

5 December 2022

## Achieving the Green Deal sustainably

### Recommendations for the 9 December Batteries Regulation trilogue

As the Batteries Regulation proposal negotiations near the end, the European battery manufacturers wish to stress the importance of framing five key issues from the text in the correct way:

1. **Grandfather clause, art. 1(3a):** a grandfather clause needs to ensure appliances such as trains, aircraft and industrial systems continue operating with batteries designed before the entry into force of the Regulation, and for which a design update is not possible without altering the architecture of the entire application.
2. **Battery producer definition, art. 2.37:** the definition should assign producer status to the appliance or vehicle original equipment manufacturers (OEM) irrespective of the location of the battery manufacturer. OEM should therefore take over end-of-life responsibilities as they are closer to the market where the vehicle or the appliance will be placed and therefore better positioned to efficiently organize the end of life management (2.37).
3. **Recycled content and information per batch of batteries, art. 8:** the original article proposes to gather information per batch of batteries. There is no definition of “batch” in the text, but each battery plant potentially produces several models and batches each day. This requirement would force manufacturers to produce hundreds of certificates every year, with negligible benefit over a single annual carbon content disclosure per battery model.
4. **Information on dismantling of vehicles, art. 60.3a:** if the producer definition is not amended as indicated by EUROBAT (attributing extended producer responsibility to the OEMs), the requirement in art 60.3a should be deleted as batteries manufacturers do not have information on the vehicles and appliances batteries are installed in.
5. **Carbon footprint calculation, Annex II.** Carbon footprint calculation rules should set restrictions to the use of negotiable attribute tracking instruments (Guarantees of Origin or similar instruments) to situations where the laws of physics “demonstrating a temporal and geographical link” are not violated. We therefore support the text of the EP mandate for Annex II point 2a.

We provide in the following a fuller explanation and amendments for each of the points.

### Grandfather clause, art. 1.3a

Once the regulation enters into force, it will rule out the distribution of certain types of batteries, including batteries incorporated in appliances designed before the entry into force of the regulation, for which a redesign is not possible without redesigning a significant part of the electrical system of the application (e.g. in trains, aircrafts, industrial system, etc.). A grandfather clause needs to be included for (a) spare parts batteries which are incorporated in equipment already in service, and (b) supplies for safety-sensitive applications designed before the entry into force of the regulation and their spare parts.

#### *European Parliament mandate*

3a. With the exception of Chapter VII, this regulation shall not apply to batteries which the producer can prove were produced before the entry into force of this regulation.

#### *EUROBAT suggested amendment*

3b (new). **Chapter II and chapter IV shall not apply to industrial batteries placed on the market which:**

- **are of a model which the manufacturer can demonstrate was first placed on the market before entry into force of this regulation,**
- **and are sold to the manufacturer or to an end-user of an air, rail or underground mass-transit system, of a model which was first placed on the market before entry into force of this regulation,**
- **and provide to this mass transit system a power back-up service for the safety of the mass-transportation system and its passengers.**

### Battery producer definition, art. 2.37

The definition should assign producer status to the appliance or vehicle original equipment manufacturers (OEM) irrespective of the location of the battery manufacturer. OEM should therefore assume end-of-life responsibilities, also when the OEM purchases a battery from a manufacturer in the same country, as they are closer to the market where the vehicle or the appliance will be placed, and therefore better positioned to efficiently organize the end of life management.

#### *Council amendment*

producer' means any manufacturer, importer or distributor **or other natural or legal person** who, irrespective of the selling technique used, including by means of distance contracts as defined in Article 2(7) of Directive 2011/83/EU, **alternatively** 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.: (i) **is established in a Member**

#### *EUROBAT suggested amendment*

(37) 'producer' means any **manufacturer, importer or distributor 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**

State and manufactures batteries under its own name or trademark, or has batteries designed or manufactured and supplies them for the first time under its own name or trademark, including those incorporated in appliances, light means of transport or vehicles, within the territory of that Member State; (ii) is established in a Member State and resells within the territory of that Member State, under its own name or trademark, batteries, including those incorporated in appliances, light means of transport or vehicles, manufactured by others. A reseller is not regarded as the ‘producer’ if the brand of the producer appears on the batteries, as provided for in point (i); (iii) is established in a Member State and supplies for the first time on a professional basis, batteries, including those incorporated in appliances, light means of transport or vehicles, from a third country or from another Member State; (iv) sells batteries, including those incorporated in appliances, light means of transport or vehicles, by means of distance communication directly to end-users, that are either private households or other than private households, in a Member State, and is established in another Member State or in a third country.

first time in that member state for distribution or end use.

