

COMMENTS ON THE EUROPEAN COMMISSION'S PROPOSAL FOR A REGULATION CONCERNING BATTERIES AND WASTE BATTERIES

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European Recycling Platform (ERP) very much welcomes the European Commission's proposal for a new Batteries Regulation and its overall objective to promote a competitive, circular and sustainable value chain for batteries in Europe. We appreciate the huge effort that has gone into this proposal and the ambition to reflect both the latest market and technology developments and the latest amendments to general waste legislation.

With this paper, ERP would like to share some of its practical experience in operating producer responsibility organizations (PRO) for batteries in 12 countries and to make some proposals for amendments in order to ensure the Regulation can fully deliver on its objectives.

Summary

In a nutshell, we would like

- to ask for a **specification of the definition of "portable batteries"** in order to avoid overlaps with electric vehicle batteries, in particular when it comes to batteries in vehicles such as e-bikes and scooters;
- to ask for a **specification of the definition of "industrial batteries"** in order to assure that only battery types exclusively designed for industrial purposes are covered by the definition;
- to propose a **more realistic approach for the collection targets for waste portable batteries** considering the amount of waste portable batteries available for collection, thereby taking into account aspects like the increasing lifetime of batteries and exports;
- to propose **abandoning the opportunity to revoke a PRO's authorisation when missing a fixed collection target** as the collection rate alone is not a fair indicator for a PRO's collection performance but must consider overall market circumstances;
- to propose **requiring final users to hand over their waste batteries to producers or PROs**, in order to avoid parallel flows and to ensure that all batteries available for collection find their way to those actors held responsible for collection; and
- to propose **implementing effective enforcement measures for chapter VII incl. ideally cross-border means to ensure compliance with and of EPR schemes** and to combat free-riding.

In the following chapters we provide further and more specific comments on the proposed provisions of this Regulation. For the sake of clarity, we structured our remarks and proposed amendments in a way that corresponds to the Articles of the Regulation.

Regarding Article 2 (Definitions)

With regard to the **definition of “portable batteries”** we feel that **further clarification is necessary** in order to avoid overlaps with the definition of “electric vehicle batteries”, in particular when it comes to batteries in vehicles such as e-bikes and scooters. Even though Recital 12 states that “all batteries used in light means of transport, such as e-bikes and scooters, are classified as portable batteries” one could well regard them as “electric vehicle batteries” based on the definition of those batteries in Article 2 (12). Further, we would like to point out that, under the proposed definitions, batteries with a weight of more than 5 kg which are neither designed for industrial purposes, nor an electrical vehicle battery, nor an automotive battery, would be defined as industrial battery, even when occurring in household appliances.

With regard to the **definition of “light means of transport”** and in view of the fact that batteries from those means are to be excluded from the collection targets for waste portable batteries in Article 48 we would like to **ask for clarification** whether or not this definition includes vehicles such as wheelchairs. Further, we would like to point out that the proposed definition would exclude scooters on which travellers are typically not seated when the vehicle is moving. This would contradict Recital 12 which suggests that light means of transport actually include scooters (see paragraph above).

With regard to the **definition of “industrial batteries”** we suggest adding that these batteries need to be “exclusively designed for industrial purposes” in order to **avoid dual-use battery types** ending up with consumers and related collection channels would not be considered as portable batteries.

With regard to the **definition of “economic operators”** we would like to **ask for clarification** whether or not “online marketplaces” are included as we feel that they are not sufficiently covered by the definition of fulfilment service providers in Regulation (EU) 2019/1020.

With regard to the **definition of “authorised representatives”** we would like to point out that it does not correspond to the definition used in some Member States’ regulation to depict a manufacturer representative located in that specific Member State. Therefore, in order to avoid any misconceptions, we would propose **to differentiate between EU-wide authorised representatives** for product design aspects (since here the single market applies) **and national authorised representatives** for EPR aspects (since here national markets apply).

Regarding Article 40 (Obligations of authorised representatives)

Again, in order to avoid any misconceptions, we would like to ask for a differentiation between the obligations of an EU-wide authorised representative and those of a national authorised representative (see above our comments on the definition).

