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Joint recommendations ahead of the EU Council Environment Working Party meetings

Eurometaux, Eurobat, Recharge and EBRA representing metals and batteries producers, original equipment manufacturers and recyclers, would like to address some remaining concerns to the EU Council ahead of its final talks on the Battery Regulation proposal.

The issues included in this paper include grandfather clause, producer definition, hazardous substances restrictions, carbon footprint measure, recycled content and supply chain due diligence.

Art. 1.4 (new) – grandfather clause

Once the Battery Regulation enters into force, it will rule out the distribution of certain types of batteries, including batteries incorporated in appliances designed before the entry into force of the regulation, for which a redesign is not possible without redesigning the entire application (e.g. trains, aircrafts, industrial system, etc.). A grandfather clause needs to be included for (a) spare parts batteries which are incorporated in equipment already in service, and (b) supplies for safety-sensitive applications designed before the entry into force of the regulation and their spare parts. It also needs a transition period of 24 months.

Art. 2 (37) – "producer" definition

The definition should assign producer status to the appliance or vehicle original equipment manufacturers (OEMs) irrespective of the location of the battery manufacturer. In the majority of cases, OEMs already have producer responsibility today, but they should assume end-of-life responsibilities also when the OEM purchases a battery from a manufacturer in the same country. OEMs are closer to the market where the vehicle or the appliance will be placed, and therefore better positioned to efficiently declare the placing on the market and organize the end-of-life management. Furthermore, the definitions proposed by the Council and by Commission give a bonus to a "same member state" battery supplier in the eyes of the OEM, which goes against the single market principle.

Art. 6 – hazardous substances restrictions

The proper chemical management of batteries should aim at tackling risks associated with their lifecycle, where exposure and emissions can occur. A purely driven hazard approach does not allow to identify what needs to be addressed by risk management on top of what is already regulated.

The procedure for managing hazardous substances under the proposed Battery Regulation shall ensure that double regulation is avoided. Art. 6 should be amended to refer to the already existing REACH, OSH and IED processes and therefore benefits from existing horizontal legislation rather than to create additional product specific requirements. In addition, we suggest including a reference to the prioritisation mechanism referred to in the EU Commission's Restrictions Roadmap (adopted in CARACAL in November 2021) to ensure the most relevant risks would be tackled first.

Art. 7 – scope of the carbon footprint measure

The scope of Art. 7 should be based on the assessed scope in the inception impact assessment, and start with EV above 2 kWh as well as large batteries such as energy storage system (ESS) batteries first. Only at a later stage, if the carbon footprint has been set up and works well, it could be extended to a broader scope of batteries.

The biggest concern remains with regards to the time and resources needed to develop a standardised methodology and strong implementation for a robust carbon footprint calculation.

We strongly support developing a strong carbon footprint methodology and setting feasible and implementable carbon footprint requirements which will have a true game-changing effect and steering potential to strengthen European competitiveness and sustainability norms.

Art. 8 – recycled content

The prediction of the amount of secondary raw materials available in 2030 (and later), and whether it will be sufficient to meet the targets, is not clear yet not only because the European EV market is not yet matured enough but also because there is an outflow of used batteries outside the EU creating depletion of strategic secondary raw materials. Moreover, conditions to bring back the used batteries recycling in Europe aren't that straightforward. Hence, a very cautious approach is necessary, including strong review clauses and safeguard measures against the risks connected to ex ante specified minimum recycled content targets.

A potential future extension of recycling content obligation to additional batteries raw materials would force the industry to compete even harder for the available secondary raw materials. Moreover, it might bring shortages of battery raw materials in the EU resulting in production stops in the EU or forcing European manufacturers to source secondary raw materials from non-European producers. Any eventual future extension of this obligation requires a thorough impact assessment as even the concluding remarks of the one prepared by Öko Institute in 2020 put in doubt the environmental benefits of recycled content requirements for batteries raw materials for the next decade[1].

Chapter VI.A – supply chain due diligence (Art. 39 of the Commission proposal)

Responsible and ethical sourcing of metals is an essential part of EU policy. Requirements building on existing schemes and international standards encourage the use of sustainably produced and responsibly sourced metals in batteries. The rules prescribed in the Battery Regulation should apply across the entire supply chain to both upstream and downstream levels to ensure a level-playing field.

Legislative coherence with the Sustainable Corporate Due Diligence proposal will be essential to ensure a level-playing field, but also to avoid the duplication of rules and requirements for metals used in batteries but also in other applications.

Existing industry-led schemes[2] for various battery metals, allow for the implementation of risk-based due diligence in a dynamic way, with a process that can be more easily adapted to real risk profiles on the ground.

[1] Öko Institute, Batteries Regulation Impact Assessment: 'Especially, for critical metals needed in rapidly growing markets, e.g. Li, Co in lithium ion batteries, not enough secondary materials will be available up to 2035 to specify relevant shares of recycled content in batteries placed on the market'[1]

[2] Cobalt Industry's Responsible Assessment Framework (CIRAF), Aluminium Stewardship Initiative, the Copper Mark, the Joint Due Diligence Standards for Copper, Lead, Nickel and Zinc, and the Metal Alliance for Responsible Sourcing (Mars), the Initiative for Responsible Mining Assurance (IRMA), etc.