

## EUROBAT Feedback on public consultation on the targeted revision of the REACH Regulation

(15 April 2022)

EUROBAT welcomes the public consultation on the targeted revision of Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) and supports the Commission in its efforts to protect consumers, vulnerable groups and workers from the most harmful chemicals.

EUROBAT acknowledges the Chemicals Strategy for Sustainability's ambition in relation to safe products and non-toxic material cycles.

While all battery technologies rely on substances with intrinsic hazardous properties, the risks for workers and the environment are adequately controlled through enforcement of workplace and environmental legislation specifying strict permitting conditions for installations and occupational health and safety provisions.

Regarding risks to consumers and professional users, batteries are sealed articles designed to prevent the release of the incorporated substances during the use phase.

EUROBAT calls on policy-makers to consider the targeted revision of REACH in the wider context of the Chemicals Strategy for Sustainability, which recognises that chemicals, including metals, are the building blocks of low-carbon, zero pollution and energy- and resource-efficient technologies, materials and products.

In light of the Green Deal's ambitious climate change and air pollution mitigation goals, proper attention needs to be paid to the key role played by batteries in supporting clean transport modes and enabling the decarbonisation of the EU's electricity grid.

As an organization representing downstream users of various chemicals, EUROBAT would like to make detailed comments as regards question 7 (registration of certain polymers), 8 (environmental footprint of substances), and 13 and 14 (Authorisation and Restriction).

### SECTION I REGISTRATION

#### Introduction of registration requirements for polymers

EUROBAT considers that the criteria for the identification of polymers as polymers of low concern (PLCs) should ensure that fluoropolymers fall under that category and therefore be exempted from registration requirements.

Indeed, REACH does not specify that persistence alone justifies risk management measures. In addition, fluoropolymers do not degrade to perfluoroalkyl acids (PFAAs). The exclusion of fluoropolymers from the definition of PLC based on a criterion of the formation of degradation products such as perfluoroalkyl acids (PFAAs) is not justified in our view.

Fluoropolymers are an indispensable driver of the European Green Deal and are used within various components of renewable energy installations, including Li-Ion batteries.

More generally, EUROBAT calls on the Commission to consider the implications of introducing registration requirements for polymers, in particular for the availability of niche applications, against the wider sustainability goals on the Green Deal.

EUROBAT's latest Battery Innovation Roadmap, scheduled for publication in June, forecasts that solid state batteries comprising a polymeric electrolyte could start to be mass-produced from 2025 onwards.

Among many assets, solid state batteries are characterized by excellent shelf life and are expected to present potentially lower manufacturing costs than liquid electrolyte batteries.

### **Introduction of information requirements for the environmental footprint of chemicals**

EUROBAT questions the added value of introducing requirements on the environmental footprint of a substance as such, when society only uses mixtures, materials and articles.

The concept of environmental footprint goes beyond substances to cover products and processes and should therefore be primarily considered under vertical legislative frameworks.

We note that the debate on the environmental footprint of chemicals is still at a very early stage, with discussions held in the CARACAL meeting held over 23-24 March 2022 on the basis of document CA/18/2022 being the first opportunity to discuss the Commission's thinking about options for requesting information requirements about on the environmental footprint of chemicals.

At the very least, EUROBAT calls for preserving the coherence of the EU's legislative framework and avoiding inconsistencies between the data to be provided under various horizontal and product-specific legislative frameworks or initiatives, such as the [Corporate Sustainability Reporting Directive](#), the upcoming [Ecodesign and Batteries Regulation](#), the [criteria for safe-and-sustainable by design chemicals](#), the [Non-Financial Reporting Directive](#).

Besides, EUROBAT regrets the lack of reference to the whole life-cycle of substances in CARACAL document CA/18/2022.

While several steps in the manufacturing of non-ferrous metals can come with a high environmental footprint, the inclusion of such metals in applications such as battery electric vehicles (BEVs) or energy storage system (ESS) applications make a positive contribution to air pollution and climate change mitigation goals, resulting in a positive environmental impact across the life-cycle.

If the collection of data on the environmental footprint of substances appears necessary, it would be best to start from a voluntary, industry-led approach.

### **Section III Authorisation and Restriction**

#### ***Including the concept of essential use in authorisations and restrictions and generic risk management approach***

EUROBAT understands that the essential uses concept was developed as a tool supporting generic restrictions aimed at curbing exposure to substances for which the risks cannot be controlled.

One of the main drivers behind the concept is the expected universal restriction proposal on non-essential per- and polyfluorinated substances (PFAS)<sup>1</sup>, a large group of substances with widespread uses and for which little data is available.

Conversely, although many substances used in batteries have hazardous properties<sup>2</sup>, they do not pose a risk to human health or the environment during manufacturing, use, end-of-life management and recycling.

