

Position Paper
**On the proposal of the
EU Commission for a new
Battery Regulation**

Introduction

The German electrical and electronic industry organized in the association ZVEI believes that the proposed regulation for the battery sector published by the EU Commission on December 10, 2020 is a good approach to strengthen the European battery industry, to harmonize national regulations, and to take into account the increased sustainability requirements. However, after an in-depth review of the proposal, we conclude that there is still a need for adjustment at various points in the draft.

Main messages

- 1) Definitions of terms and scopes need to be reviewed in a precise manner. The specifics of each battery application and battery technology should be considered.
- 2) Restrictions on hazardous substances should base on the well-established REACH and OSH regulations and not on new parallel processes in the Battery Regulation.
- 3) The scope of carbon footprint should focus in a first step on “electric vehicle batteries” and in a second step on battery technologies with the biggest CO2 saving potentials.
- 4) Any numerical targets, e.g. for collection rates, shall be adopted only after the adoption of a proper methodology. For collection of portable batteries, we propose the calculation method "batteries available for collection".
- 5) Recycling content targets should be based on yet to be developed reliable data on the development of markets for batteries, raw materials and recycling materials.
- 6) Repaired or remanufactured Batteries have to comply with the same strict standards and certification process as new products.
- 7) Removability and replaceability specifications should consider specific product requirements and safeguarding consumer safety.
- 8) For information sharing, the concept of the "Digital Product Passport" should be considered.
- 9) For standardization, the established European standardization system should be used in the development of harmonized standards relating to Batteries.
- 10) Due Diligence in the supply chain should be streamlined and facilitated. We propose the creation of a negative list of "non-sustainable" raw material companies.
- 11) Producers should not be made responsible for organizing the preparation for reuse and recycling of batteries and for bearing the costs of this activity. The decision to recycle or reuse a battery must be left to the market.
- 12) The clarification of how market access criteria for batteries will be tested and enforced, especially for batteries imported into the EU, is essential.
- 13) User safety is a top priority for producers. Product development therefore requires sufficient lead time in case of new product requirements by delegated and implementing acts.

Legal basis

We are concerned that the new proposal for the Battery Regulation is a step away from the very successful New Legislative Framework. We recommend a careful assessment of the change of the legal basis and the use of Article 114 of TFEU for any potential upcoming legislative initiative. The proposal is based on Article 114 of the Treaty on the Functioning of the European Union (TFEU), which must be used for measures that aim to establish or ensure the functioning of the single market. This is a switch from the current legal basis as the Batteries Directive 2006/66/EC was based on Article 175 TEC (now Article 191 TFEU) and on Article 95 TEC (now Article 114 TFEU) for the identified product-related provisions.

Chapter I - General provisions

Definitions of terms and scopes should be carefully assessed in relation to the obligations imposed. The specifics of each battery application and battery technology should be considered.

Definitions of general Terms

The new Batterie Regulation will adapt the main principles of the New Legislative Framework (NLF) including CE marking, declaration of conformity, responsibilities of economic operators and market surveillance. Consequently, the Regulation (EU) 765/2008 on principles of CE marking, Directive (EU) 2001/95/EG on safety of consumer products and Regulation (EU) 2019/1020 on market surveillance are to be applied to batteries in parallel. For legal certainty and to avoid confusion it is necessary, that for the same elements used within this system the same terms and definitions are to be used. The relevant common definitions for Union Harmonisation Legislation are given in Decision 768/2008/EG and already used Union Harmonisation Legislation according the NLF. The current draft of the future Batterie Regulation deviates partly from these common terms and definitions and differently in language versions. See in particular the very important term “manufacturer” Art. 2 Point (27). In the German draft “Erzeuger” is used what should read “Hersteller” in accordance with NLF. The term “Hersteller” is used instead as translation for the term “producer” (Art. 2 Point (37)).

<p>Proposal: For commonly used elements of NLF take over the NLF terms and definitions as given by Decision 768/2008/EG and already used in Regulation (EU) 765/2008 and 2019/1020 for all language versions.</p>
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Definition of battery system

It is not clear from the definition how to proceed with the interconnection of batteries (battery systems).

<p>Proposal: The following definition should be added to clearly delimit the term "batteries": (xx) Battery system: interconnection of several batteries</p>

Definition of batteries

In the proposal we see inconsistencies in the definition of and the differentiation between different designs of batteries (cell, pack, module). Given the fact that the future regulation will be used by a multitude of sectors (battery manufacturer, assemblers, application manufacturers) these definitions must be unambiguous and applicable for all kind of uses. Currently we are working on such definitions. The work is still going on. Therefore, we will give input on that soon but not in this consultation.

