

EuRIC Reaction to the Proposed Batteries and Waste Batteries Regulation (Batteries – modernizing EU rules)

26 February 2021

Key points

- ❖ Mandatory recycled content should be made mandatory to all battery categories
- ❖ Consistent and further clarified definitions are needed
- ❖ Inclusion of Voluntary Agreements
- ❖ Removability and replaceability of all batteries and not only of portable ones (with batteries mechanically bounded and easily accessible)
- ❖ Consistent adjustment of labelling obligation for all information until 2023 and information provided for all levels of batteries
- ❖ Introduction of a clear colour coding, depending on batteries' types
- ❖ Introduction of specific waste code number for the different types of Li-ion Batteries
- ❖ Obligation for producers to periodically investigate in which waste streams batteries are disposed of and act upon it
- ❖ Continuously adapting to BATs is not feasible for treatment facilities due to constant technological advancement
- ❖ End-of-life information to always be made available in a free and public website and be complemented, if necessary, upon request

The European Recycling Industries' Confederation (**EuRIC**) welcomes the long-awaited proposed Batteries and Waste Batteries Regulation published by the EU Commission on December 10, 2020. It is a fact that improving the design of batteries – making them more sustainable, readily removable and easily recyclable - is a pre-condition to transition towards a circular economy. It is also part of the solution to tackle acute problems faced by recyclers linked to the ever-increasing battery fires during the collection, transport and treatment of the booming end-of-life products containing batteries, which pose major problems.

EuRIC sees the Commission's Proposal as a huge step forward in terms of connecting the dots between the design and end-of-life (EoL) phase of batteries (from design & production to reuse & recycling) while simultaneously minimizing their harmful effects on the environment – and as a consequence on human health. However, the following points have been identified for further improvements; where clarifications, changes or additions are needed to establish a well-functioning regulatory framework.

The **points** identified by EuRIC on the different provisions included in the proposed Regulation for Batteries and Waste Batteries are:

1. Article 8 – Recycled content in industrial batteries, electric vehicle batteries and automotive batteries

EuRIC is very pleased to see that some of its recommendations - made early in the process of revising the Directive 2006/66/EC – on mandatory recycled content have been taken into consideration and included in the proposed regulation concerning batteries and waste batteries. More specifically, EuRIC welcomes the introduction of mandatory recycled content in industrial, electric vehicles & automotive batteries with the levels to be achieved being 12% cobalt, 85% lead, 4% lithium, 4% nickel by 2030 and 20% cobalt, 85% lead, 10% lithium, 12% nickel by 2035. This is strongly linked and connected with the continuous efforts of the EU Commission and the recycling industry to make closed-loop systems the new norm. Setting minimum level of recycled content is also fully in line with EuRIC's priorities for circular economy.

The mandatory requirement of recycled content in batteries will not only increase the demand for recycled raw materials in the EU market, but it will also help to create a much more stable and competitive EU market in which secondary raw material will have an equal status as their primary relatives, levelling in that way the playing field.

Although EuRIC very much welcomes the inclusion of mandatory recycled content in the above-mentioned battery categories, it would like to mention that in order to truly achieve a fully circular economy **mandatory recycled content should be made mandatory to all battery categories**. This will give the possibility to the recycling industry – an industry that is already considered a major contributor for achieving a circular economy – to develop and invest on sustainable technologies for the recycling of batteries. These technologies will also have a positive impact on the environment and the society as a whole.

2. Article 2 – Definitions

EuRIC supports the inclusion of new definitions in order to clarify the current provisions on the different battery categories and to update them in line with the latest technological developments, and believes that clear and consistent definitions are of an utmost importance to achieve the ultimate goal of this regulation. In that regard, EuRIC would like to express its **concerns about the consistency of some of the definitions** given in article 2 of the above-mentioned regulation and particularly concerning the definition provided on the **light means of transport**. More precisely, the proposed regulation defines light means of transport as:

“wheeled vehicles that have an electric motor 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”

EuRIC believes that the forementioned definition – with its current wording – does not include all light means of transport (e.g., electric scooters that do not have a seat and the driver/traveller has to stand while riding the scooter, speed pedelec, electric scooters with 2.000 – 4.000 watts) which may have a negative impact on the correct classification of batteries (e.g., portable, non-portable etc.) in the future.