Batteries are sealed units, designed to prevent substances from being released during normal and foreseeable use, while manufacturing and recycling operations are conducted by permitted facilities operating under strictly controlled conditions required under existing EU workplace and environmental legislation to ensure workers' and environmental protection.

Therefore, we consider that the application of the essential uses concept as a central mechanism for exemptions under REACH should be carefully targeted, both for generic and specific restriction proposals.

EUROBAT is concerned that derogations from any possible restrictions or authorisation decisions based on "essentiality" could pose reputational risks and weaken regulatory predictability given the dynamic nature of the essential uses concept and its political dimension.

Therefore, we support the establishment of "safe use" as a primary screening tool for exempting uses of harmful chemicals from restrictions or streamlining the assessment of authorisation decisions.

We recognise that the thinking on the "safe use" concept is at an early stage, with discussions meant to continue during the Commission's workshop on the reform of the authorisation and restriction procedures to be held on June 7<sup>th</sup>.

Nonetheless, we already call on the Commission to integrate the protection provided by legislative obligations as part of the criteria underpinning the expected "safe use" concept, in addition to the technical properties of the processes and articles considered for restrictions and Candidate List listing.

For example, the industrial use of lead metal in batteries, a substance classified as Repr. 1A, is covered by a comprehensive framework of legislation designed to ensure that exposure is minimised below safe levels, including binding limit values under the Chemical Agents Directive (CAD) and permitting obligations based on Best Available Techniques Associated Emission Limit values (BAT-AELs) under the Industrial Emissions Directive (IED).

Likewise, plants that collect and recycle end-of-life lead-based batteries are subject to binding workplace limit values and must meet stringent pollution abatement standards based on BATs under the IED (point 5. of Annex I).

Regarding technical properties, there is no risk to consumers during the service life of the batteries as lead is enclosed within the battery (a 'complex object'). Batteries supplied ready-for-use are sealed units and have no user-serviceable parts. There is no exposure or emission of lead metal or lead compounds.

Besides, EUROBAT wishes to point out that the application of the essential use concept will be made complex by the fact the same substance can be used to perform the same technical function in applications serving different societal purposes.

---

<sup>1</sup> [Registry of restriction intentions until outcome - ECHA \(europa.eu\) - Per- and polyfluoroalkyl substances \(PFAS\)](#)

<sup>2</sup> Lead metal and cobalt are classified as reprotoxic (Lead 1A, Cobalt 1B; Cobalt is also classified a 1B carcinogen) under the CLP Regulation and therefore eligible for restrictions based on the generic approach to risk management (Article 68(2)). On 4 December 2019, France submitted a proposal to classify lithium carbonate, lithium chloride and lithium hydroxide as Repr. 1A.

For example, the same model of starting, lighting, and ignition (SLI) battery can be used in different types of emergency vehicles that regularly experience overloaded systems (firefighting vehicles, ambulances, military vehicles), which makes the use of lead in those types of batteries more or less critical or essential for society depending on the end-use of the article.

Likewise, the same model of battery for energy storage system (ESS) can be used as back-up for power outages in a wide range of contexts (e.g. domestic, medical, military).

Another example is the mechanical power provided by electricity discharge in motive power applications where motion is provided by traction batteries, e.g. industrial equipment such as forklifts.

The level essentiality of the function of releasing electricity on demand and in turn providing the required amount of energy to move and lift objects may be seen as different by policy-makers and society depending on the types of facilities and sectors in which forklifts (the end-articles) are used.

While replacing human motion by traction batteries may be seen as critical for health and the functioning of society in general, the application of the essential use concept in relation to substances used in these batteries will be made difficult by the lack of clarity and outline of the concept.

Accordingly, basing any exemption or derogation from Annex XIV listing and/or restrictions on the essential uses concept will be particularly challenging, something which we think a screening based on “safe use” would alleviate.

Overall, EUROBAT considers that any possible restriction targeting batteries should follow the Article 68(1) procedure, given that information on exposure across the life-cycle is widely available and that evidence should not be discarded in favour of more precautionary approaches.

Concerning the reform of the authorisation and restriction procedures, EUROBAT supports Option 2 of CARACAL document CA/03/2022, with a derogations to be proposed by competent authorities during the drafting phase of restrictions, along with a system allowing applicable joint derogations to be requested by industry, in line lessons learned from the application of Directive 2011/65/EU (RoHS II).

EUROBAT would support moving Annex XIV entries under Annex XVII, either through Article 68(1) or a revised Article 68(2) covering industrial uses as well.

This would help alleviate most of the issues linked with the Authorisation Title, including negative signals to business leaders and investors about the availability of substances, distorted level-playing field with non-EU countries, as well as the costs of applying for authorisation. In a report published on April 2021, ECHA estimates that the average application cost per use has been close to €200 000<sup>3</sup>.

### *Including the concept of essential use in authorisations and restrictions*

EUROBAT considers that authorisation decisions or exemptions should as far as possible rely on the existing risk assessment processes, coupled with an early “safe use” screening.