Internal storage (Art. 2, point 6)

The definition of “battery with internal storage” seems to have the same intention as the definition of “Battery cell” in point (2), where it says “... and containing the active materials ...”. The term “with internal storage” is therefore, in conjunction with point (1), redundant. It is also not used in battery technology, where batteries other than with “internal storage” are known as “flow batteries” or “redox-flow batteries”.

Proposal: Delete point (6) as well as reference to “with internal storage” throughout the document.

Portable battery (Art. 2, point 8)

We welcome the intention to better adapt the definition of portable batteries to the use by the end user. Nevertheless, the chosen criteria need to be improved.

Proposal: The definition should not refer to weight, but to handling. For this purpose, the previously proven criterion of portability ("can be held in the hand") should be added again.

Furthermore, the weight criterion should be replaced by an adequate energy content criterion. This is also reflected in the relevant labelling requirements and relevant standards. In addition, an energy content criterion would contribute to the conclusiveness of the delimitation, such as is done for the articles for industrial and EV batteries. We propose the delineation value of <2kWh for this purpose, as is applied to the other battery categories.

Furthermore, we propose to add the phrase "includes batteries for light means of transport" to clarify the intention of the EU Commission that these batteries should fall into the category of portable batteries in the future (see recital 81 of the proposal). In addition, the definition of EV batteries should be adapted analogously and explicitly exclude batteries for light means of transport.

Light means of transport (Art. 2, point 9)

The definition of “light means of transport” is not consistent with recital (12) where scooters are included. Furthermore, it is unclear why the watt-threshold is set at 750W as it does not reflect the current state of EU legislation and would split established vehicle categories (see Two Wheeler Directive 168/2013/EU). In addition, it is not clear whether the watt-threshold refers to maximum power or maximum continuous rated power.

Proposal: ‘light means of transport’ means wheeled vehicles that have an electric motor powered by a portable battery of less than 750 watts, on which travellers are seated when the vehicle is moving and that can be powered by the electric motor alone or by a combination of motor and human power

Automotive battery (Art. 2, point 10)

On-board power supply batteries for electric vehicles are not adequately described in the definitions. On-board power supply batteries are not to be equated with appliance batteries. The recycling routes for spent vehicle electrical system batteries are similar to those for starter batteries.

Proposal: ‘automotive battery’ means any battery used ~~only~~ for automotive starter, lighting, ~~or~~ ignition power or main on-board power supply on vehicles;

Stationary battery energy storage system (Art. 2, point 13)

An energy storage system is not a battery. Nor is a battery energy storage system the same as a battery. A battery energy storage system consists of one or more batteries and an electric

power conversion system which converts the energy to the form which is compatible with the grid.

Proposal: Replace the term “stationary battery energy storage system” with “stationary battery energy storage system battery”.

Battery management system (Art. 2, point 22)

The main purpose of a battery management system is to ensure that all components operate safely within their specified ranges of parameters including voltage, temperature and current. Safety needs to be mentioned above function. The safety aspect must not be disregarded by picking the definition from a safety standard without mentioning safety. See IEC 62619, *Secondary cells and batteries containing alkaline or other non-acid electrolytes - Safety requirements for secondary lithium cells and batteries, for use in industrial applications*.

Proposal: “battery management system” means an electronic system associated with a battery which has functions to control current in case of overcharge, overcurrent, overdischarge, and overheating and which monitors and/or manages its state, calculates secondary data, reports that data and/or controls its environment to influence the battery’s safety, performance and/or service life.

Repurposing (Art. 2, point 26)

Since the draft regulation introduces specific requirements for the repurposing of batteries, it should also include a definition that reflects the basic safety-related requirements for repurposing.

Proposal: for crucial safety related reasons the definition for repurposing needs to include that only “certified” parts (sub-units) or complete battery packs are allowed for a second life.

State of charge (Art. 2, point 24)

Rated capacity is used to define “state of health”. However, a definition of rated capacity is missing. An acceptable definition for rated capacity can be found in the UN Recommendations on the Transport of Dangerous Goods, Manual of Tests and Criteria.

Proposal: “Add the following term and definition: ‘rated capacity’ means the capacity, in ampere-hours or milliampere-hours, of a cell or battery as measured by subjecting it to a load, temperature and voltage cut-off point specified by the manufacturer.

Reuse (Art. 2, point 40)

Reuse is used for different objects in the document, not only for batteries but also for secondary raw materials.

