

AVERE RECOMMENDATIONS ON PROPOSAL 2020/0353 ON BATTERIES AND WASTE BATTERIES

(OCTOBER 2021)



AVERE welcomes the European Commission's initiative to present a **Regulation concerning batteries and waste batteries**, published on 10 December 2020. A revision of the current outdated legislative framework is urgently needed to provide further regulatory support and clarity for the European battery manufacturing and recycling industries.

As EV sales accelerate in Europe, the EU's ability to remain competitive with the rest of the world will be heavily dependent on the ability to both domestically develop batteries at larger scale and stay at the forefront of global technical development in order to meet EV demand and help accelerate the transition to e-mobility. Batteries can also play a key role in storing renewable energies, and therefore in decarbonising all sectors of the EU economy.

The new framework should thus create the legal conditions and incentives for a competitive, innovative, high-quality battery market to emerge in Europe. Meanwhile, a secure and controlled end-of-life path will have to be established for all batteries.

Creating true business cases for battery end of life management and environmentally sound recycling will guarantee high collection rates with little need for additional enforcement.

However, the current proposal contains some overly prescriptive and pre-emptive provisions that, rather than supporting the domestic development of a strong European battery industry, may stifle innovation and competition and hurt the economic case for battery production in the EU. In particular, AVERE believes that the following overarching regulatory principles should guide EU policy making in the field of EV and industrial batteries:

- Improve conditions & facilitate batteries' safe collection, storage and transport across the EU's internal market, establish a secure and controlled end-of-life path for all batteries
- Create a dynamic and competitive internal market for battery recycling to make closing the loop a win-win
- Do not impose minimum recycled content levels in new batteries as long as insufficient data is available, and in a first step consider requiring to maximise recycled content instead
- Limit overall regulatory burden for an innovative, fast-paced sector; make provisions fair vis-à-vis competing sectors, in particular the fossil fuel industry
- Extend supply chain due diligence obligations to other sectors – notably fossil fuels – and give sufficient time for actors to adapt
- Maintain open battery design to avoid lock-in effects, encourage innovation and ensure optimal battery use, performance and lifetime
- Limit sharing of critical battery information to necessary data and actors
- Make carbon footprint declarations meaningful and comparable, provide flexibility in declaring carbon footprint of batteries & adapt obligations to volumes placed on the market
- Ensure provisions are credibly enforceable, also outside the EU, to ensure a level playing field for EU-made batteries and prevent hidden exported emissions.

AVERE's recommendations to amend the Commission proposal

1. Recommendations for: Battery collection and recycling efficiencies (art 57)

Short background justification: A truly sustainable and resilient battery industry in Europe needs to be circular, keeping as many valuable raw materials in the loop as possible.

AVERE therefore supports encouraging adequate collection schemes for all operators across Europe to make sure all batteries have a secure and controlled end-of-life path. Beyond collection, we support EU rules that create the conditions for a competitive and sustainable battery recycling industry in Europe. Once profitability happens, the market incentive overlaps with the societal objective of the circular economy, and a 100% collection rate is almost guaranteed, even when enforcement falters. Li-ion battery recycling is already profitable in some Asian countries, but not yet in Europe. Recovery rates can thus be a useful tool to put a floor in the market and to ensure that low-quality recycling does not gain a foothold.

We therefore recommend to:

- Regularly review recycling efficiency objectives and metal recovery rates based on state-of-the art industry practices over time for the targets to be realistic yet ambitious, as this will also help maintain the pressure on the EU battery recycling industry (article 57).
- The methodology for measuring recycling efficiency and determining recovery rates per metal needs to be consistent and standardised, so that the resulting numbers are understandable and facilitate accurate comparison (article 57 (4)).

2. Reconsider setting minimum levels of recycled content (article 8)

Short background justification: As outlined above, AVERE supports building a closed-loop circular ecosystem for batteries. However, AVERE believes that setting prescriptive rules for minimum levels of recycled content to be placed in new batteries, without first having established an appropriate foundation for such an endeavour through collecting sufficient data on feasible recycled content levels, will not help reach the EU's circular economy nor strategic autonomy objectives (see more below).

We therefore recommend to:

- Maintain mandatory technical documentation but adjust timing to allow industry to adapt to new requirements (give at least 24 months between the adoption of the implementing act and the disclosure obligation).
- Make declarations based on EU-wide company weighted averages: current proposal implies an unnecessary level of granularity and administrative burden for the declaration requirements ("each battery model and batch per manufacturing plant"). Proposal: companies would have to provide information on the percentage of cobalt, lead, lithium or nickel recovered from waste present in the batteries placed on the EU market as an aggregated figure.
- As long as insufficient data and visibility on the availability of recycled materials within the EU is available, minimum shares of recycled content should be substituted by an obligation to maximise recycled content in new batteries. Setting ex-ante minimum levels of recycled content in manufacturing at this point in time could result in unanticipated market distortions, such as: (i) a need to import secondary materials from third countries due to insufficient availability in the EU; (ii) a decrease of material availability in other applications; (iii) a perverse incentive to limit battery lifetime in order to get the recycled materials needed to meet the minimum levels.
- The obligation to maximise recycled content should be followed by an in-depth Commission assessment of the environmental and market costs and benefits of minimum levels of recycled content to determine if further legislative action is needed and which levels of recycled content requirements would be feasible. If appropriate, the regulation should be amended as necessary.