Other unclear definitions identified by EuRIC include:

- **Definition No. 7** - *‘portable battery’ means any battery that: is sealed; weighs below 5 kg; is not designed for industrial purposes; and is neither an electric vehicle battery nor an automotive battery;*

EuRIC believes that this definition is insufficient/unclear and should be worded differently. The term “sealed” should be eliminated from the proposed definition as there are not “non-sealed” batteries currently on the EU market. Moreover, as a definition on “industrial use” has not been provided in the proposed regulation, EuRIC struggles to understand the “industrial use” term and how can a user or waste operator recognize if a battery has been designed for industrial purposes or not. In terms of design, it is noteworthy to mention that batteries and battery cells in systems, devices and machines, used in businesses and/or industries, are not different from those used in electrical devices or vehicles.

- **Definition No. 10** - *‘automotive battery’ means any battery used only for automotive starter, lighting or ignition power*

EuRIC believes that also this definition is insufficient/unclear and needs to be further clarified. According to the above definition, vehicles’ batteries that are connected with the radio, navigation device and with other electronics, should not be perceived as “automotive batteries”.

- **Definition No. 12** - *‘electric vehicle battery’ means any battery specifically designed to provide traction to hybrid and electric vehicles for road transport;*

EuRIC again struggles to understand how can a waste operator distinguish an electric vehicle battery based on its design.

- **Definition No. 26** - *‘repurposing’ means any operation that results in parts or the complete battery being used for a different purpose or application than the one that the battery was originally designed for;*

In EuRIC’s view the definition of “repurposing” is not complete in the proposed regulation and is not in line with EU Waste Directive. Furthermore, this activity, being a waste treatment operation, must be supported by a permit. Therefore, EuRIC proposes to substitute ‘repurposing’ with ‘preparing for re-use’ and for this definition to be complemented with the following sentence:

“Preparing for re-use is a waste treatment operation and must be done only by a ‘permitted facility”

- **Definitions No. 42 & No. 49** on “treatment” and “recycling process” respectively.

EuRIC believes that the definitions provided for treatment and recycling process are not in line with the ones provided in the Directive 2008 /98 /EC. Therefore, in order to have a consistent EU legislation, EuRIC proposes that the above definitions should be phrased with the same or similar wording as the ones provided in the Directive 2008/98/EC.

In conclusion, EuRIC strongly believes that - for all the above stated reasons -, some of the definitions should be complemented for more clarity (e.g., No. 26) while others transferred as is or with similar wording (e.g., 42 & 49) from other pieces of legislation. With regard to the definitions 7, 10 and 12, EuRIC believes that - with their current wording – they will not result helpful to the producers/importers who will have to allocate batteries for registration nor to recycling facilities who will have to separate them at the end of their useful life. For a better and easier understanding of the definitions, EuRIC proposes the division of batteries into two categories; **large and small**, which will only differ in weight – with 6Kg being possibly the best compromise for the previously referred division. This will give an element of consistency to Article 2 which is essential for avoiding any possible confusion that may arise in the future.

3. Inclusion of Voluntary Agreements

EuRIC also believes that article 27 named “**Voluntary agreements**” of the Directive (2006/66/EC) – that has been eliminated from the proposed Batteries and Waste Batteries Regulation – should again be included. EuRIC bases this recommendation on the fact that article 27 has so far provided a suitable solution for economic operators (producers, collection points, recyclers etc.) to comply with several of the requirements set in the Directive, in particular, with the requirements related to the collection rates assigned to producers and to the shipment of waste batteries. In that regard, EuRIC would like to reiterate some of the benefits arising from Voluntary Agreements:

- Inclusion of an extensive of list of authorized collectors and recycling facilities that: (a) cover the whole territory of a Member State, (b) are close to the end user and (c) do not only cover areas and target waste batteries where the collection is profitable;
- Further insurance that waste batteries are being treated in an environmentally sound manner;
- Additional tool to ensure that low collection rates of waste batteries are increased while the already high ones are being maintained

Therefore, EuRIC recommends for Article 27 of the previously referred Directive to be transferred and included, as is or with a similar wording, in the proposed Batteries and Waste Batteries Regulation.

