sometimes also the traction batteries of electric vehicles, are generally manufactured by a battery manufacturer, then integrated into a vehicle or an appliance by an OEM (Original Equipment Manufacturer) and finally made available on the market for the final customer.

The current definition of producer included in the Batteries Directive generally considers the appliance or vehicle manufacturers as the producer:

(12) 'producer' means any person in a Member State that, irrespective of the selling technique used, including by means of distance communication as defined in Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts (1), places batteries or accumulators, including those incorporated into appliances or vehicles, on the market for the first time within the territory of that Member State on a professional basis;

The reason is quite simple and properly reflects the structure of the value chain: a large fraction of the industrial, EV and automotive battery business is conducted through OEMs, which typically operate from a limited number of manufacturing plants, and reach their customers through an extended distribution



network, as illustrated in figure 1.

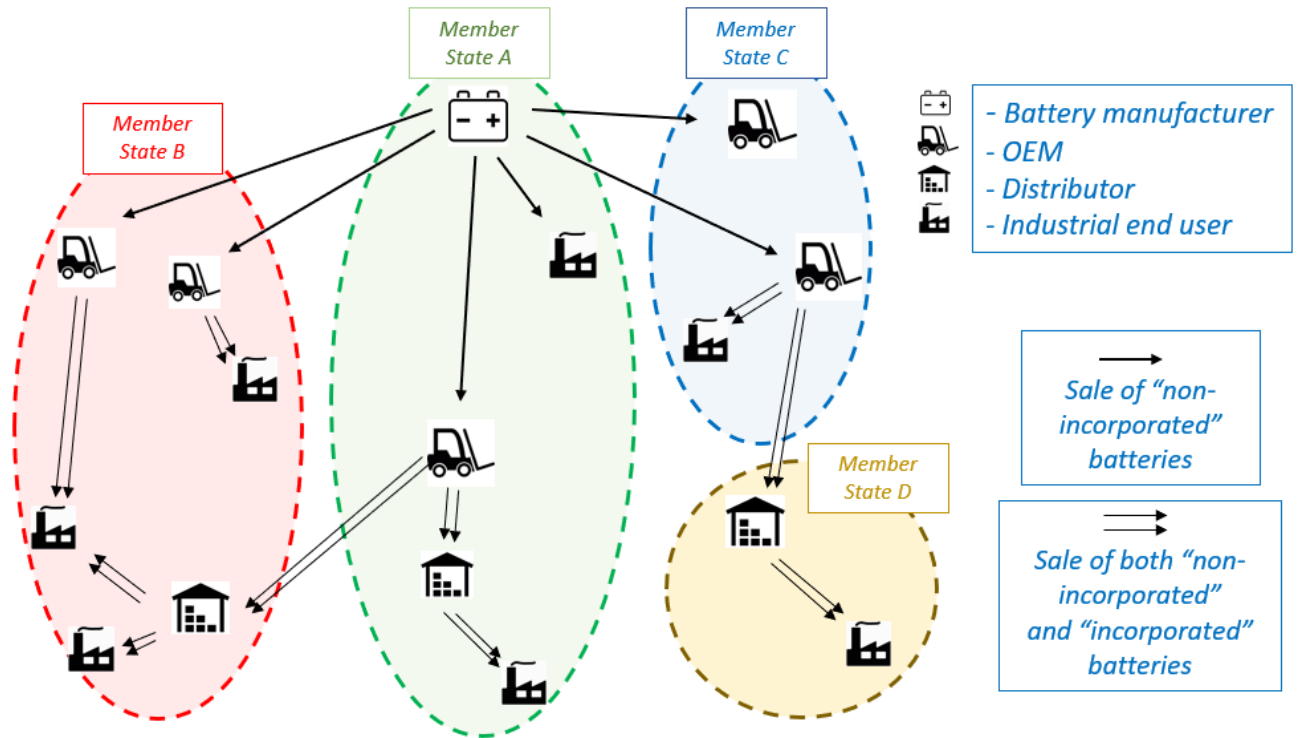


Fig 1: typical industrial, EV and automotive battery value chain

There is however a shortcoming in the Batteries Directive definition which needs to be addressed, concerning the unjustified difference in the identification of the producer depending on the location of the battery manufacturer. Consider figure 2:

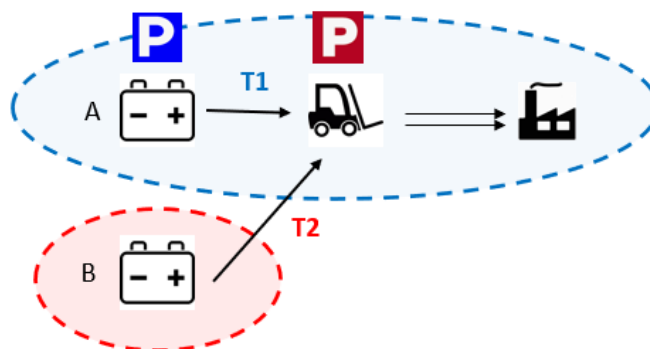


Figure 2: battery manufacturer in the same country of OEM vs battery manufacturer in a different country

