

Feedback on the Proposal for a European Battery Regulation

1st March 2021

The International Lead Association representing Europe's lead battery recyclers, primary lead producers and mining companies welcomes the proposal for a new comprehensive European battery regulation that aims to improve the quality, sustainability, transparency, and social responsibility of the battery value chain. This Regulation should be the primary tool to regulate all aspects of batteries and efforts should be made to simplify the regulatory framework by transferring legislative requirements related to batteries from other EU instruments to this new Battery Regulation (e.g., End of Life Vehicle Directive requirements related to batteries).

The existing circular economy model for lead batteries, that enables a very high collection rate and recycling efficiency to be achieved through a comprehensive network of high performing recyclers operating in many Member States, is the EU gold standard. Our Members have some concerns that the current proposal may not have adequately considered the role of independent lead battery collection and recycling operators that deliver these services. We would welcome further discussions with the Commission to ensure that appropriate safeguards are in place to ensure that this highly efficient process is not inadvertently disrupted by any new legislative provisions.

We support the legal basis for the Regulation based Article 114 of the Treaty on the Functioning of the European Union (TFEU), since it is important to harmonise many measures across Member States. However, we would like Commission to clarify how they plan to ensure that appropriate enforcement will take place to make the Regulation equally effective for batteries manufactured and recycled in or outside of the EU.

We support the Commission proposal to include specific recycling efficiency and material recovery targets and welcome the adoption for the first time of requirements for lithium-ion batteries given the importance this technology will play in carbon reduction goals and the predicted increases in market volumes. However, we believe it is premature to establish recycling efficiencies and recovery targets for materials before rules regarding the calculation methods has been published as the ability of companies to achieve mandatory levels will be very dependent upon the eventual methodology adopted.

As a general comment we are concerned that many important aspects that will impact the ability of the sector to comply with the Regulation have yet to be defined and are rather left to future implementing or delegated acts. We believe to provide greater business certainty the use of implementing and delegated acts should be minimised, and that greater detail should be included in the Regulatory proposal itself.

Our feedback on specific elements of the proposal is detailed below:

Article 2: Definitions

Article 2 (10): The definition of an *automotive battery* should be expanded to include auxiliary batteries such that the definition “any battery used only for automotive starter, lighting or ignition power” should be amended to “any battery designed for automotive auxiliary or back up purposes, starter, lighting or ignition power”.

Article 2 (44): The definition of waste management operator needs to include the concept of “recovery”. E.g., ‘waste management operator’ means any natural or legal person dealing on a professional basis with the separate collection, sorting, or treatment **and recovery** of waste batteries.

Article 6 (and 71): Restrictions of hazardous substances

All batteries use hazardous substances in their manufacturing or contain hazardous substances to achieve their desired functionality. We agree that these uses should not present an unacceptable risk to human health or the environment. However, the proposal in Article 6 appears to duplicate and create unnecessary overlaps with existing EU legislation covering chemical use (e.g., REACH), workplace health and safety (e.g., Chemical Agents Directive and supporting framework) and environmental protection (e.g., Industrial Emissions Directive).

We question why battery use of hazardous substances should receive special focus through new provisions described in Article 6 and the related procedure for amending restrictions on hazardous substances described in Article 71 when the existing regulatory framework already addresses these concerns.

Whilst we are encouraged that the proposal includes provisions to align with the REACH process for managing hazardous substances by including provisions for risk assessment, socio-economic impact, and analysis of alternatives, we question why the existing REACH framework itself cannot be directly applied rather than creating a new parallel procedure for battery chemicals that is regulated through a delegated act.

Notwithstanding this position, we remain concerned that the procedure outlined in Article 6 and 71 will not preclude any battery substance from being subject to additional REACH activity such as Authorisation or Restriction initiated by a Member State. Thus, if the current proposal for restrictions of hazardous substances within the Battery Regulation is not subject to amendments, we request that Commissions strengthens the provision of REACH Article 58(2) to avoid unnecessary regulatory overlaps for the same use of a substance.

Article 7: Carbon footprint of electric vehicle batteries and rechargeable industrial batteries

We support the introduction of carbon footprint declaration, performance classes and maximum thresholds to promote green batteries made in Europe. However, we believe the current scope of requirements to achieve these goals is currently too wide and it should be limited to electric vehicle batteries and stationary batteries for energy storage. The category “rechargeable industrial batteries with internal storage and a capacity above 2 kWhs” includes hundreds of very diverse applications and several battery chemistries. It would therefore lack proportionality to include all of these applications. Moreover, the Commission and Member States should provide more clarity on how they plan to ensure that appropriate enforcement will take place, to make the Article 7 requirements of the Regulation equally effective for batteries manufactured in or outside of the EU

The carbon footprint proposal uses methodology described in Annex II that was developed for and applicable only to lithium-ion batteries, even if several segments of the industrial battery market are dominated by other technologies. Lead, nickel and sodium batteries can all be used in as stationary energy storage batteries, and carbon footprint methodologies should therefore be developed for each chemistry. Similarly, individual specific performance classes and maximum carbon thresholds should be developed for each battery technology/chemistry.