3. Clarify & narrow down access to critical battery data; set right conditions for second life batteries (Articles 2, 14, 58, 59, 64, 65)

Short background justification: AVERE believes that the lifespan of batteries should be optimised for batteries' respective use, and should be in line with the practical application of waste hierarchy principles. However, policies should not implicitly or explicitly favour extending batteries' lifetime - in other purposes than the original one - over recycling them, i.e there should be no artificial requirement imposing a second-hand life for batteries if recycling is the better environmental or economic choice for them.

The decision to repurpose or recycle a battery should be left to the market and repurposing costs should be borne by the actor carrying out the activity. Clearly transferring Extended Producer Responsibility obligations from the original producer to the remanufacturers would be the necessary step for a second life market to emerge where environmentally and economically relevant.

We therefore recommend to:

- Limit access to Battery Management System (BMS) data to authorised operators (proposed definition (article 2(20)): any legal or natural person who has legally

purchased the battery and who fulfils the conditions detailed in article 59(5)b) and to relevant data). Safeguards should be placed to limit significant liability and safety issues when a battery is manipulated outside the OEM's control.

- Access to BMS data should be limited to those batteries with second life potential (article 14) and made subject to a signed contract proving that remanufacturing or reuse will take place (article 59). The current open-ended wording on access level and the definition of "independent operator" seem too broad for the purpose and sensitivity of the information to be shared (articles 14 & 59).
- Conditions and levels of access to battery-related information should also be clarified in the case of the battery passport and the electronic exchange system before these detailed disclosure obligations enter into force (articles 65, 64 respectively).
- More legal clarity should be provided in the Battery regulation and/or as part of a revised EU Waste Shipment Regulation on the status of batteries sent for remanufacturing or reuse. Batteries undergoing remanufacturing operations should not be classified as battery waste at any point in time, including transport, as the objective of remanufacturing is to extend the original life of the battery. This could be done by clarifying under article 58 that batteries that are shipped across EU borders for remanufacturing or re-use operations should not be subject to the burdensome requirements of the EU Waste shipment regulation (WSR). Such operations should be managed outside the scope of the WSR, which is highly costly and creates significant impediments to waste movements for efficient repair, reuse or recycling.

4. Extend due diligence requirements to all battery applications and to all sectors competing with battery technologies, notably fossil fuels (Articles 39, 72)

Short background justification: AVERE believes that due diligence requirements can be helpful to secure traceability and accountability along the battery value chain. However, other competing sectors also have supply chains with risks and impacts during raw material extracting and should therefore be held to the same standards. Supply chain requirements should not apply to the battery sector alone.

We therefore recommend to:

- Adapt the proposed timeline to give more time to comply with new, extensively detailed provisions, including new third party verification requirements (24 months instead of 12) and include all battery applications in the scope of article 39 obligations.
- Include the explicit possibility to recognise industry-led schemes as a means to implement all requirements laid down in article 39; and align article 72 on scheme recognition with these changes by specifying the criteria, conditions and timeline for industry-led supply chain due diligence schemes to be recognised
- Other required changes must come from other legislations, e.g the Commission's upcoming proposal for mandatory cross sectoral due diligence requirements. These should guarantee a level playing field between batteries and competing technologies, notably fossil fuels.

5. Closely consider additional regulatory burden on EV industry and anticipate practical enforcement challenges on the ground (art 16, 17, 38, 41, 66-68)

Short background justification: AVERE considers that the proposed regulation entails a significant leeway for the Commission to add numerous technical requirements at later stages – staggered over time – which implies for instance that stakeholders will have to assess targets

without methodologies in place or that further legislation or standardisation requirements may be added or changed (art 16). This is of concern noting the already extensive and burdensome provisions suggested in the proposal as such and considering the rapidly changing and complex landscape of battery technology. Furthermore, predictability and certainty for business planning at the outset is vital to enable companies to plan their compliance.

We therefore recommend to:

- Closely consider additional regulatory and practical burden of setting ex ante performance requirements for future EV and industrial batteries
- Limit scope for the Commission to make use of delegated acts to change the regulatory framework in regards to standardisation at a later stage. This task should be left to standardisation organisations.
- Limit the scope for Member states to challenge the compliance of batteries on their market to avoid market fragmentation across Europe (articles 66-68).
- Enforcement provisions under Chapter VI on economic operators' obligations and article 17 should limit the grounds for re-examining or updating conformity assessment of batteries.
- Importers under article 41 should not be in charge of carrying out sample testing of marketed batteries, investigate nor keep register of complaints of non-conforming batteries and battery recalls. This responsibility should be attributed to notified bodies or market surveillance authorities instead.

6. Make carbon footprint declarations meaningful and comparable (article 7 and annex II)

Short background justification: AVERE supports the principle behind assessing improvements to batteries' Life Cycle Assessment and carbon footprint performance/impact over time, but these obligations should equally apply to competing sectors, i.e disproportionate obligations for EV & industrial batteries should be avoided. Limits to current methodological tools to measure carbon footprint and mid-term reliance on third country supply chains also need to be acknowledged.

We therefore recommend to:

- Adapt the proposed timeline to reflect the need to significantly update and improve current Product Environmental Footprint Category Rules (PEFCR), which currently do not exist for Battery Energy Storage Systems.