## Recycled content and information per batch of batteries, art. 8

The administrative costs of this measure would put an unjustified strain on battery manufacturers (who would be forced to produce certificates for each batch they produce). A proper level playing field could not be ensured as market surveillance authorities will not have the resources to guarantee the compliance of all products. Besides, this requirement should not be imposed on every battery model: certain batteries require higher levels of primary materials to deliver better performances. Considering company averages would solve such problems: every company would simply have to provide information on the percentage of cobalt, lead, lithium or nickel recovered from waste present in the batteries placed on the EU market as an aggregated figure. The overall objective of monitoring (and set up targets, if needed) the use of recycled content would be met in a more efficient and less burdensome way.

### *Commission proposal*

1. From 1 January 2027, industrial batteries, electric vehicle batteries and automotive batteries with internal storage and a capacity above 2 kWh that contain cobalt, lead, lithium or nickel in active materials shall be accompanied by technical documentation containing information about the amount of cobalt, lead, lithium or nickel recovered from waste present in active materials in each battery model and batch per manufacturing plant.

### *EUROBAT suggested amendment*

1. Electric vehicle batteries and ~~rechargeable~~ **industrial stationary energy storage** batteries with ~~internal storage and~~ a capacity above 2 kWh shall be accompanied by technical documentation that includes, for each battery model ~~and batch~~ per manufacturing plant, a carbon footprint declaration drawn up in accordance with the delegated act referred to in the second sub-paragraph and containing, at least, the following information:

### End of life information on dismantling of vehicles for producers, art. 60.3

EUROBAT supports the Commission proposal and suggests that should the producer definition not be amended as indicated by EUROBAT (always attributing extended producer responsibility to the OEMs), the requirement in Art 60(3)(a) should be deleted. In transactions between a battery manufacturer and an OEM in which the manufacturer holds producer status, it cannot be expected that the battery manufacturer supplies information on the dismantling of vehicle and appliances to allow the removal of incorporated batteries. Only the OEM can do this as it manufactures and owns the vehicle. This is why EUROBAT recommends that in a such supply scenario, the OEM must hold producer status and the battery manufacturer should not.

#### *Council amendment*

3. From the moment that a battery model is supplied within the territory of a Member State producers shall make available electronically, ***free of charge*** and upon request, to waste management operators carrying out repair, remanufacturing preparing for re-use, preparing for reuse repurposing, treatment and recycling activities, as far as it is needed by those operators to carry out those activities, the following battery model specific information regarding the proper and environmentally sound treatment and waste batteries: (a) the processes to ensure the dismantling of light means of transport, vehicles and appliances in a way that allows the removal of incorporated batteries;

#### *EUROBAT suggested amendment*

Delete the requirements in 60.3a or adapt the producer definition to clearly, coherently, and unequivocally identify the producer in the case of batteries incorporated in vehicles or appliances.

### Limitations to the use of negotiable attribute tracking instruments (Guarantees of Origin or similar instruments) for the carbon footprint calculation, Annex II (art. 7).

We support that a temporal link (hourly) and geographical link (same bidding zone) be required to allow contracts between the energy supply and its use by the economic operator to be used for the carbon footprint calculation. In absence of such links, the country mix shall be used or attribute of the energy delivered via a direct and dedicated link, as the case may be.

#### *Council amendment*

(none)

#### *European Parliament mandate*

(2a).  
When calculating the carbon intensity of the energy used during the different battery life cycle stages and processes as listed in point 4, average carbon emissions data for

the country where the specific activity or process took place shall be used. Lower emission factors shall only be used where the economic actor can reliably demonstrate that the region where the specific activity took place and which supplied the energy to the economic operator or their individual processes or energy supply are less carbon intensive than the country average. This shall be demonstrated via proof that the energy is taken from that region and that it is less carbon intensive, or via a direct connection to a renewable or lower carbon energy source or a contract demonstrating a temporal and geographical link between the energy supply and the use by the economic operator, which must be verified by a third party verification statement.

## About EUROBAT

EUROBAT is the association of the European manufacturers of automotive, industrial and energy storage batteries. EUROBAT represents more than 90% of the automotive and industrial battery industry in Europe though its more than 50 members from across the continent. EUROBAT members and secretariat 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.

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