



15 October 2021

DIGITALEUROPE's position paper on the proposed Batteries Regulation

Executive Summary

DIGITALEUROPE appreciates the opportunity to comment on the landmark revision of the EU Battery Directive 2013/56/EU and notes with appreciation the ambition and significant innovative thinking in the proposed revision. Batteries will play a crucial part in the digitalisation and electrification of a circular economy. DIGITALEUROPE members drive forward many of the innovations related to battery-containing devices, which will be so crucial in the servitisation and dematerialisation aspects of the transition towards a circular economy. At the same time, the environmental challenges associated with batteries need creative solutions that will keep up with the innovation of the years to come.

The proposed Batteries Regulation comes at an important time for the batteries market and manufacturers using batteries in their devices. In this position paper, DIGITALEUROPE offers concrete recommendations for the EU institutions to consider as they negotiate this proposal.

Key priorities

In particular, DIGITALEUROPE points out four priorities:

- ▶ Support for the new wording of removability and replaceability (Art. 11)
 - DIGITALEUROPE believes that the proposed Regulation has found a good balance. It ensures environmental protection and takes into account the significant innovation in battery and ICT technology by requiring all waste batteries at the product's end of life, and removable during the lifetime of the product when the expected lifetime of the battery is less than that of the product.
 - DIGITALEUROPE recognises the difficulty in developing appropriate and reliable methodologies to calculate expected lifetimes *ex ante* and stands ready to support the European

institutions in developing such guidelines. Given the anticipated short period between adoption and entry into force, and the lack of methodologies to calculate lifetimes, we ask for an adequate transition period of 12 months to allow manufacturers to put together all necessary documentation to demonstrate conformity, or, respectively 24 months to implement new engineering solutions and designs.

- Art. 11(2)(b) may want to consider the integration of batteries below a certain small size, e.g. 400 mAh or coin cell batteries.
- ▶▶ Labelling requirements to be unambiguous, simplified and on feasible timelines:
- In the current proposal, the CE mark is required as of January 2022 and the QR code as of 2023. DIGITALEUROPE recommends the same implementation timeline for both markings. It is unrealistic to expect manufacturers to be able to align their entire supply chain for a large part of their product portfolio to implement a new mark without a transition timeline. Manufacturers need at least 12 months after entry into force to implement markings and labellings.
 - DIGITALEUROPE believes that most of the labels and markings should be hosted digitally. We otherwise support the proposal in clarifying that the wheellie bin, CE mark, and QR code are all subject to similar obligations, namely, they should be legible, visible and indelible, and they should all be subject to an exemption if size or nature of battery warrants it. Other marking or labelling requirements should be aligned with this. In case of an exemption, the manufacturer should have a choice between putting the labels on either the documentation or the packaging, and not both. In case of coin cell batteries, it should be clear that additional labelling is not going to fit on the battery itself.
- ▶▶ Collection targets to be realistic yet ambitious:
- DIGITALEUROPE and many other industry associations have continuously provided evidence for "Available for Collection" as the more appropriate methodology to calculate collection targets. Otherwise, the targets set out in the proposal are not realistic to achieve.
- ▶▶ Full alignment with the New Legislative Framework
- A number of requirements across Art. 18, 38 following and Annex VI and VIII do not align with NLF and Blue Guide best practice and need to be adjusted.

The proposal breathes significant policy innovation. DIGITALEUROPE sees the need for strong harmonisation of the proposal at hand with upcoming regulatory initiatives. In the interest of avoiding a fragmented Single Market, DIGITALEUROPE supports setting the environmental ambitions and detailed requirements at a European level through a Regulation.



Technical Recommendations

Below, DIGITALEUROPE provides detailed recommendations on specific provisions of the proposal. We have provided detailed commentary on most of those points in the following position papers

- Oct. 2020, [DIGITALEUROPE infographic on integrated batteries](#)
- Oct. 2020, [Joint association letter on integrated batteries](#)
- Sept. 2020, [Joint industry statement on the restriction of primary batteries](#)
- Mar. 2020, [DIGITALEUROPE recommendations for the revision of the Battery Directive](#)