Proposal: ‘reuse of a battery’ means the complete or partial direct re-use of the battery for the original purpose the battery was designed for

Chapter II - Sustainability and safety requirements

Restrictions of hazardous substances (Art. 6, Art. 71)

Any restriction on the use of a substance in batteries should follow a risk-based approach, also taking into consideration the results of a socio-economic impact assessment and the availability of alternatives. We welcome that fact that the Battery Regulation proposal adopts these fundamental principles. However, we are concerned with the introduction of a fully new parallel process described in Articles 6, 71 and 73 of the proposal with its own procedural rules,

which duplicates the existing and well-established REACH restriction process set out in Annex XVII of Regulation (EC) No 1907/2006.

Duplication of Hazardous substance management need to be avoided. Cross-reference in the Batteries Regulation to the requirements of the REACH Regulation and OSH framework is sufficient to ensure the management of hazardous substances in batteries.

Proposal: ZVEI therefore urges the co-legislators **to make use of the well-established REACH and OSH regulations** when regulating hazardous substances and **refrain from creating a new parallel process** in the Battery Regulation

Carbon Footprint (Art. 7)

We have some doubts whether the timetable proposed by the Commission for the development of a viable method for calculating the carbon footprint can be met. For example, the rules for different categories of product-related ecological footprint are currently only available for lithium batteries for mobile applications, but not for lead or nickel batteries or for stationary batteries. The calculation of the carbon footprint in the case of industrial batteries for each technology and application is not possible or would be very inaccurate at the current stage due to the lack of a harmonized calculation method. Comparability of the footprint of batteries is therefore not possible in a uniform and comparable manner across all market participants. Also, the volumes of the respective batteries in the respective applications and thus the potential CO₂ savings are very different. In the future development of calculation methods, the specific characteristics of each battery technology and application must be taken into account: In our view, it is neither reasonable nor justified to evaluate the CO₂ footprint of one battery technology based on a methodology that was developed for another technology.

Furthermore, the calculation of a CO₂ footprint is highly bureaucratic. Manufacturers in this field are SMEs and would therefore be heavily affected by additional costs for collecting the data. It is also unclear to us at the moment how these requirements will be monitored by national authorities/notification bodies in the case of imports so that there is no unfair competition.

In the case of batteries for electric vehicles (traction batteries), the starting point is slightly different. Here, application and technology is relatively uniform and volumes show large increases; moreover, production is concentrated in a few producers inside and outside the EU and are often the same companies.

Proposal:

- The scope of this measure should be limited to "batteries for electric vehicles" > 2 kWh in a first step. In a second step, based on the experience with batteries for electric vehicles, other battery technologies could be added depending on volumes and CO₂ saving potential.
- Establish a more appropriate timeline for defining the respective methodology for calculating the total CO₂ footprint, dependent on the respective technology and application.
- Once such a methodology is available, a transition period of at least two years should be provided until it is implemented.
- The carbon footprint methodology should ensure that the GHG impacts of all actors in the battery supply chain are captured based on their actual and true emissions and that the use of sectoral averages is limited to components that have marginal impacts compared to the overall battery footprint.

Declaration of energy content (Art. 7)

“Capacity above 2 kWh” is a contradiction in itself as capacity is expressed in Ah while energy is expressed in Wh or kWh. A correct notion can be found in the UN Recommendations on the Transport of Dangerous Goods, Manual of Tests and Criteria, where the term “nominal energy” is used. Also refer to Commission Regulation (EU) No 1103/2010 on Capacity labelling. Also refer to Annex II (2) where the functional unit is defined as 1 kWh of the total energy. Also refer to Annex IV, where it is required that capacity is expressed in Ah and energy is expressed in Wh.

Proposal:

- Replace “capacity” with “nominal energy” wherever the term “capacity above 2 kWh” appears in the document.
- Add a definition for “Nominal energy”: ‘nominal energy’ means the energy of a battery determined under specified conditions and declared by the manufacturer, expressed in Wh. The nominal energy is calculated by multiplying nominal voltage expressed in V by rated capacity expressed in Ah.

Recycled Content (Article 8)

We are surprised by the Commission's proposal on minimum content of recyclates in new batteries. The Commission has not addressed concerns expressed during the stakeholder meeting and outlined in the impact assessment. For example, it has not been clarified how the recycled content can be calculated and verified, especially for imported batteries. Thus, there is a risk of putting the EU battery industry at a disadvantage compared to international competitors. We also do not understand the logic of a defined recycled content for batteries. Fixed recycled contents only make sense if the price for the recyclate is higher than the world market price. Mandatory recycled content is intended to increase the sales opportunities for recyclates. But this does not apply to the metals listed in Art. 8 of the directive which are traded worldwide and are subject to world market prices. It is therefore in the interest of a recycler to sell as much metal as possible - either to battery manufacturers or to other manufacturers. Lithium and cobalt are also limited resources. Price increases in the future are therefore realistic and make recycling attractive. In the case of lead in starter and industrial batteries, we are already achieving very high recyclate percentages, regardless of targets. Moreover, rigid and also very high targets, such as for the lead recyclate share, hinder further market growth, as this is dependent on the available mass of lead recyclate, or indirectly require the import of waste batteries to cover the necessary raw material quantities.