Figure 2 illustrates the situation of an OEM with two choices of battery supplier, one in the same Member State and another one from another Member State. According to the definition of producer included in the

Batteries Directive:

- When OEM buys batteries from any member state but his own, the OEM **does not have** producer status
- When OEM buys batteries from his own member state, the OEM **has** producer status

This situation clearly creates disparities between battery suppliers and goes against the objective to create a single market for batteries, since the location of the battery manufacturer compared to the OEM changes the attribution of the producer status, and the obligations connected with it. As the definition stands, it gives a bonus to a “same member state” battery supplier in the eyes of the OEM, which is a barrier to the single market. This situation should be addressed to create a level-playing field and should clearly and unequivocally identify the producer irrespective of its location. The new definition of producer included in the Batteries Regulation builds on the definition of the Batteries Directive, but it does not bring clarity to the definition of producer responsibilities.

2.(37) ‘producer’ means any manufacturer, importer or distributor who, irrespective of the selling technique used, including by means of distance contracts as defined in Article 2(7) of Directive 2011/83/EU, supplies a battery for the first time for distribution or use, including when incorporated into appliances or vehicles, within the territory of a Member State on a professional basis

The industry proposal would have the additional benefit of addressing the many situations (which arise under the Directive definition and would still arise under the Regulation proposal) where the battery manufacturer has no knowledge or control over the fate of the battery incorporated into vehicles or appliances. Indeed, in the case of a battery incorporated in an appliance or vehicle, the OEM often exports the appliance or vehicle in a third country, and the battery manufacturer therefore has no information on where the appliance or vehicle will be placed on the market, and above all where the battery will become waste (figure 3).

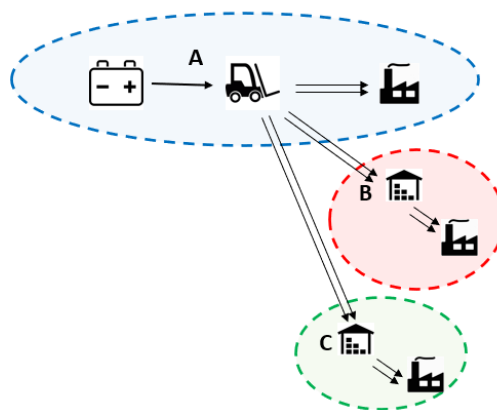


Fig 3: The battery manufacturer has no information on transactions from member state A to member states B and C

Attributing the producer definition to the battery manufacturer and not to the OEM would make it impossible for the battery manufacturer to efficiently organize the take back system as described in Articles

47 and 49 of the Batteries Regulation. Also, other provisions could not be met: for instance,

- the battery manufacturer has no information on the dismantling of vehicles and appliances, which the producer is required to communicate to waste management operators under Article 60.3,
- similarly, the battery manufacturer has no information on the quantity of batteries made available on the market of a given member state and used there (Art 61.2a).

The battery manufacturer is therefore unable to comply with the EPR requirements in the case of batteries incorporated into vehicles or appliances produced by another company; consequently, it should not be considered as the producer in the case of batteries incorporated into vehicles or appliances produced by another company.

Similarly, the producer definition included for instance in the Directive 2012/19/EU on waste electrical and electronic equipment (WEEE) is not suitable for automotive, industrial and EV batteries, since it defines as the producer, among others, “any natural or legal person who [...] manufactures [batteries] under his own name or trademark”, a condition which is generally met by battery manufacturers and which would therefore almost always assign producer status to battery manufacturers.

To solve this issue, it would be preferable to align the case of “same member state” supplier with the case of “any other member state” suppliers. The producer should be the first entity placing on a member state market for distribution or use. Under this option, operational responsibility would always be assigned to local entities, located where the battery will be used, will become waste, and will need to be collected. Consequently, our proposal for the producer definition in the Batteries Regulation is the following:

(37) ‘producer’ means any natural or legal person in a Member State who, on a professional basis and irrespective of the selling technique used, including by means of distance contracts as defined in Article 2(7) of Directive 2011/83/EU, supplies a battery incorporated into appliances or vehicles for the first time in that member state for distribution or end use, or otherwise supplies a battery for the first time in that member state for distribution or end use.

About EUROBAT

EUROBAT is the association for the European manufacturers automotive, industrial and energy storage batteries. EUROBAT has more than 50 members from across the continent comprising more than 90% of the automotive and industrial battery industry in Europe. The members and staff work with all stakeholders, such as battery users, governmental organisations and media, to develop new battery solutions in areas of hybrid and electro-mobility as well as grid flexibility and renewable energy storage.