Regarding Article 43 (Obligations of fulfilment service providers)

With regard to the proposed obligations of fulfilment service providers we are surprised that these actors need to ensure compliance only with the requirements set out in Chapters II and III and not with the requirements set out in chapter VII. This would mean that fulfilment service providers would not have the obligation to check compliance of producers with any EPR requirements.

In addition, we would like to ask for clarification whether or not online marketplaces are covered by the definition of fulfilment service providers (see above our comments on the definition of “economic operators”).

This surprises us also since at the same time compliance of fulfilment service providers and marketplaces is one of the main aspects of the EPR guidelines which the Commission is currently preparing.

Regarding Article 46 (Register of producers)

With regard to the producers' registration we feel it necessary to further **specify the role of PROs**. Under the proposed provisions, it is not clear who is obliged to actually register the producer – the producer itself or PRO if appointed.

Regarding Article 47 (Extended Producer Responsibility)

In order to combat free-riding on the EPR obligations set out in this chapter, we believe that for producers of portable batteries it should be **mandatory to join a PRO** which carries out the EPR obligations on their behalf. This would also increase the availability and transparency of data and the efficiency of the system as a whole.

With regard to the **modulation of the financial contributions** paid by producers to PROs we would like to point out the **necessity of an EU-wide approach**, in particular when it comes to defining criteria for the modulation by battery type and chemistry, in order to ensure harmonisation across Member States. Different national or PRO individual design related criteria would not only disturb the internal market, but would potentially also not lead the desired impact pan-European criteria would have.

While we support the **principle of equal treatment**, we see some **difficulties with regard to its implementation**. For example: A PRO's effort for carrying out the annual standard activities (e.g. declarations, reporting, basic consultation) is the same for all producers, regardless of size. In many cases, smaller manufacturers even require more effort and thus cause higher costs than larger ones (e.g. due to lost invoices or the need to clarify legislation). So pricing producers solely based on their size (i.e. quantities put on market) would not be fair either. This needs to be taken into account. We also propose to align the provisions in this paragraph with the EPR guidelines the Commission is currently working on.

With regard to the provisions mentioned in **Paragraph 5** we see the need to **specify the term "third party"**, since we feel it is not sufficiently clear who exactly is meant in this context.

We agree to the proposed **authorisation process for PROs**. However, we see the need to **further specify some core authorisation criteria** (e.g. via implementing or delegated act), ensuring a minimum level of harmonisation while also leaving some flexibility to Member States.

With regard to the **publication requirements for PROs** we would like to point out that many PROs are in competition with each other. Publishing sensitive data on members or their financial contributions could therefore **be incompatible with respective national competition law**. The publication requirements set out in this Article should take this into account. With regard to the timing of publication, we would like to point out that certain data, such as the amount of batteries collected and recycled, are typically not available at the end of the year, but sometimes only months later.

Regarding Article 48 (Collection of waste portable batteries)

While supporting the overall objective of increasing collection of waste portable batteries, we believe that the proposed **collection targets are too high**, and we strongly doubt that they can be achieved under the given circumstances. In order to avoid a collective missing of the targets, they should therefore be lowered to a more realistic level. We also propose to adjust the calculation method for the collection rate. The amount of portable batteries put on market is not a good indicator for the amount of batteries actually available for collection and thus not a fair foundation to measure a PRO's collection performance. Therefore, we propose to **calculate the collection rate as percentage of the amount of waste portable batteries available for collection**, thereby taking

into account aspects like the increasing lifetime of batteries and exports. In this context, we also propose to **implement different collection targets for different battery chemistries**, taking into account that the handling of e.g. Lithium-based batteries is much more expensive and avoiding “cherry picking” of PROs. We would also like to point out that **the collection targets for producers and PROs should differ from those for Member States** (see Article 55) as the latter also include batteries collected from other actors than producers and PROs (e.g. treatment facilities, public waste management authorities and voluntary collection points as referred to in Articles 52, 53 and 54, respectively).