4. Article 11 – Removability and replaceability of portable batteries

EuRIC believes that the removability of batteries is of paramount importance for recyclers, but acknowledges that this very much depends on the type of product from which the battery has to be removed from. With regard to the Article 11 of the proposed Batteries Regulation, EuRIC would like to make the following comments:

- EuRIC strongly recommends that the focus of this Article should be shifted from portable batteries to all batteries in general. To increase replaceability and generally the durability of batteries, the article in-question and the requirements included in it, should apply to all battery types (e.g., industrial, traction etc.,) and not solely to portable batteries.
- With regard to paragraph two of the Article, EuRIC would like to highlight the fact that in the proposed regulation it is not mentioned that batteries incorporated in appliances should be mechanically bound and easily accessible to make possible easy and fast removal. Therefore, gluing practices should be accepted/allowed only when there is no other alternative, and the use of adhesives is necessary (e.g., waterproof mobile phones).

5. Article 13 - Labelling of batteries

EuRIC welcomes the intention of the EU Commission to improve the labelling of all batteries placed on the EU market in order to provide information necessary for their identification and main characteristics. However, due to the fact that the obligation to provide the above referred information will enter into force in three different phases - 2023, 2024 and 2027 -, EuRIC fears that this may have confusing effects on users and recycling facilities. It should be noted that the fragmentation of information will also make the optimization of the collection process more difficult in the years to come. Therefore, **EuRIC calls for a consistent adjustment of labelling obligation for all information until 2023.**

Furthermore, it is a fact that a battery is - for most electronics and electric vehicles (EV) - comprised of battery cells which are mounted in a battery pack which in its turn is mounted in a battery frame. Besides the above-described multilayer structure, most batteries also contain both a cooling and a battery management system. Information on the above-mentioned layers is therefore essential to further facilitate repairing activities and extend the lifetime of all batteries. In that regard, in order to further close the loop of materials and make battery value chains more circular, **EuRIC calls for more information - on the label - on all levels of a battery.**

Finally, as also proposed by the consultant during the impact assessment study, EuRIC also **calls for the introduction of a clear colour coding, depending on batteries' types** (NiMH, Li-ion, NiCd, Pb), on the model. This will firstly facilitate the employees of the entire value chain - retail collection, recycling etc. - to make an on-spot assessment and separate successfully the different types of batteries and secondly the end user during the disposal of batteries at the end of their useful life. Besides the introduction of a clear colour coding, **EuRIC would also like to recommend the inclusion of more information – on the label - on the type of Li-ion batteries included in WEEE.** Constant technological development

has had as a result the development of a plethora of Li-ion batteries which have different chemistries. Information on these different chemistries is crucial, as Li-ion batteries with different chemistries should not be mixed during material recycling. Accidental mixture of different types of Li-ion batteries could have effects that are completely at odd with the circular economy concept. These effects include:

- material value decrease (down-grading) and,
- increase of recycling cost

6. Introduction of specific waste codes for Li-ion batteries

EuRIC also calls for the **introduction of specific waste code numbers** for the ever-increasing number of **Li-ion batteries** placed on the EU market. This is strongly linked and connected with point No.5 of this document, as the classification and labelling of batteries is done in accordance with the CLP regulation. The proposed regulation is undoubtedly addressing batteries at the end of their useful life as waste batteries. By doing so, specific waste code numbers have to be assigned to Li-ion batteries – depending on the Li-ion battery chemistry - and be included in the European Waste catalogue (2000/532/EC). This will firstly help in the correct use of the hazardous and non-hazardous waste code numbers – by Member States - for Li-ion batteries and secondly the proper allocation of capital by treatment facilities for future investments.

