# Platform recommendations to policy makers on the Battery regulation

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# Introduction and general recommendations

The Platform welcomes the Commission's proposal for a Batteries Regulation and strongly supports the need for modernisation of the existing batteries legislation. To that end, the regulation shall ensure harmonisation of the internal market and facilitate an accelerated shift to electrified mobility by engaging all parts of the battery supply chain. For this, the regulation must establish proportional provisions to enable a sustainable battery ecosystem. As a cornerstone of the European 2050 agenda, the Regulation needs to be future proof and promote innovation and growth of this strategic sector.

As the Platform for electromobility is an alliance of organisations from across civil society, industries, and transport modes along the value chain of the electromobility industry, this position focuses on electric vehicle (EV) batteries. We would like to nevertheless see a better differentiation of the various battery applications to reflect the different use and nature of battery products placed on the market.

In general, regulators should keep in mind risks associated with tight timelines, lack of level-playing field with competing actors and sectors, lock-in effects preventing innovation, and of over-regulation. In addition, rules and conditions for practical enforcement should be clearly described to ensure the effectiveness of the Batteries Regulation.

## Timeline

We support the need for secondary acts to supplement the regulation's substantially technical provisions and invite regulators to be particularly cautious about the timeline for their implementation. Well-thought through timelines would balance the need for a quick implementation of the Regulation while ensuring robust methodologies.

## Proportionality

The Batteries Regulation text and impact assessment is focused on mass-volume battery applications and chemistries. We encourage policy makers to take into consideration that the administrative burden for small-volume and niche batteries risks becoming disproportionate and driving niche technologies out of the EU market. Especially, we point towards the scope of articles 7, 8, 14, 57 and 59. For example, the State of Health obligation is very technology-specific and not applicable to a number of battery types included in the scope. On the carbon intensity requirements, we

suggest only applying them once Product Environmental Footprint Category Rules (PEFCR) have been established for the relevant battery types. We want to highlight, however, that for some applications it will be truly impossible to define meaningful PEFCR because of their high granularity.

### Enforcement on imports

Imports should be subject to equivalent enforcement measures onto European production. In general, it is unclear how certain requirements will be enforced in practice, and in a fair manner for all batteries, whether they are manufactured domestically or imported. According to the Regulation, carbon footprint declarations, minimum recycled content and due diligence shall require third-party verification done by a notified body. Conformity assessments should be established using uniform criteria, independent of the location of the assessment activity. Particular attention should be given to the practices of auditors not based in Europe when they perform their third-party verification[1].

Finally, regulators must avoid duplication or overlaps with existing legislation and requirements, and limit the overall administrative burden on the nascent battery industry. To avoid disproportional cost increase and slowed down technological development, we recommend streamlining and aligning provisions, to encourage new market comers and to guarantee the enforcement capacity of the relevant authorities.

We suggest below under specific headlines where improvements or simplifications are relevant.

## 1/ Carbon footprint declaration and performance classes

The Platform very much welcomes the proposed requirements for carbon footprint declaration, calculated based on the PEFCR[2] currently under revision. It is a concrete tool to strengthen the EU's 2050 climate-neutrality objective and to incentivise, at product level, the use of clean energy. However, limitations remain in the proposal:

### Scope

[1] Research shows that the standards applied by auditors do not comply with EU standards. More worrying are the unfair and illegal practices.
[2] Product Environmental Footprint Category Rules for High Specific Energy Rechargeable Batteries for Mobile Applications

The scope of the carbon footprint declaration obligation should be revised. Instead of a declaration obligation "for each battery model and batch per manufacturing plant", provisions should apply per battery model, manufacturing plant, raw material extraction processes and supply chain configuration to ensure that upstream emissions and variations are reflected. Additionally, the requirement for all industrial batteries is not practically feasible. Their fields of application are too diversified to establish meaningful PEFCR relevant for establishing comparable carbon footprint declarations.

### Enforcement

We are also concerned about the measure's enforceability with respect to activities taking place outside the EU. To ensure a level playing field between European and non-European actors, more clarifications are needed especially on the viability of the declared data and conformity assessment referring to audits conducted outside the EU.

### Methodology

A methodology needs to be developed to ensure declarations are both fully representative of the carbon intensity and comparable to each other. The use of representative data and supply-chain configurations will ensure such comparability. Therefore, the Platform supports the industry's work to update the existing PEFCR for rechargeable batteries. Furthermore, certifications of energy use should reflect real world use of carbon-free energy and be based on the energy mix of the country where the specific activity or process takes place. The methodology should ensure transparency of the actual emissions as well as confidentiality of data to avoid undermining any competitive advantages or intellectual property.



## 2/ Due Diligence Requirements

The Platform strongly supports the introduction of binding corporate responsibility rules for due diligence throughout the battery supply chain.

### Scope

Whilst the Platform welcomes the proposed supply chain due diligence provisions, it would like to stress that due diligence requirements should be extended to the sectors competing with electric transport to provide consumers and authorities with full transparency on the diverse mobility options available on the market. Notably, due diligence requirements must be equally applied to the fossil fuel sector.

## Human right and environmental protection

The proposed regulation currently only addresses gross human rights violations, excluding, therefore, many other possible violations of human and labour rights. To address this, the regulation should instead refer to the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises. As these guidelines do not, however, cover the social and environmental impacts of mining or refining, due diligence requirements should be further strengthened to include clear provisions on social and environmental protection and responsibility (see Annex 1).



# 3/ Battery Passport

## Timing

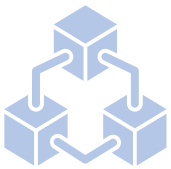
Economic operators must have sufficient time to adapt to new data sharing requirements which should be as much as possible under one single format. Those new requirements will be defined through delegated acts, and we remind regulators that the industry should have sufficient lead time to be able to plan, develop and adapt those changes to have them implemented in the production process before they are deployed in the respective battery applications.