The development of these battery chemistry specific methodologies will require an appropriate amount of time, above all for those technologies where the existing Product Environmental Footprint Category Rules (PEFCRs) are not available. We therefore believe that it will be impossible for the Commission to meet the deadline of 1 July 2023 to adopt the delegated act establishing the methodologies for all technologies included in the scope of the proposal and a longer phase in period should be anticipated for those technologies where the existing Product Environmental Footprint Category Rules (PEFCRs) are not available

To allow Industry time to adapt to the requirements specified in delegated acts associated with Article 7 we believe there needs to be at least 24 months between the adoption of the delegated acts and their implementation.

Article 8: Recycled content in industrial batteries, electric vehicle batteries and automotive batteries

We support the principle of maximising the use of recycled materials to manufacture batteries where this is technically feasible and sufficient recycled material is available on the market to meet the needs of the sector. It is important also to avoid leakage of critical battery materials towards other applications through ‘downcycling’.

However, we have concerns about the scope of the requirements (in common with comments made on other Articles) and the fact that environmental and economic benefits of mandatory targets have not been properly assessed. We believe that to ensure a level of workability and proportionality the scope should initially be limited to electric vehicle batteries and stationary batteries for energy storage.

Lead batteries are already the gold standard in Europe for use of recycled materials as input to the battery manufacturing process. Other battery technologies, including lithium-ion, currently use few recycled materials but it recognised that one of the barriers to improving this is the current absence of sufficient end-of-life batteries on the market and immature recycling processes. Whilst the provision of technical documentation containing information about the amount of cobalt, lead, lithium or nickel recovered from waste present in each battery (not only as “active material”) may be possible we believe that is not appropriate at this time to specify mandatory minimum shares of cobalt, lead, lithium or nickel to be recovered from waste in 2030 and 2035 and that these should be developed at a later date through an implementing act as is proposed for other aspects of the regulation where mandatory targets could be adopted. The proposal does not describe how the minimum shares for recycled content were estimated and no impact assessment has been made available that provides evidence for the environmental benefits that would be derived from the implementation of such mandatory targets.

Even in the case of lead batteries, where recycled content over the range of battery types is already up to 80%, there will be some battery models that require greater use of primary lead to achieve a customer's desired performance. Therefore, if mandatory recycled content is maintained within the final regulatory text, Article 8 should allow include the opportunity for derogations for specific battery models where technical requirements preclude use of recycled materials to the extent required by any mandatory content applied to the battery chemistry.

Article 13: Labelling of batteries

We have long advocated for an improvement for the identification of battery chemistry to aid proper sorting so that lithium-ion batteries with the same dimensions and form as lead batteries do not end up in the lead battery recycling process. Our members have reported several significant process safety incidents (e.g. explosions and fires) over the last few years as a result of inadequate separation of lithium-ion batteries from lead smelter feedstocks.

To improve battery chemistry identification for proper sorting, an IEC Standard (62902) was developed on colour coding. We are disappointed that the proposals in Article 13 do not include provisions for this colour coding regime.

Article 14: Information on the state of health and expected lifetime of batteries

Article 14 specifies that rechargeable industrial batteries and electric vehicle batteries with internal storage and a capacity above 2 kWh shall include a battery management system containing data on the parameters for determining the state of health and expected lifetime of batteries as laid down in Annex VII. Whilst this may be relevant for lithium-ion batteries it is not for other technologies, including lead-based batteries. Therefore, the scope of this requirement requires some attention to ensure it applies only to those battery types where the benefits of including a battery management system are clear.

Article 39: Obligation for economic operators that place rechargeable industrial batteries and electric-vehicle batteries with internal storage and a capacity above 2 kWh on the market to establish supply chain due diligence policies

We agree with the Commission proposal to limit the supply chain due diligence requirements to raw materials present in lithium-ion batteries. The majority of raw materials used to manufacture lead-based batteries are sourced from recycled materials collected and processed by high performing smelters in Europe. We agree that it would not be proportionate to include these in mandatory supply chain due diligence requirements that are better targeted at procurement of primary materials from Regions that are in conflict or involve forced labour practices. Notwithstanding this, we should highlight that voluntary supply chain due diligence programmes such as that recently announced for lead metal (see [ILA News](#)) already play a role in mitigating risks associated with supply chain practices associated with lead based batteries.

Articles 47-58: End-of-life management of batteries

Most of the lead battery collection, treatment, and recovery (recycling) operators in Europe are independent. They all have a permit for their activities which ensure, that batteries are collected, treated, and recycled in an environmental sound manner. In contrast to the portable batteries, a uniform take-back system only including battery producers or waste management operators authorised by producers is not necessary for lead-based automotive, and industrial batteries; these waste batteries have positive market returns and are therefore

taken back or purchased free of charge by independent waste management operators and secondary lead smelters. It is essential to maintain the already close to 100% collection and recycling of lead-based batteries that is delivered through use of independent waste management operators that play a major role in collecting, sorting, treatment, and recycling. The role of such actors needs to be better defined in the Regulatory proposal

Article 56: Treatment and recycling

We wholeheartedly support the requirement that under no circumstances should any collected waste batteries be landfilled or incinerated and that recycling processes for waste batteries must comply with minimum environmental standards. However, whereas Directive 2010/75/EU contains BAT conclusions for lead battery recycling facilities, there are no established BAT conclusions for lithium-ion batteries.

