

## PROPOSAL OF NEW EUROPEAN BATTERY REGULATION

### 1. CONTEXT

The European Commission is required to revise the Batteries Directive 2006/66/EC. Following the adoption of the Strategic Action Plan on Batteries<sup>1</sup>, the Commission wishes to include requirements related to the sustainability and safety of batteries. Such requirements should help the internal market to operate more seamlessly and improve the environmental performance of batteries. The adoption of a new regulatory framework for batteries is mentioned as a key deliverable in support of the Strategic Action Plan on Batteries in the Annex to the Commission's Communication "The European Green Deal"<sup>2</sup>.

The PFA would like to provide its initial assessment on the Commission proposal on a new Battery Regulation. The PFA supports that batteries placed on the EU market should become sustainable, high-performing, and safe all along their entire life cycle and keep a level playing field. However, we would like to point out that the specific requirements for batteries of electric vehicles should be taken into account and should also be in line with existing or upcoming vehicle legislation to avoid double regulation. Furthermore, the definitions in different regulations should be consistent within the new Battery Regulation. In the following paragraphs, we would like to highlight further concerns.

### 2. KEY MESSAGES AND RECOMMENDATIONS

#### KEY MESSAGES

- a. Batteries must become sustainable, high-performing and safe
- b. We welcome the Commission's acknowledgment that specific requirements must be revisited at the time of implementation to determine their adequacy
- c. The Regulation should avoid burdensome double regulation
- d. Need for more flexibility in order to adequately prepare producers and the supply chains

#### KEY RECOMMENDATIONS

- e. Simplify implementation and timeline
- f. Favour existing international regulations
- g. Develop a standardised test for state of health
- h. Efficient use of resources to promote circularity in any value chain
- i. Clarify roles and responsibilities of producers in extended producer responsibility
- j. Consider other carbon footprint calculation methodologies
- k. Avoid double regulation on repurposing and remanufacturing requirements
- l. Revise information and reporting requirements
- m. Acknowledge ongoing work on due diligence
- n. Use consistent definitions for the collection of waste batteries

<sup>1</sup> Annex to the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - On the Move, Sustainable Mobility for Europe: safe, connected and clean

<sup>2</sup> COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE EUROPEAN COUNCIL, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS The European Green Deal COM/2019/640 final

### 3. AREAS OF CONCERN

#### 1. Simplify implementation

The proposed Regulation comes with a very high number of implementing and delegated acts, through which the Commission will define calculation methodologies, parameters and minimum values, among other things.

We welcome the Commission's acknowledgment that some specific requirements must be revisited at the time of implementation to determine their adequacy. However, combined with a fragmented and difficult to manage timeline, we believe that these acts will have fundamental and far-reaching impacts on product development and production method for electric vehicle applications. Some of the proposed changes would require a lead time of 3 to 5 years in order for the industry to adopt design changes.

We therefore recommend that the timeline be simplified and that the enforcement of the new delegated and implementing acts be concentrated to a limited number of dates.

#### 2. Favour existing international Regulations

Article 10 of the proposed Regulation, combined with Annex IV, introduces new performance and durability requirements for rechargeable industrial batteries and electric vehicle batteries. However, performance and durability are already being regulated at international level by the Global Technical Regulations (GTRs) developed by the United Nations Economic Commission for Europe (UNECE).

More specifically, a new GTR on electrified vehicles defining vehicle-specific durability performance requirements is expected to be adopted in 2021/2022 for passenger cars (M1) and light goods vehicles (N1), and at a later date for buses (M2, M3) and heavy-duty vehicles (N2, N3). This Global Technical Regulation on batteries will set out more comprehensive tests and should develop requirements that provide more relevant information on battery performance and durability.

There is a clear overlap between this legislative proposal and the new GTR, which will lead to an unnecessary increase of the administrative burden on producers. In the spirit of consistency and international harmonisation, we therefore recommend that the proposed Regulation only refers to the requirements developed at UNECE level for electric vehicle batteries. A lot of time was already invested in studies to come up with the new GTR.