We agree to the **authorisation process** for PROs referred to in Paragraph 6. However, we are concerned about the possibility to revoke this authorisation in case the collection targets are not met. As described above, the achievement of a fixed collection rate is not a fair indicator for a PRO’s collection performance – at least not under the current calculation method not considering longer life times of batteries and with unpredictable parallel battery flows caused by the provisions in Articles 52-54 that are beyond the PRO’s control (see below). PROs would face a very high and unnecessary risk of losing their permit. Therefore, **the collection rate should not be a criterion for evaluating a PRO’s authorisation**. If to be foreseen at all, a better criterion would be the PRO’s collection rate in comparison to the average collection rate of all PROs in the respective national market.

With regard to the **survey to be carried out by Member States** on the share of waste portable batteries in mixed municipal waste and in waste electric and electronic equipment streams we would like to **ask for clarification** whether the requirement of “corrective action” would apply to an individual PRO, to all PROs in the respective Member States or to all actors collecting (including treatment facilities, public waste management authorities and voluntary collection points referred to in Articles 52, 53 and 54, respectively). In this context we would also like to point out that “corrective action” such as awareness raising campaigns conducted by an individual PRO would probably not be very efficient -.

Regarding Article 52 (Obligations of treatment facilities), Article 53 (Participation of public waste management authorities) and Article 54 (Participation of voluntary collection points)

We would like to point out that the possibility for operators of waste treatment facilities, public waste management authorities and voluntary collection points to hand over waste batteries directly to waste management operators gives rise to **parallel battery flows which are beyond control of producers and PROs** and which limit their ability to collect waste batteries themselves. Yet, producers and PROs are de facto held responsible for meeting the collection targets referred to in Article 48 as they otherwise may lose their permit (see Article 48 Paragraph 10). We propose that **final users should be obliged to hand over their waste batteries to producers or PROs**, in order to avoid parallel flows and to ensure that all batteries available for collection find their way to those actors held responsible for collection. Alternatively, it would need to be ensured that all actors involved in the collection of waste portable batteries (including the ones mentioned in Articles 52-54) are held responsible for meeting the national collection targets.

Or and if this articles 52-54 are only meant to allow for additional collection points for batteries, this additional collection should happen under a contract with a PRO as a PRO collection points to make sure all volumes are reported correctly (something that is already today practice in many member states).

Regarding Article 61 (Reporting to the competent authorities)

With regard to the reporting requirements referred to in Paragraph 1 we would like to ask for clarification whether PROs need to report the relevant data on an aggregated level or for each individual producer. Notwithstanding the above, in order to comply with the provisions, PROs are reliant on producers sharing their data. Therefore, producers should be required to report this data to PROs.

Regarding Chapter IX (Union market surveillance, control of batteries entering the Union market and Union safeguard procedures)

Legal provisions are worthless if not followed correctly. Therefore, it is of utmost importance that all the provisions of this Regulation are properly and actively enforced. Unfortunately, the Articles of this Chapter are **missing clear provisions on the enforcement of EPR obligations**. We would, therefore, ask for the implementation of effective and ideally cross-border means to ensure compliance with and of EPR schemes and to combat free-riding.

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About ERP

European Recycling Platform was founded in 2002 in response to the introduction of the European Union's Waste Electrical and Electronic Equipment (WEEE) Directive. ERP's mission is to ensure high quality and cost-effective implementation of the Directive, for the benefit of its customers and the environment. In June 2014, ERP became part of the Landbell Group, an international supplier of service and consulting solutions for environmental and chemical compliance. ERP and Landbell Group have collected more than 5 million tonnes of packaging, more than 3.5 million tonnes of e-waste, and over 80,000 tonnes of portable batteries.

ERP is the first and only pan-European PRO authorised to operate in Austria, Denmark, Finland, Germany, Ireland, Israel, Italy, Norway, Poland, Portugal, Slovakia, Spain and the UK. By passing on the advantages of multinational recycling operations to customers, ERP has proved to be the most competitive solution for companies in the countries where it operates for WEEE, batteries and packaging compliance, as well as take-back services.

For more information on ERP, please visit: www.erp-recycling.org



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