Provision	DIGITALEUROPE Recommendation	Justification
Art. 11 Replaceability	<p>Supports the new wording.</p> <p>Requests entry into force 12 months after adoption.</p> <p>Requests close collaboration with manufacturers if guideline on metrics for lifetime of device and/or battery are to be developed.</p>	<p>Full support for removability at end-of-life for all devices with incorporated batteries. The replaceability provision is nuanced and strikes a good balance between protecting the environment and enabling innovation. In the absence of a single objective methodology to calculate expected lifetimes, manufacturers are faced with the risk of legal uncertainty and a fragmented Single Market caused by different interpretations by enforcement authorities.</p> <p>The provision does not provide a clear definition or methodology for establishing expected lifetime, which DIGITALEUROPE has argued in the past is difficult to do ex-ante. That said, we gladly engage with members' experiences when the Commission does consider providing guidelines.</p> <p>Given the short anticipated period of time between adoption and entry into force, and the lack of methodologies, we ask for an adequate transition period of 12 months to allow manufacturers to pull together all necessary documentation to demonstrate conformity, or, respectively 24 months to implement new engineering solutions and designs.</p> <p>We continue to be concerned about the requirements providing that independent operators or users should be enabled to replace the battery. There are significant potential safety and quality risks associated with non-professionals replacing batteries, and the potential use of counterfeit or substandard replacement batteries.</p> <p>Finally, the current wording in the proposal defines a battery as readily replaceable, where it can be substituted with a "similar" battery without affecting the devices performance. In advanced electronics, the original battery is an integral part of the product that seamlessly interacts with the software and mechanical elements of the device. To guarantee the highest level of safety, we suggest not to consider the battery as a stand-alone component that can be replaced with any battery. "Similarity" is to go beyond size and wattage, and we</p>

		encourage aftermarket services to utilise batteries that conform to the original specifications.
Art. 13 QR code	Allow for compliance with CE marking and crossed-out wheelie bin through e-labelling.	Implementation of a QR code will mean that enforcement authorities will require a QR reader to confirm compliance. In this case, a CE mark and crossed-out wheelie bin as a physical labelling requirement is duplicative.
Art.13 QR code & labels to be "printed or engraved"	Delete "printed or engraved".	Align with other regulations to prescribe only "visibly, legibly and indelibly", in line with wheelie bin requirement and CE marking requirement - not to limit the way labels or QR code are attached to the equipment.
Art 13(6)	Include " <i>Labels and information required under Art. 13(1), 13(4), 20(3), 20(4), 38(8), 38(9), 41(3), Art 60 can be provided solely by digital means.</i> "	The regulation requires significant amount of information and labelling to travel with the battery. Considering that batteries in the ICT sector can be very small, DigitalEurope recommends reducing the compliance complexities by consistently allowing for a digital solution. As long as the information is for the B2B context or enforcement authorities but not consumers, it is a reasonable expectation that this would be entirely sufficient. It would allow for appropriate updates and reduce the compliance burden significantly
Art.13 QR code Art. 13(6) if not on the battery, labels and QR code "shall be put on the packaging and to the documents accompanying the battery"	Replace "and" with "or".	Previous versions and other labelling regulations provide a choice between labelling the packaging or the documentation – this is reducing administrative complexity and achieves the intent of information provision all the same.
Annex VI Part C QR code "shall be 100% black"	Replace with "shall be of a colour".	QR readers are capable of reading QR codes in grey or even white on dark backgrounds. The principle requirement should be "readable by a QR reader", the rest can be left to industry to ensure.
Art. 13(1) Annex VI, Part A, 4	Remove "date of placing on the market".	It doesn't make sense to have date of placing on the market and critical raw material contained in the battery shown on the battery label. As a requirement, this is foreseen to come into force in 2027. This means that if the information was required one could also provide it through the QR code.
Art. 18(2) EU declaration of conformity to "be translated into the language or languages required by the Member State in which the battery is placed on the market"	Replace by "in a language easily understood" or, preferably, "translation upon request by Member State".	We seek alignment with NLF and Blue Guide, avoiding workload of translation the Declaration of Conformity into all EU languages. See also comments on Art. 38-43.
Art. 20 CE marking	CE marking to be required as of 12 months after the Regulation has come into force.	The negotiation timeline for the Battery Regulation is ambitious and will not leave sufficient time to implement any labelling requirements as of day 1 of the Regulation coming into force. If adopted at the end of 2021, companies will have only a few weeks to comply with a requirement that usually takes 6-12 months to implement across the entire supply chain and product line. A lack of a transition timeline forces the entire industry into the risk of a potentially non-compliant situation. SMEs do not have the capacity to monitor legislation in draft and negotiation stage and will be caught off-guard. Even if companies follow the negotiations, they tend not to implement requirements in draft legislation because they are aware of the possibility of last-minute changes. In addition, labelling requirements without adequate transition timelines will adversely affect stocks of spare parts in service centres, which cannot be reworked anymore.
Art. 38-43	Clarify responsibilities of each category of actor involved in the supply chain.	Manufacturer (or authorised representative) to bear the first level of responsibility in case of direct placing on the market, importer/distributor or fulfilment service provider being the second point of call to bear responsibility in case the producer is not putting the product directly on the market.
Art 38 (4.1)	Delete " <i>in a language which can be easily understood by consumers and other</i> "	The language requirements are already set out in Article 18, which is fully aligned with the NLF.