#### 3. Develop a standardised test for state of health

Article 14 of the proposed Regulation (complemented by Annex VII) provides that batteries with a capacity over 2 kWh should include a battery management system (BMS) with data on their state of health (SOH) and expected lifetime. It also provides that the data should be accessible for the purpose of reusing or remanufacturing the battery.

However, accessing raw BMS data is not a reliable way of determining the state of health of a battery, considering that the algorithms used differ depending on the type of battery, making direct comparisons impossible. Furthermore, providing access to BMS data also raises issues linked to intellectual property rights, as BMS data typically comprises proprietary information, which cannot be disclosed without limitations.

The future UN GTR on 'Battery durability' will address the issue of State of Health through monitoring of 'State of Certified Energy'. The reliability of this indicator can be verified by a standardized test (homologation test). To avoid double regulation with the UN Regulation that will transpose the GTR EVE work, the PFA proposes to exempt the requirement in article 14 for electric vehicles.

#### 4. Bring flexibility to recycling requirements

Article 8 of the proposal introduces specific targets for the percentage of recycled content in manufactured batteries, starting from 2030. However, we believe that these requirements could hinder the development of new electromobility innovations due to the technical limitations of recycling processes or potential shortages of the recycled materials necessary to produce new battery cells. Such shortages could also have a negative impact on the global competitiveness of vehicles made in the EU for export.

Furthermore, the current timeline is too ambitious for a proper implementation. For instance, it is too early to assess the technical feasibility of a 95% recovery rate for cobalt and nickel. As of today, it is also close to impossible to predict in which quantities a recycled material will be available 15 years from now, when EV batteries are returned for recycling purposes – or even later when it includes second-use batteries.

Likewise, it is very difficult to predict what new technologies will be on the market by then, and how this will influence demand for and supply of virgin and recycled materials. Consequently, the overall goal must be to create a level playing field for all market operators and to prevent a shortage in supply of recyclates.

The development of battery technology continues at a fast pace, and the composition of batteries can and will change. We therefore recommend that these new requirements show more flexibility to ensure that the rollout of electromobility is not jeopardised; for instance, the 2030 targets should be defined by 2025 based on an assessment of current recycling technologies.

#### 5. Ease extended producer responsibility guarantee requirements

Article 47 of the Regulation states that battery producers should have extended producer responsibility (EPR) for their products sold on EU markets. This entails the collection of waste batteries as well as their transport, preparation for repurposing and remanufacturing, treatment and recycling. It also requires that producers and producer responsibility organisations have the necessary organisational and financial means to fulfil their EPR obligations.

We believe that the vast costs incurred by these new requirements would immobilise huge amounts of capital that would then no longer be available for other purposes, such as research and development. Thus, we recommend that the provisions on the guarantees to be provided by producers and producer responsibility organisations be more flexible.

Moreover, second use and re-use of EV and industrial batteries raises a number of questions regarding EPR. The automobile industry calls for a clear definition of what the responsibility of vehicle manufacturers is when it comes to collecting batteries that they have put on the market for their initial use.

Producers or importers of EV and industrial batteries cannot be held responsible for second-use batteries put on the market by third parties. The producer of a battery for second-life use should carry product liability and extended producer responsibility. Furthermore, when a battery is used for second-life applications, the producer of the second-life product must install labels and ensure that the new product is clearly identified as a second-life product.

## **6. Consider other carbon footprint calculation methodologies**

Article 7 of the proposal introduces new requirements on carbon footprint declarations, which would have to accompany all electric vehicle batteries starting on 1 July 2024. The Commission is also tasked with establishing a methodology for the calculation of the carbon footprint (July 2023), battery performance class requirements (December 2024) and maximum Life Cycle thresholds (July 2026) via delegated acts.