In the case of lithium, the available amount of recyclates also depends on the politically desired shift toward second-life applications. If these applications increase, the potential amount of recyclate available for new batteries would also be lower.

Finally, the proposal applies to all industrial, automotive and electric vehicle batteries >2 kWh, regardless of their characteristics. However, in some specific cases, high proportions of primary materials are required to achieve higher performance.

Proposal: At this early stage, we do not support the setting of targets. We recommend that targets should only be set once a detailed and realistic assessment of the development of the battery market, raw materials market including the recycling market is available. In the meantime, the regulation should focus on the targets already defined and established in the Battery Directive. A re-evaluation in 2027, as already laid out in the proposal, can be a good basis for setting quotas.

It is also critical that the respective proportion of recovered substances should only refer to the proportion in the active material. For lead-acid batteries in particular, this should be rejected. Around half of the lead content of a lead-acid battery is metallic lead (i.e. no active material) and is not taken into account in the calculation of the recyclate content. Therefore, at least for lead-acid batteries, recyclate content should refer to the proportion of the respective metal in the complete battery and not only in the active material.

Proposal: Regardless of the concerns mentioned above, at least for lead-acid batteries, recyclate percentages should refer to the proportion of each metal in the battery and not just in the active material.

Remanufacturing (Art. 11, Art. 14, Art. 47, Art. 59)

In line with the objectives of the circular economy policy, we recognize the need to establish a "right to repair" within the Battery Regulation. However, in the context of batteries and electronic devices, the wording is crucial. We are concerned that a misunderstanding of the safety risks particularly related to "remanufacturing" of batteries has resulted in wording that does not accurately reflect the safety risks to the consumer or unauthorized third parties. It has to be noted that neither "repair" nor "remanufacturing" are properly defined in the draft regulation even though they are often interchangeably used throughout the whole document.

All current standards and tests are based on battery cells with a known origin and a well-defined status and/or quality. Furthermore, various strict safety, transport and product tests on a defined number of samples are required for certification. This is not the case with "remanufactured" systems with possibly even aged cells and / or modules. Remanufacturing should not lead to the undermining of product-, safety- or test-regulations and standards.

In addition, the exceptions listed in Art 59 (4) are problematic, since they effectively create a system where certain repurposed 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 get into 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 to avoid market distortions.

Proposal: "Repaired or Remanufactured Batteries" have to comply with the same strict standards as new products. In addition, a remanufactured battery or a device with a remanufactured battery must pass the entire certification process (functionality, product certification, safety and transport tests) again. All guarantee and liability claims need to be transferred to the party undertaking the preparation for second-life as well as all requirements in regards to labelling, testing etc. set out in the draft regulation.

Furthermore, it has to be considered that standards, test plans etc. are only designed for tested (new) parts (cells, electronics, housing - also regarding tightness...). Remanufactured used parts can be associated with serious risks for safety, the environment and the user. Additionally, we strongly oppose the current wording in Article 59 that paves the way for a blanket access to the Battery Management System by un-authorized third parties, so-called "independent operators".

Proposal: As long as there is no solid legal framework and corresponding standards for "remanufacturing" that are consistent with product stewardship, production process testing, transportation and safety testing, etc., we would strongly advise against introducing a wording in the regulation that facilitate the remanufacturing of batteries, especially where this facilitates access for unauthorized third parties. Should Article 59 stay in place at least paragraphs 1 and 2 need to be deleted and paragraphs 3 and 4 reworked so that there is a clear reference to authorised economic operators to prevent malpractice.

Removability and replaceability (Art. 11)

Accessibility

The proposed regulation provides for accessibility of batteries to end users. This general wording is in our view critical. User safety is a top priority for manufacturers, especially for small, rechargeable handheld devices with water-resistant properties. Improper replacement of batteries in wet-use appliances can expose consumers to significant safety risks, including electrical shocks or fire caused by electricity-water contact. In addition, the possibility for consumers or untrained operators to replace batteries in such appliances runs against existing EU legislation (e.g. Low Voltage Directive 2014/35/EU) and harmonized EN standards (e.g. EN 60335- 1) that establish strict requirements for resistance against moisture and liquid ingress.

Proposal: To safeguard consumer safety, it is essential that only specialized service personnel have access to areas of the devices that may be potentially dangerous to users without product-specific training. Due to these product-specific features, replaceability, where it affects product design, should be addressed in corresponding ecodesign regulations.