	<i>end-users for each battery that they place on the market or put into service”</i>	
Art. 38 (4.2)	Delete <i>“However, where several batteries are delivered simultaneously to a single user, the batch or consignment concerned may be accompanied by a single copy of the EU declaration of conformity.”</i>	This paragraph implies the requirement for a copy of the DoC to accompany each battery. No other clause in this draft regulation requires this and furthermore, considering that the QR Code will also lead to the DoC (See Article 13.5 (i)), this is unnecessary and not proportionate.
Art 38(8)	Delete <i>“and web address”</i>	The NLF requires only the postal address. Requiring multiple forms of address causes an unnecessary proliferation of marking that is not aligned to the NLF. This proposal aligns with the Blue Guide 2016 and with its draft revision currently under consideration.
Art. 49 Take-back of industrial and automotive batteries	Move to "Available for Collection" methodology.	DIGITALEUROPE has argued in the past, along with a great number of other associations for a shift of the collection methodology to "available for collection".
Art. 55 collection of portable batteries	Move to "Available for Collection" methodology.	As DIGITALEUROPE has argued in the past, an increase of the collection targets for portable batteries as envisaged in the proposal is only realistic if it is accompanied by a change in the calculation methodology to "available for collection".
Art. 60(5) "The costs covered by the producer under Art 47(1e) shall be shown separately to the end-user at the point of sale of a new battery."	Replace "shall" by "may".	Battery fees are currently visible in very few Member States (namely BE, ES, NL). Only in those countries the retailers indeed know and may show the costs covered by the producer to the end-user at the point of sale of a new battery. For other countries where the fees are not visible, the retailers are not aware of the costs covered by the producer and therefore cannot show these separately to the end-user. Implementing visible fees across the EU involves a huge administrative and financial burden for the local “producers”, therefore DIGITALEUROPE prefers a voluntary option, especially for devices with integrated batteries which may also be subject to WEEE visible fee regulation.
Art. 75 Extension of the Batteries Regulation to the Market Surveillance Regulation	Deletion of Art. 75(1).	Follow better regulation principles to allow for an adequate impact assessment of extending the scope of Art. 4 of Regulation EU 2019/2020 to the revised Battery Regulation, which would bring economic operators making batteries available on the EU market into scope. The Market Surveillance Regulation is not yet applicable, and Art 4 was subject to significant discussion among EU institutions to find a compromise. If the European Commission wishes to revise 2019/2020, it should use the foreseen revision in 2023 in order to properly impact assess the change and assess the efficiency of current measures.
Art. 78	Include <i>“The regulation shall apply from 12 months after the entry into force. Art. 11, 13 and 20, Art. 38(8) and Art 41(3) shall apply from 24 months after the entry into force of the regulation, without prejudice to specific later transitional measures applicable</i>	Art 11 is a design requirement, and Art. 13, 20, 38(8) and Art 41(3) impose labelling and marking requirements. Whereas EV and industrial batteries have received ample transition timelines, for the portable battery provisions impacting design and labelling/marketing of products, no such transition timelines are foreseen. As a consequence, industry would be required to comply as of day 1 of the entry into force. However, neither SMEs nor multinational corporations have the ability to re-direct their supply chains and product designs without sufficient advance notice.

	<i>to specific requirements.”</i>	
Art. 79	Date of application 12 months after adoption.	While it is not yet clear when the regulation will be officially approved and published, it is clear that the negotiation timeline is ambitious and the entry into force envisaged for 1. Jan 2022 is not going to give manufacturers enough time to fulfil the requirements. Especially for some batteries and battery-containing products already produced, a transitional period is necessary as no grandfathering provisions are being made.
Annex V (12a)	<p><i>Include “meet the objectives with respect to safety requirements set out in Directive 2014/35/EU”</i></p> <p><i>Delete “be accompanied by technical documentation demonstrating that they are safe ... to amend the safety parameters laid down in Annex V in view of technical and scientific progress.”</i></p>	<p>Article 12 and Annex V represent a significant departure from the core principles of the NLF. Delegation of technical requirements to harmonised standards has been one of the core principles that has led to the success of many New Approach and NLF directives for decades:</p> <p>While the draft does support use of standardisation in general (Article 15), the specification of detailed technical requirements in Annex V can only lead to inflexibility in dealing with future emerging risks as well as confusion and inconsistent application of the requirements by different manufacturers. These safety aspects covered in Annex V are well within the remit of ESO technical bodies who have the expertise and experience to develop standard(s) covering these together with suitable limits and repeatable test methods that will deliver consistent results.</p> <p>Safety of electrical equipment (including batteries) is covered in the LVD and GPSD. Even though battery energy storage systems may not fit as well in the scope of those directives, the same principles of safety can still apply. The Declaration of Conformity as proposed in Article 18 foresees a statement that requirements of Chapter II have been met. Thus the additional requirement for technical documentation in Article 12 seems superfluous.</p>
Annex VI Part A (5)	Delete <i>“date of placing on the market”</i>	A product cannot be placed on the market until <i>after</i> the stage of manufacture has been completed. Labelling and packaging are integral parts of the stage of manufacture, at which time the date of placing on the market is as yet unknown. It is therefore not possible to fulfil this requirement.
Annex VIII Part B (3)	Delete <i>“or the importer that places the battery on the Union market”</i>	Under the NLF, as well as in normal practice, the importer neither has a role in nor authority over the manufacturing process. This draft text is a modification to the content of Module A1 as provided in Decision No 768/2008/EC of the NLF, and does not align with the provision of recital (34)