Nonetheless, EUROBAT welcomes the policy debate that has arisen on the concept and would like to make several comments on the topic.

---

<sup>3</sup> ECHA - Socio-economic impacts of REACH authorisations A meta-analysis of the state of play of applications for authorisation

Regarding the sustainability assessment, we call for the establishment of strict data requirements to prove the existence of alternatives. This is important to ensure that any claims on the existence of alternative(s) to (a) substance(s) falling under the scope of a draft restriction made by e.g. competitors under ECHA's consultations are properly substantiated.

In addition, EUROBAT considers that the "criticality" dimension of the criteria be linked with the objective of increasing the resilience of strategic value chains, as underlined in the updated Industrial Strategy.

The "criticality" aspects of the criteria should build on the key value chains identified as part of the Commission's work on the EU's strategic foresight on chemicals, specifically the strategic dependencies and strategic value chains identified under the ongoing study on foresight for chemicals<sup>4</sup>.

The concept of "regrettable substitution" should also be taken into account when applying the EUC.

Policy-makers should ensure that uses of harmful substances labelled as "non-essential" are not replaced by uses of substances that may be less hazardous but cause a greater level of concern for society.

Lastly, EUROBAT argues that any link between the concept of "most harmful chemicals" and the Classification, Labelling and Packaging (CLP) Regulation should be based on uncontroversial CLH processes, for example classifications for which the Agency's Committee for Risk Assessment (RAC) adopted a unanimous opinion, in line with the current process for identification of substances of very high concern (SVHCs) through ECHA's Member State Committee (MSC).

For example, a controversial classification of the three lithium salts carbonate, chloride and hydroxide as Repr. 1A could represent a deterrent to any decision related to investments in Europe for every product where the lithium salts are used, including EV batteries, in light of the stated goal to phase-out the use of the most harmful chemicals.

### **On the interface between REACH and product-specific legislation**

EUROBAT calls on the Commission to consider Title II (registration), Title III (information in supply chains) and Title VIII (restrictions) of the REACH Regulation as relevant tools for addressing risks arising from the use of harmful substances in batteries, including risks from the waste stage (collection, transport, disposal or recycling).

As regards the waste stage of material life-cycles, the chemical safety assessment to be performed by registrants must cover all stages of the life-cycle of the substance, and the corresponding exposure scenarios should include "waste management measures to reduce or avoid exposure of humans and the environment to the substance during waste disposal and/or recycling"<sup>5</sup>.

As for the risk assessment supporting the preparation of Annex XV Dossiers, ECHA's Guidance on Annex XV for restrictions notes that risk-related considerations may cover the waste stage of substances.

As highlighted in ECHA's Guidance on waste and recovered substances<sup>6</sup>, "recovery operators need to ensure that the recovered substances comply with restrictions as set out in Annex XVII".

---

<sup>4</sup> [GROW/2021/OP/0006](https://ec.europa.eu/growth/policies/eu-strategic-foresight-chemicals/)

<sup>5</sup> Section, 1, step 5 of Annex I of REACH.

<sup>6</sup> [ECHA-10-G-07-EN](https://echa.europa.eu/en/chemicals/safeguarding-public-health/annex-xv-dossiers)

The Commission should take advantage of the revision of the restriction and authorisation procedures and/or refine existing guidance documents to provide further legal certainty on the possibility to make use the procedure to address risks at all stages of the life-cycle of substances, including the collection, transport, disposal or recycling of the corresponding materials, and more generally further clarify the interface between chemicals, products and waste.

Only thus can consistency between the REACH Regulation and vertical, product-specific legislation be ensured and possibly duplicated and inconsistent processes in the legislative framework be avoided.

While the proposal for a Regulation concerning batteries and waste batteries<sup>7</sup> introduces a product-specific procedure for managing hazardous substances, the Commission should consider the review clause proposed under Article 77(3) of the Council's General approach<sup>8</sup> linked with the REACH revision as part of its impact assessment to ensure that double regulation is avoided.

Should the Commission consider that risks concerning the waste phase of harmful chemicals in batteries are not fully addressed by Titles II, III and VIII of REACH, the Industrial Emissions and Waste Framework Directives or OSH legislation, we consider that targeted restrictions following a specific approach to risk management would represent an appropriate policy answer.

In addition, any projected restriction affecting battery value chains, be it under Title VIII of REACH or Article 6 to the upcoming Battery Regulation, should be included at the earliest possible stage under a revised version of the Commission's and ECHA's restrictions Roadmap<sup>9</sup>.

\*\*\*

## 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.



Avenue de Tervueren 188A, Box4, 1150 Brussels, Belgium  
EU Transparency Register: 39573492614-61



<sup>7</sup> COM/2020/798 final

<sup>8</sup> 7103/1/22 REV 1

<sup>9</sup> CA/51/2021