There also exist batteries that are encapsulated in a way that guarantees a high degree of protection, i.e. ex-safe sensors or invasive medical sensors.

Proposal: Battery applications, where encapsulation or other technical measurements are required for the safe and reliable use, should be exempted from requirements of removability.

Making batteries removable will also have an impact on product design. Facilitating easy consumer removal of the battery may require an increase of device size, which comes at the expense of portability and increases the product costs since more materials will be needed. Consequently, it is not granted that re-designed appliances with removable batteries are equally user-friendly than current designs.

Proposal: The wide range of appliances with batteries must be considered. It is impossible to implement a one-fits-all approach due to the different areas of use and prediction. Thus, we propose a product specific approach regarding product sustainability.

For the addressing of battery replaceability and removability, we recommend a clear distinction between batteries in the device and cells in the battery. Replaceability should only be directed to batteries in the device where replaceability is not a safety risk for the consumer.

Proposal: Hence, we recommend a clear distinction between requirements for removability at end-of-life for all appliances and replaceability if the lifetime of the battery is shorter than the appliance.

The draft of the new battery regulation does not specify who is responsible for complying with the removability and replaceability requirements. Manufacturers of battery cells cannot be responsible for how appliance manufacturers integrate batteries into their appliances, in particular as this is not necessarily required by the design of the batteries. This is the responsibility of the device manufacturers.

Chapter III - Labelling and information requirements

Information Sharing, Battery Passport (Article 13, 64, 65)

Art. 13 mentions an extensive list of information that must be provided together with the battery in different forms (printed or engraved on the batteries, through a QR code and with a battery passport). We fear that this system would result in duplication of sources, with high unnecessary administrative costs to maintain and operate multiple labelling systems. We would therefore propose to streamline and standardize these processes.

Proposal:

In view of the vast amount of information requirements in today's already existing legislation, we believe it is essential to create a uniform, universally valid and digital form of saving and sharing product data and information. One example of this could be the digital nameplate. ZVEI is currently working with the national standardization organizations on further proposals for this, which will be submitted at a later stage. The concept of the digital nameplate ("Digital Product Passport") is based on two fundamental principles:

- There is the proposal of a unique identifier for batteries in the form of a QR code or RFID tag. With a smartphone or tablet PC, this information can be read out and displayed to the user directly and without a network connection. The information that has been saved is the minimum requirement for a globally unique identification using a globally unique, machine-readable identifier that is assigned to the battery in the data format of a link (URL/URI). This link can be used as a unique identifier for both the individual battery and the associated digital information.
- Another proposal is to have the information filed in the "Digital Product Passport" in both a human-readable and a machine-interpretable form. This proposal is based on the concepts of the Industry 4.0 components, more specifically the so-called Industry 4.0 management-shell and its submodules. These serve as the structure for machine-interpretable storage.

Both concepts are the subject of standardization at IEC and CENELEC. These standards can be referenced using the NLF.

Furthermore, the requirement for full information sharing with "independent operators" (e.g. Art. 14 and 59) should be deleted, since it may affect company secrets as well as security-relevant topics, among other things.

→ For more details see text below "Electronic exchange system (Art. 64) / Battery passport (Art. 65)"

Minimum average duration (Art. 13 (2) / Annex III)

The term "minimum average duration" can only be defined for non-rechargeable portable batteries of general use. It cannot meaningfully be applied to rechargeable portable batteries where the term capacity is defined.

Proposal:

From 1 January 2027, rechargeable portable and automotive batteries shall be marked with a label containing information on their capacity and non-rechargeable portable batteries shall be marked with a label containing information on their minimum average duration when used in specific applications.

Information about the state of health (Article 14)

Article 14.1 requires all rechargeable industrial batteries and electric vehicle batteries with internal storage and above 2 kWh to have a BMS. This is a clear indication that the proposal was developed considering only the specificities of one type of battery: lithium and sodium battery are equipped with a BMS, while lead and nickel batteries generally do not need such system to be managed. Requiring them to be equipped with a BMS is therefore totally unnecessary, also considering that generally, these batteries are not suitable for second life applications, and it would result in waste of resources and in a clear market distortion. Therefore, we strongly suggest that only batteries equipped with a BMS shall store this kind of information.

The recitals of Art. 14 (2c) provide, among other things, that the data saved by the battery management system must be made available to aggregators operating virtual power plants in electricity grids. Virtual power plants are a topic of the electricity market with considerable technical and administrative challenges. In our view, this should not be addressed in the battery regulations.