Part A of Annex XII already appears to be rather incomplete and notwithstanding the Commission's proposal to adopt delegated acts in accordance with Article 73 to amend the treatment and recycling requirements for waste batteries, we would recommend that this Annex is already updated to better reflect existing good practice treatment and recycling requirements described in the non-ferrous metals BAT Reference document.

Article 57: Recycling efficiencies and material recovery targets

We support the Commission proposal to include specific recycling efficiency and material recovery targets and welcome the adoption for the first time of requirements for lithium-ion batteries given the importance this technology will play in carbon reduction goals and the predicted increases in market volumes.

However, for all battery technologies we believe it is premature to establish recycling efficiencies and recovery targets for materials BEFORE detailed rules regarding the calculation methods has been adopted. The ability of companies to achieve future targets is very dependent upon the calculation methodology utilised. As a minimum the proposal must include provisions to review the targets described in Annex XII Part B through an implementing act should the new detailed rules regarding the calculation and verification of recycling efficiencies highlight that the initially proposed recycling efficiency targets are not technically or socio-economically feasible.

Some lead battery recyclers operating in the EU may require some significant capital investment and process changes to achieve the current recycling efficiency targets proposed in Annex XII, even though the site recycling operations are currently considered as Best Available Technology (BAT) under the Industrial Emissions Directive. These operations must be given sufficient time to make the necessary process upgrades and receive the approval from local authorities for revised site environmental permits that will be required. We do not believe the current provisions described in Article 57 adequately considers the practicalities for these operators.

Article 58: Shipments of waste batteries

Whilst not necessarily being relevant to this proposal we would like to remind the Commission that the battery manufacturing and recycling Industries have long lobbied for amendments to the Waste Shipment Regulations to make it easier for recyclers operating to high environmental standards in the EU to import end of life batteries from certain low- and middle-income countries that are currently facing challenges in ensuring environmentally sound recycling.

Whilst it is recognised that this is not a long-term solution to this problem it would allow short to medium term respite for these impacted countries whilst also enhancing the ability of battery manufacturers to access secondary materials that have been recycled under appropriate conditions.

It is critical that the Commission now clarify the conditions that are necessary to demonstrate how a recycler or other waste holder exporting the waste batteries can prove that the treatment outside the EU took place in conditions that are equivalent to the requirements of the Regulation. This was never resolved in the current Battery Directive and there is a significant risk that batteries that should be recycled in high performing EU facilities are rather exported to lower cost facilities operating to much lower environmental, health & safety standards outside the EU. The Commission should ensure a delegated act laying down the criteria for the assessment of equivalent conditions is developed as a matter of urgency.

Article 61: Reporting to the competent authorities

The reporting obligations included in Articles 61 (and 62) are a reason for concern:

- Article 61 seems to foresee a comparison between collected batteries and batteries placed on the market in the same year: this comparison for many battery types that have extended lifetimes makes no sense and requires further consideration.
- There is also a risk of double counting of waste batteries from the interaction of Articles 61.2.b and 61.3, which should be avoided
- It is not clear how repurposed batteries will be counted: the system needs to take into account also these batteries.
- The timeline is also quite challenging since producers are required to provide data only 4 months after the end of the year, yet Member States are given 18 months of the end of the reporting year for which the data are collected.

Article 70: Green public procurement

Whilst we understand that public procurement should take account of the environmental impacts of batteries over their life cycle, we are concerned that without more detailed guidance local authorities may not apply the criteria detailed in Articles 7-10 appropriately. It is our understanding that Articles 7-10 are to be applied to batteries within the same chemistry class rather than being a tool to compare environmental attributes between different battery chemistries. It would not be appropriate to design public procurement policies by incorrectly applying the sustainability criteria described by Articles 7-10 to restrict selection of a specific battery chemistry that can perform the functionality required by the customer.

About ILA

ILA is the only association representing lead producers globally, working to create a sustainable future for lead.

Our members produce lead from mining, smelting, refining and recycling. The ILA team comprises dedicated full-time experts and advisors who work closely with members and other organisations to promote the safe and secure management of lead. We work closely with companies, regulators, policymakers and other stakeholders to promote and support the safe and responsible use of lead in a wide range of important products, from batteries to radiation shielding. Because in seeking to achieve a low carbon world, lead matters. ILA supports the Consortium for Battery Innovation, a pre-competitive innovation group pioneering new research and development ushering in the next generation of advanced lead batteries.

With offices in Europe and North America, we liaise with partner groups and associations involved in battery manufacturing and other industries where the use of lead is critical.