## Streamlining

The battery passport should be streamlined with a focus on a single, innovative, and digital approach. The current proposal foresees the creation of two separate systems, a QR code and a battery passport, requiring uploading the same information in two databases. The battery passport should be developed coherently with international proposals, such as the battery passport initiative of the Global Battery Alliance, with the QR code providing access to such battery passport. This method should only be required once access rules and conditions are clearly specified and streamlined.

## Confidentiality

The Commission must identify which data sets are essential to achieve the objectives of the regulation and boost the data-sharing economy while ensuring confidentiality. In particular, stakeholder-specific access levels should be developed.



# 4/ Repurposing & Remanufacturing

The Platform welcomes the Regulation's intention to provide a regulatory framework for the explicit transfer of Extended Producer Responsibility from the original producer to the repurposer to limit liability and safety concerns for second-life EV batteries. The current provisions, however, require clarifications to make the framework legally and technically robust.

## State of health information

State of health information is needed for the assessment of second-life worthiness. The legal and operational conditions to grant access to Battery Management System (BMS) data for authorised independent operators must be clarified with particular attention to safety and intellectual property rights. Additionally, in Article 14, the scope should be limited to those batteries with a BMS that are technically capable of meeting second life requirements. Annex VII of the regulation will need to be reassessed to consider technical feasibility. This includes especially data requested (e.g. cooling demand), which is only available for certain battery types.

## Safety

Repurposing and remanufacturing should not come at the expense of safety. Especially unqualified persons should be prevented from manipulating or altering a battery.

## Data ownership

Additionally, intellectual property rights should be better protected. Ownership rules on data generated by EVs should be balanced between property rights and a sufficient level of openness to allow innovation. In general, data access should be read-only. This is both important with regards to IP rights and safety.

## Waste status

The proposed classification of batteries potentially suitable for second life in waste-related rules is important. Nonetheless, the collection of waste batteries identified as suitable for repurposing should be designed so that a second life business model can develop while preventing illegal waste transport. A fast-track procedure shall be considered under the waste shipment regulation to transport waste and non-waste batteries to a list of pre-authorised recyclers, diagnosis and repurposing workshop within the EU without transboundary notification.

## Shipment

To avoid all remaining risk of illegal shipment of batteries outside Europe, we recommend ensuring a clear-cut transfer of extended producer responsibility between original producer and remanufacturer to address safety and liability issues upon batteries' second life (see Annex 1).

# 5/ Circular Economy

The Platform welcomes the recognition of batteries within a circular economy. The Regulation should ensure the EU's circular economy system ready for a significant increase in waste volume triggered by effective targets and should further drive innovation and process development. To do so we recommend establishing: high and ambitious standards for recycling and material recovery and equivalent conditions of recycling outside Europe including environmental and social criteria. To that end, at least a deadline per which such conditions have to be established should be introduced in the respective article 58.

## Targets (recycling efficiencies and material recovery)

Although binding targets are key, we recommend a careful approach to avoid potential unintended consequences. Binding targets have been the driving force for environment and climate improvement across EU regulations, but they should always go hand in hand with a solid methodology and a careful assessment of the environmental costs and benefits. We therefore call for ambitious yet technically and economically feasible binding recycling targets based on a robust methodology that takes account of best available recycling techniques, waste volumes and market developments of new battery technology.

## Recycled content

Driving the market for secondary raw materials forward is very important for sustainability and the general ambition of establishing a circular economy. We invite legislators to pay particular attention to finding the most effective and efficient solutions for increasing the circularity of secondary raw materials in the batteries sector. In view of better regulation, we therefore suggest focussing on establishing more ambitious definitions of End-of-Waste and End-of-Recycling to recover secondary raw materials that can truly compete with virgin ones.

## Recycling efficiency

We welcome that the required recycling efficiencies have been further adapted to the various battery chemistry families available on the market today. In view of technological feasibility, additional graduation within certain battery families is required though.

# Annex 1: Considerations regarding existing and upcoming legislations

## EU Product Environmental Footprint Category Rules

We recommend drafting the methodology of carbon footprint declarations along the existing line of the EU Product Environmental Footprint Category Rules (PEFCR).

## Waste Shipment regulation

A harmonised classification for the status of batteries should be established across both texts. Excessive administrative burden, especially for batteries shipped for remanufacturing or reuse should therefore be avoided. The regulation should be the opportunity to facilitate the importation of waste into Europe therefore boosting the European, high-standard recycling industries.

## OSH Legislation and Regulation on REACH

Substances management, at the use, manufacturing and recycling phase, is regulated by the horizontal Occupational Safety and Health (OSH) and Regulation on Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH). Therefore, the chemical management articles 6 (2-5) and 71 should be removed from the Battery Regulation.

## Due Diligence Requirements

Due diligence requirements must be equally applied to the fossil fuel sector as part of the upcoming horizontal due diligence legislation by including equally detailed environmental due diligence requirements.

## The Initiative for Responsible Mining Assurance

As the relevant OECD guidelines do not cover the environmental impacts of mining, due diligence requirements should be strengthened to include environmental protection and responsibility. Namely mining companies should comply with

requirements as set out in the Initiative for Responsible Mining Assurance (IRMA)'s standard on environmental responsibility (Principle 4)[3].

# Annex 2: List of Members of the Platform for electromobility


[3] https://responsiblemining.net/wp-content/uploads/2018/07/IRMA_STANDARD_v.1.0_FINAL_2018-1.pdf