Proposal: „facilitating the reuse, repurposing or remanufacturing of the battery ~~and for making the battery available to independent aggregators operating virtual power plants in electricity grids.~~

Furthermore, Art. 14 of the draft also determines that information on the state of health shall be saved on the battery management system and shall be accessible at any time in order to facilitate the possibilities for further use and reuse of the battery storage device. The parameters for determining the state of health are listed in Annex I for this purpose. This requirement is very problematic from a perspective of competition. The data stored on the battery management system and the analysis of these data is essential for the functioning, durability and quality of the battery storage system. The reading of the data and the individual conclusions about the current and future operation of the battery that are drawn from it are part of the sensitive trade secrets of the manufacturers. The provision to make this data public in an undifferentiated manner will represent a serious interference with competition.

Moreover, such a requirement is not applicable for stationary battery storage systems in the context of resource efficiency or the circular economy. Stationary battery storage systems, in contrast to batteries in e-mobiles, are used until their absolute end of life in their initial application. For batteries of this type, there will be almost no "second life" application for which this data would be necessary.

Proposal: We call for differentiated regulation. For those battery types for which reuse or repurposing is a possibility, a specific parameter should be developed that can be used to measure the state of health without making a large amount of sensitive data publicly available. This should be done in the context of standardization. For battery uses for which no second-life application is possible in any case, no regulation is necessary or meaningful.

For batteries equipped with a BMS, clearer rules on access to data shall be formulated: this article cannot result in a blank check for any party to access the BMS. Granting such access would endanger safety and intellectual property. For this reason, only the information listed in Annex VII shall be accessible, and the access shall be regulated by a contractual agreement.

Chapter IV - Conformity of batteries

Standardisation / Common specifications (Art. 16)

Article 16 of the draft EU Batteries Regulation makes it possible to bypass the European standards organizations in the preparation of harmonized standards. This stipulates that the EU Commission reserves the right to regulate requirements or tests by means of implementing acts if there are delays in the preparation and adoption of mandated harmonized standards. The same applies if, in the view of the EU Commission, requirements or tests in mandated harmonized standards are not sufficiently formulated. This concerns the definition of common specifications for requirements or tests on which Articles 9, 10, 12 and 13 and Art. 59(5)(a) are based. A Standardization Request (SReq) for harmonized standards, on Articles 9, 10, 12, 13 and 59(5)(a) is already in the drafting phase and has been extensively commented by the standards organizations.

This approach does not correspond to EU Standardization Regulation 1025/2012 and the established model of the New Approach in 1985 and with its further development into the New Legislative Framework (NLF) by means of EC Regulation 765/2008. The strength of the NLF lies in particular in the interaction between statutory requirements and harmonized European standards, i.e. the harmonized European standards drawn up by the European standards organizations and subsequently published in the Official Journal of the EU ("Official Journal"). The EU institutions define the basic requirements for products in directives and regulations. The technical content is then defined by the technical experts in the standardization bodies. These experts are delegated, for example, by the public sector, industry, research and consumer, environmental and occupational health and safety organizations. They draw up technical standards that are harmonized throughout Europe. The European standards organizations CEN, CENELEC and ETSI serve in the process as moderation platforms open to all interested stakeholders. The progress of standardization is transparent and inclusive for all, so there is a high degree of predictability on all sides. Decisions are made by consensus, enjoy broad acceptance and are relevant for the entire internal market. This division of labour relieves the European legislator of the burden of drafting detailed regulations, the legal framework is kept flexible, and the resulting standards are practical and thus easy for companies to implement.

Proposal: We ask for using the established European standardization system in the development of harmonized standards in the area of the Batteries Regulation and for Article 16 to be deleted. Moreover, the EU Commission's approach offers no legal basis; a legal opinion on the European system of harmonized standards commissioned by the German Federal Ministry for Economic Affairs and Energy (BMWi) (Redeker, 08/2020) found that the EU Commission cannot commission other rule makers or organizations to develop harmonized standards.

Chapter VI - Obligations of economic operators other than the obligations in Chapter VII

Due Diligence in the Supply Chain (Article 39)

The due diligence obligation mentioned in Art. 39 should apply to manufacturers of rechargeable industrial batteries and EV batteries of more than 2 kWh. Indeed, the expected market growth of EV lithium batteries in particular will lead to a strong increase in lithium consumption - with all the consequences for the environment and for social aspects in the

lithium mining regions. It is therefore reasonable to make this mining as environmentally and socially compatible as possible.