The Automotive industry believes that the proposed delay between the delegated acts and their entry into force is too short for an adequate implementation by producers. We also believe that the Product Environmental Footprint (PEF) calculation methodology (described in Annex II and in the relevant Product Environmental Footprint Category Rules) is insufficient for a proper assessment of the carbon footprint of batteries.

ACEA is part of the PEF secretariat to further work on this topic and the results of this working group should be taken into consideration.

## **7. Avoid double regulation on repurposing and remanufacturing requirements**

Article 59 of the proposed regulation introduces new requirements related to the repurposing and remanufacturing of electric vehicle batteries, most notably related to independent operators carrying out such operations.

However, operators already have access to all necessary dismantling, repair and handling instructions from the OEM according to the requirements introduced by Regulation 2018/858 on the approval and market surveillance of motor vehicles.

Moreover, mandating the use of standardised tools and processes for the dismantling of batteries could result in unwarranted technology and design restrictions. For the sake of extended producer responsibility, it is also essential that battery repairs and reuse remain managed by authorised operators.

We therefore recommend that the Regulation recognises that repair, reuse, remanufacturing and repurposing of traction batteries from electric vehicles must be performed in authorised workshops by trained personnel, considering that there are already established processes in place to provide the necessary advice and instructions for repairs and treatment of end-of-life vehicles.

Furthermore, in order to secure improved circularity, remanufactured and repurposed batteries should generally be exempted from obligations that require collection and back tracing of data and obligations not required when placed on the market for the first time.

## **8. Revise information and reporting requirements**

Article 64 of the Regulation mandates the Commission to set up an electronic exchange system for battery information by 1 January 2026. This system will contain information and data on electric vehicle batteries and rechargeable industrial batteries, divided into publicly accessible information and information accessible only to accredited remanufacturers, second-life operators and recyclers.

We believe that these information and reporting requirements could become a major burden for OEMs and their suppliers, as well as for operators of waste treatment facilities.

We also believe that disclosing the required information breaches existing confidentiality and IP regulations, while there are already well-established tools and processes such as the International Dismantling Information System (IDIS). This is particularly true for the disclosure of the battery composition (point E of Annex XIII). For the automotive sector the battery composition is incredibly sensitive information and such a disclosure would reduce any competition amongst manufacturers on improving their battery technology.

We therefore recommend that an assessment of the real information needs of the relevant stakeholders be performed, as well as the most efficient process of information provision, while considering the existing reporting and information systems. The requested information should be kept to a minimum and abide by existing confidentiality and IP regulations. We also recommend that double reporting be avoided, in order to decrease the administrative burden and minimize the risk of errors.

## **9. Acknowledge ongoing work on due diligence**

Article 72 of the proposal regulates supply chain due diligence schemes, which are meant to ensure that raw materials entering the supply chain should be responsibly sourced. However, we believe that this provision overlaps with the ongoing work on an EU-wide system of due diligence for supply chains, which could increase the administrative burden on producers.

Nevertheless, if battery specific provisions ought to be included in this Regulation, it is important that substance specific requirements are explicitly mentioned. We would therefore recommend that the CAS (Chemical Abstracts Service) numbers of the affected substances be clearly provided in the Regulation. This would ensure that manufacturers could start working on their specific supply chains and adapting them to the new requirements.

## **10. Use consistent definitions for the collection of waste batteries**

Article 49 of the regulation provides for the collection of waste automotive and electric vehicle batteries and the take back arrangements of producers.

The Automotive industry is ready and prepared to take back free of charge electric vehicle waste batteries at collection points provided by the producers. However, while we welcome the flexibility shown in the provision, we believe that the definitions used still lack clarity. A consistent use of 'take back' should mean the compliant acceptance and reception of goods at a location defined by the legally responsible actor. In this context, 'hand over' should be defined as the delivery of waste batteries at the above-mentioned collection point.

Therefore, we recommend that Article 49 use the proposed definitions, which we believed to be clearer and more consistent.