7. Article 47 – Extended Producer Responsibility

With regard to paragraph (a) of Article 47, EuRIC would like to suggest the inclusion of the activities **storing** and **sorting** in the list of activities included in it. Therefore, with the changes suggested by EuRIC, the in-question paragraph would be as follow:

*“organise the separate collection of waste batteries in accordance with Article 48 and Article 49 and the subsequent transport, **sorting**, preparation for repurposing and remanufacturing, **storing**, treatment and recycling of waste batteries, including the necessary safety measures, in accordance with Article 56;”*

8. Article 48 – Collection of all waste portable batteries

Waste portable batteries -or alternatively ‘small batteries’, as proposed by EuRIC - that are disposed of incorrectly is becoming ever more problematic for waste managing companies handling these waste streams, with an increasing occurring rate of waste fires as a result. **EuRIC therefore calls on the Commission to lay down an obligation for producers to periodically investigate in which waste streams batteries are disposed of**, where they actually are not intended to end up. This information then shall be used to take targeted measures on preventing waste batteries ending up in wrong waste streams (e.g., measures in communication, stricter enforcement etc.).

9. Article 51 – Obligations of end users

A major problem today is that not all end users possess the knowledge of how to dispose of batteries, due to the existence of ambiguous terms in the existing directive. As a consequence, a percentage of batteries do not end up into the right waste stream and hence are not being treated properly. For this reason, EuRIC believes that paragraph one of Article 51 - *“End users shall discard waste batteries separately from other waste streams, including from mixed municipal waste”* – is ambiguous and needs to be worded differently. As the proposed regulation aims at further closing the loop of materials, this crucial point should not be left open for interpretation.

10. Article 55 - Collection rates for waste portable batteries

EuRIC is pleased with the ambitious but necessary collection targets - of 45%, 65% and 70% to be achieved by December 31 of 2023, 2025 and 2030 respectively - set in this article. These targets will not only help in tracking the batteries that are already on the European market but will also help to direct the batteries to the right waste stream at the end of their useful life. However, EuRIC would also like to **propose that the targets provided for the collection of portable batteries will not only apply to the portable battery category but will apply to and have to be achieved for each battery category individually** (small and big batteries as proposed by EuRIC above). By doing so, the EU Commission will prevent that the focus will only be placed on the ‘easy-to-collect’ batteries.

11. Article 56 – Treatment and recycling

EuRIC strongly supports **paragraph one** of Article 56, which explicitly states that waste batteries shall not be landfilled or incinerated. This would be undoubtedly a loss of resources that can be collected, treated and re-injected into the market.

Although the above paragraph is fully in line with the New Circular Economy Action Plan and with the European Green Deal, **EuRIC finds particularly concerning paragraph 2** which requires that *“permitted facilities shall ensure that all treatment and recycling processes for waste batteries comply, as a minimum, with Part A of Annex XII and with best available techniques as defined in Article 3(10) of Directive 2010/75/EU”*. It is a fact that many processes in the treatment and recycling sector of waste batteries – and not only - are still either under development or in a pilot phase or upscaling. This means that recycling technologies for the treatment of waste batteries are subject to constant change. Consequently, existing licensed treatment facilities would have to be continuously adapted to the rapidly changing technological developments in order to comply with the best available techniques which, from an economic standpoint, is not feasible.

Similarly, the European Commission's power in paragraph 4 - of the Article - to adopt delegated acts *“to amend the treatment and recycling requirements for waste batteries laid down in Part A of Annex XII in light of technical and scientific progress and emerging new technologies in waste management”* creates unprecedented legal uncertainty for operators of installations for the regeneration, treatment and recovery of waste batteries.

In particular, the possibility granted to the Commission therein to even *“modify new waste management technologies”* is to be strongly opposed. Noteworthy to mention is that,

adaptation of the requirements regarding the treatment and recycling of batteries by the Commission (recital 85, page 39) is not comparable to a change in new waste management technologies.

12. Article 60 – End-of-life information

Paragraph 2 and 3 of Article 60 concern the provision of certain information by producers to waste managers, which in principle is to be welcomed. However, this only concerns safety and protection measures that apply to the areas of collection, storage, shipment, treatment and recycling processes. This information must also include the components and materials as well as the location of all hazardous substances in a battery, if this is "necessary for the waste managers". Thus, the burden of proof to demonstrate such a requirement rests with waste and recycling management companies. These are predominantly companies to be classified as SMEs, which cannot be expected to provide such proof to an international battery manufacturer.