However, we are very sceptical of the due diligence obligations proposed in Art. 39. In our view, they go far beyond the already existing transparency obligations of the EU Regulation on Conflict Raw Materials ((EU) 2017/821). While this regulation only requires that certain raw materials are not sourced from conflict regions or only from certified suppliers from these regions, Article 39 goes much further in its transparency obligation by introducing a reporting obligation on environmental and social aspects. In addition, the EU-COM itself currently recognised a need for clarification as to how the application of the due diligence obligations is to be implemented (cf. Art. 39(7)). From our point of view, we consider the effort to implement the obligations of Art. 39 to be very bureaucratic and cost-intensive, especially for medium-sized industrial battery manufacturers, and furthermore difficult to monitor.

Proposal: The protection of the environment and social concerns in a mining country cannot be ensured by battery manufacturers alone. Politicians should work with battery manufacturers to find a viable solution. We therefore propose the amendment of Art. 39 before. Instead, the EU-COM should draw up a negative list of “non-sustainable” companies that mine the raw materials listed in Annex 20. In addition, Article 39 of the EU COM should oblige battery manufacturers to review the negative list within the framework of their already existing sanctions list control instruments. Such a negative list is flexible, it can be adapted to new findings and companies can incorporate it into their existing control mechanisms without much additional bureaucratic effort (see ZVEI position paper on due diligence in the supply chain¹).

Chapter VII - End-of-life management of batteries

Extended producer responsibility (Art. 47)

In principle, we welcome the harmonization, updating and strengthening of extended producer responsibility. However, we see a need to adapt some of the requirements in Article 47.

Proposal: Producers should not be made responsible for organizing the preparation for reuse and recycling of batteries and for bearing the costs of this activity. The decision to recycle or reuse a battery must be left to the market. The cost of this should be borne by the entity reusing the battery.

The financial contributions paid to take-back systems should be based only on the costs of collection and recycling; the aspects of rechargeability and recycled content should be deleted from Art. 47 (4) a): these characteristics have no impact on the activities of take-back systems.

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

Collection targets for portable batteries (Art. 48 in conjunction with Art. 55)

Particularly with a view to the very high collection rate of 65 or 70 percent for portable batteries in Art. 48, we advocate for a closer look at the collection target and calculation method. For example, an increase in the collection rate from 45 percent to 65 percent within two years (from 2023 to 2025) is in our view unrealistic. The currently valid calculation method based on the quantities placed on the market and the assumption of a (already very moderately calculated) three-year useful life underestimates the collection rates achieved.

¹ <https://www.zvei.org/presse-medien/publikationen/positionspapier-sorgfaltspflichten-in-der-lieferkette-sorgfaltspflichtengesetz>

Reason: In the coming years, the market for batteries is expected to continue to grow rapidly. This means that the quantities placed on the market will consistently be higher than the collected quantities, because the collected quantities represent the lower market level at the time of placing on the market. If the quantity placed on the market and the quantity collected are put into relation, the collection rate will be correspondingly low. The long useful life of batteries also plays a role. This can be ten or more years. The batteries come back with a long time delay. If the collection rate puts the collection quantity in relation to the quantity placed on the market in the last 2-3 years, this also results in a lower calculated collection rate, since the batteries placed on the market 3 years ago are not yet due for disposal. In addition, batteries are exported to non-EU countries.

The proposed definition of the calculation of collection rates is not sustainable and needs to be changed. An application-dependent calculation based on the principle "available for collection" for each market segment, which has been widely discussed in advance, should be introduced instead. The calculation method should be based, among other things, on battery use, service life and other parameters such as battery quality.

Unlike before, the draft regulation inserts an obligation for the producer to achieve the collection targets listed in Art. 48. This places the sole responsibility for achieving the collection rates on the manufacturer. This cannot be supported against the background of the multi-layered aspects of successful collection, which the manufacturer cannot influence alone. Imponderables are, for example, the level of knowledge of the end user and their ecological awareness of collection and recycling, export or abuse of the system by unknown third parties (keyword: repurposing).

Proposal:

- We propose the calculation method "waste batteries arising" or "batteries available for collection" for the collection rates. This would have the advantage that the calculation method better reflects the realities of the battery market, as the useful life of a battery and the export of batteries are taken into account.
- The collection target for 2025 should be set at 50 percent and the target for 2030 should be set at a later date based on the de facto collection rate achieved at that time.
- The responsibility for achieving the collection rates should not lie solely with the producers, but in Article 48 all stakeholders involved in the use phase should be made jointly responsible.

Dismantling of old industrial batteries (Art. 49)

Regarding the dismantling of old industrial batteries in private households (Art. 49, last sentence): If battery energy storage systems have been installed on the premises of private, non-commercial users, the dismantling and collection cannot be the responsibility of the battery manufacturer. It must be the responsibility of the system manufacturer / installer.

Proposal: Where waste industrial batteries require prior dismantling at the premises of private, non-commercial users, the system manufacturer / installer ~~obligation of the producer~~ to take back those batteries shall ~~include~~ covering the costs of dismantling and collecting waste batteries at the premises of those users.