In compliance with Directive 2000/53/EC and private-sector initiatives, automobile manufacturers already fulfil their extended producer responsibility (EPR) for end-of-life vehicles (ELV). That is the reason why very efficient and well-working collection and recycling processes already have been implemented in many EU member states. We therefore believe that new collection schemes and private-sector initiatives should not be mandatory.

## **4. PFA Positions**

### **1. Timeline and Number of delegated and implementing acts**

We ask the Commission, the European Parliament and the European Council to develop a reasonable timeline and to concentrate enforcement of new delegated and implementing acts to a limited number of dates. The time between the dates on which the methods will be defined and the date of entry into force is too short.

### **2. Performance/ Durability**

To avoid redundant, *overlapping*, or inconsistent *regulations*, we ask the Commission, the European Parliament and the European Council that for any specific performance and durability requirements in the Battery Regulation referring to EV batteries (categories M and N) there is simply a reference to the appropriate UNECE regulations in order to foster international harmonization.

### **3. Provision of data relating to the state of health of a battery**

We ask the Commission, the European Parliament and the European Council to exempt electric vehicles from the requirement in article 14 and to consider certification of the state of the battery post first life based on the future UN GTR on 'Battery durability' that will address the issue of State of Health through monitoring of 'State of Certified Energy'.

### **4. Circularity: Repairing, reusing and remanufacturing of batteries**

We ask the Commission, the European Parliament and the European Council to acknowledge that there are regulations already covering repair, reuse and remanufacturing issues. Double regulation must be avoided for electric vehicle batteries.

We ask to recognize that safety and continued proper operation of the battery mandates that repair, reuse, remanufacturing and repurposing of traction batteries from electrified vehicles must be performed in authorized workshops by trained personnel. There are already established processes in place to provide the necessary advice and instructions for repairs and vehicle end of life treatment, e.g. RMI (Repair and maintenance information regulation) and IDIS (International Dismantling Information System), which preclude the needs for additional standardization in this area.

### **5. General definitions for Responsibilities, Scope and Terminology**

We ask the Commission, the European Parliament and the European Council to make the EPR (extended producer responsibility) process and responsibilities clear with regard to all lifecycle stages of the batteries and ensure that there is no double obligation.

We ask for more clarity on the definition of remanufacturing, refurbishing, and on definitions that could have a strong impact on the responsibilities of the battery producer, e.g. the economic operator and distributor with regard to OEMs, battery producers, retail points.

### **6. Recycling efficiencies and recycled content**

We ask the Commission, the European Parliament and the European Council to bring flexibility to the requirements related to recycling efficiencies, recycled material recovery, and use of recovered materials in the active materials of new cells to ensure that the regulation

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does not jeopardize the roll-out of electromobility due to technical limits of recycling processes or shortages of recycled materials to produce new battery cells.

#### 7. End of life Information/ Electronic Exchange system

We call the Commission, the European Parliament and the European Council to perform an assessment of the real information needs of the involved stakeholders as well as of the most efficient process of information provision while recognizing the already existing reporting and information systems. We also ask that the requested information is kept to a minimum and respects existing confidentiality and IP regulations.

We furthermore ask to secure that double reporting into different systems is avoided to reduce reporting burden and minimize risk of errors.

#### 8. Due Diligence

We ask the Commission, the European Parliament and the European Council to consider the work in progress on a general proposal on due diligence, to ensure that there is no double regulation on due diligence by the Battery Regulation.

We ask to specify CAS (Chemical Abstracts Service) numbers of substances in scope of the regulation and to consider reasonable lead times to align the supply chain to the new requirements to enable accurate fulfilment of the proposed due diligence requirements.

#### 9. Extended producer responsibility

We ask the Commission, the European Parliament and the European Council to bring more flexibility to the requirement on guarantees that shall be provided by producers and producer responsibility organizations.

We ask to consider the proposed definitions and consistently use "take-back" and "hand-over" in the regulation.