It would be more appropriate to oblige manufacturers to disclose the quantitative and qualitative composition of all their battery(ies) placed on the market in the EU to the collection and recycling companies or to provide the relevant information for each battery type.

Furthermore, paragraph 3 of the forementioned article states that the battery model specific information regarding the proper and environmentally sound treatment of waste batteries, shall be made available **"upon request"** to waste management operators. EuRIC would like to express its concerns about the wording of this paragraph and state that these information are of an utmost importance for waste management operators and any delays in providing them could pose at risk treatment facilities (e.g., battery fires). Therefore, EuRIC recommends for the above-mentioned information to always be made available in a free and public website and be complemented, if necessary, upon request. In EuRIC's view, the appropriate wording for paragraph 3 would be:

"3. From the moment that a battery model is supplied within the territory of a Member State producers shall make available electronically, (e.g. in a free and public website) and completed upon request, to waste management operators carrying out repair, remanufacturing, preparing for re-use, treatment and recycling activities, as far as it is needed by those operators to carry out those activities,..."

13. Adequate insurance coverage for operators collecting, transporting and treating battery-containing end-of-life products

Though this may not be the primary objective of the proposal, it is overly important to require in the batteries regulation that adequate insurance solutions are made available to recycling companies, in particular WEEE recycling companies which are operating in compliance with legislation. The booming increase of batteries used in all types of products placed on the market does not only come with environmental impacts that the Regulation precisely aims at mitigating. It also resulted in an increased number of fires during the collection, transport

and treatment of batteries by the recycling industry¹. While operators are making huge investments to prevent or mitigate the impacts of such fires, insurance companies are offering only partial coverage at overly expensive premiums or even denying insurances to recycling facilities across Europe due to the risk of battery fires. With or without producers' responsibility support, such unbearable situation must be urgently addressed in order to reconcile the long-term goals of transitioning towards a more circular economy that EuRIC entirely supports and the tough reality on the ground whereby the most circular activities (recycling value chain) are left without any economically viable solution to cover the risks inherent to operate complex industrial processes and logistics.

14. Less administrative burdens to the stakeholders, particularly burdens related to the intra EU shipments of Batteries

EuRIC fully agrees and supports the statement made in the proposed regulation regarding the development of economies of scale that go beyond what national economies can provide in order to have a sustainable battery value chain. As also highlighted in the proposed regulation, achieving that requires a harmonized and well-functioning single market across all Members States where all economic operators of the battery value chain are subject to the same rules. For this reason, EuRIC would like to propose the inclusion of some additional points on the intra EU shipments of waste batteries which will further enhance the economies of scale concept, ultimately creating a level playing. These points include:

- ❖ Electronic notification procedures entirely in line with EU's Digital Transformation Agenda;
- ❖ Make the granting of the so-called pre-consent (deviation from the regular notification procedure) to waste recovery facilities the new norm
- ❖ A proportional financial guarantee system
- ❖ Clear observance of lead times throughout the notification procedures, with tacit consent becoming the norm when lead times have expired



EuRIC is the Confederation representing the interests of the European recycling industries at EU level. EuRIC, through its various Branches covering the vast majority of waste streams, brings together National Recycling / Resource Management Federations and Companies in lieu from more than 23 European countries active locally and globally.

EuRIC represents across Europe over:

- § 5,500+ companies generating an aggregated annual turnover of about 95 billion €, including large companies and SMEs, involved in the recycling and trade of various resource streams;
- § 300,000 local jobs which cannot be outsourced to non-EU countries;
- § Million tons of waste recycled per year (metals, paper, glass, plastics, WEEE, ELVs, tyres, textiles and beyond).

By turning wastes into resources, recycling is the link which reintroduces recycled materials into the value chains again and again. Recyclers play a key role in bridging resource efficiency, climate change policy and industrial transition.
For more information: www.euric-aisbl.eu

¹ [Characterisation of fires caused by batteries in WEEE, Ollion, L., Anta, M., Herreras, Joint Association Report co-led by the WEEEFORUM & EuRIC, 2020.](#)