Obligations for distributors, end-users, treatment centres and public waste management authorities (Art. 50-53)

For portable batteries, it should be introduced that a mandatory handover of the last user of the battery to the producers/return systems has to take place. The transfer of portable batteries to third parties (not manufacturers/return systems) by the end user should largely be avoided. Furthermore, to avoid batteries ending up in the wrong waste streams or unsafe tampering, it should be made mandatory for the distributors to hand-over waste portable batteries to the respective producer or producer responsibility organisation and forbid the supply of waste portable batteries to non-authorized third parties. This is the only way to ensure that all available spent batteries (batteries for disposal) also accrue to the manufacturers/return systems responsible for the collection targets. It must not be possible to establish and operationally run a battery take-back system for portable batteries without the involvement of a manufacturer. If this is not prevented, the result would be a highly inefficient system in which the manufacturers would have to fulfil their collection obligation not through physical collection, but through the trade in disposal certificates.

Furthermore, in the interest of end-users, recycling centres largely managed by public waste management authorities should be obliged to take back waste portable batteries and hand them over to the respective producer or producer responsibility organisation. This will increase the uptake of voluntary collection points established by producer responsibility organisations and the correct collection of waste portable batteries.

Proposal:

- In order to improve collection rates, a mandatory handover of portable batteries from the last user to the producer/return system should be introduced.
- Distributors may not be allowed to hand-over waste portable batteries to non-authorized third parties.
- Waste treatment facilities shall be obliged to take back waste portable batteries.

End-of-life information (Art. 60)

The information referred to in Article 60 should be streamlined.

Proposal: The reporting requirements on hazardous substances provided for in Art. 60 (3) overlap with already existing information requirements, e.g. ECHA's SCIP database. Duplicate reporting should be avoided.

Regarding Art. 60 (5), it is not possible to correctly assess the relevant costs 10-15 years before the battery is actually recycled. In addition, the costs per manufacturer can be very different and thus relevant for competition. The separate disclosure of price components should therefore also be considered from a competition law perspective.

Proposal: Art. 60 (5) should be deleted.

Reporting (Art. 61 und 62)

We take a critical view of the reporting requirements contained in Articles 61 and 62.

There is also a risk of double counting of spent batteries due to the interaction of Articles 61 (2) b) and 61 (3). This should be avoided.

Chapter VIII - Electronic exchange of information

Electronic exchange system (Art. 64) / Battery passport (Art. 65)

The battery types to which Art. 64(3) and Art. 65(1) refer to do not match. Art. 64(3) refers to rechargeable industrial batteries and traction batteries with internal storage. Art. 65(1) refers to any industrial battery and traction battery placed on the market or put into service with more than 2 kWh. However, the battery type for which economic operators must provide information electronically is likely to be the same as that for which an electronic record ("battery passport") must be kept.

Proposal: Coordination of the requirements in Art. 64(3) and Art. 65(1).

→ For more details see text above "Information Sharing, Battery Passport (Article 13, 64, 65)

General remarks

Secondary acts

The number of secondary acts should be reduced and the industry should be involved as early as possible in their development. We are concerned about a very high number of delegated and implementing acts included in the Battery Regulation proposal and believe that their number should be reassessed and focused on areas where they will be the most impactful. To achieve the best policy result, it is very important that the upcoming delegated and implementing acts will be developed in cooperation with stakeholders including the industry experts.

International Market – Check of conformity

According to the regulation proposal, batteries must meet numerous conformity assessments to fulfil the requirements of Chapters II and III as well as Art. 39 before they are placed on the market. These conformity assessments are extensive and should also apply to batteries imported into the EU ("level playing field" for all market players). However, it is unclear to us how the Commission plans to test, review and enforce the criteria contained in the regulation for batteries imported into the EU. This should be clarified as a priority to protect the EU battery industry from unfair competition and EU citizens from non-compliant products.

According to the proposal of the regulation, national notification bodies should be responsible for conformity assessments, but we have doubts that these national bodies each work with the same care when checking. We fear that EU manufacturers but also importers could take advantage of this ("Race to the Bottom"). We therefore propose the establishment of a central EU notification body for batteries in the future.

Third-party verification

We have noted the proposed use of third-party verification introduced in this Regulation for several requirements such as carbon footprint, supply chain due diligence and energy labelling. We would like to draw the attention to policy makers that the requirements must be proportionate, workable and contribute to circular economy. In particular, we highlight the cost of performing the life cycle analysis and feasibility in terms of technology production and enforceability of the requirements.



Position Paper on the proposal of the EU Commission for a new Battery Regulation

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