Recommendations on industrial batteries

DIGITALEUROPE would like to offer further commentary on elements of the proposal that are mostly focused on industrial and e-vehicle batteries.

DIGITALEUROPE members are either directly affected by those provisions or see a need to comment based on their experience with batteries in general.

Additionally, whereas portable batteries are not in scope, DIGITALEUROPE sees a need for harmonisation across policy instruments:

Provision	DIGITALEUROPE Recommendation	Justification
Art. 2 Definitions	Lower the threshold to 3 kg.	In several countries, the existing thresholds applied are under 3 kg. For example, it is 3 kg in DK, 1 kg in ES, 3 kg in SE. Countries will need to accommodate the higher thresholds by making major changes in their

		programmes. Companies that already have established take-back programmes for batteries at the thresholds defined will need to evolve their take-back practices with their customers to address the proposed 5 kg threshold.
Art. 7 Carbon footprinting	Align the transition period for carbon footprint thresholds with the transition period for recycled content.	Publication of life cycle carbon footprint is a common practice in our industry. However, LCA methodology is not harmonised and methodological discussions regarding measurable product carbon footprints are still in the early stages. PEFCR guidance for mobile applications exist but no PEFCR for industrial batteries do. IEC is soon starting new standard work on PCR guidance. In summary, neither LCA nor PEF is ready to be used for threshold setting. Comparability is challenging due to definition of product performance and category, definition of "representative" product, modelling of electricity, use of secondary data and circular footprint data. More investigations are required.
Art. 8 Recycled content	Supports current scope.	DIGITALEUROPE members as a rule do not produce batteries. Implementation of such a rule for industrial and e-vehicle batteries will depend on the availability of compliant batteries by battery producers.
Art. 9, Art. 10 Performance requirements		Performance requirements should be industry-led and not mandated. The Regulation should defer to industry standards for performance requirements. The evaluation of considering phasing out non-rechargeable batteries in 2030 should include evidence regarding potential cost increases and adverse effects associated with mineral mining, waste management and material recovery.
Art. 39, Art. 72 Due diligence	Propose to harmonise due diligence regulations instead of a separate due diligence obligation for batteries.	DIGITALEUROPE welcomes the recognition of industry schemes but cautions against the inclusion of mandatory independent third-party verification which is not consistent with international standards and due diligence frameworks. Any rules and obligations in the Regulation should be consistent with other EU regulations, such as on responsible minerals and sustainable corporate governance.
Art. 65 Battery passport	Supports suggested scope. Requests full harmonisation with potential future product passport.	There is potential for overlap or contradictory requirements with the potentially forthcoming product passport contemplated under the Commission's Sustainable Products initiatives. DIGITALEUROPE requests full harmonisation, especially where a battery passport and a product passport may be required in the future. Ideally, the implementing acts for the Battery Regulation are drawn up in parallel with other implementing acts for other pieces of legislation.
Annex XIII Information to be stored in European Electronic Exchange System	Delete parameter (p) "50% of cycle-life" and "energy efficiency ... at 50% cycle life"	Difficult to determine energy efficiency at 50% of cycle-life. Test period would be very long, making enforcement difficult and costly.

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About DIGITALEUROPE

DIGITALEUROPE represents the digital technology industry in Europe. Our members include some of the world's largest IT, telecoms and consumer electronics companies and national associations from every part of Europe. DIGITALEUROPE wants European businesses and citizens to benefit fully from digital technologies and for Europe to grow, attract and sustain the world's best digital technology companies. DIGITALEUROPE ensures industry participation in the development and implementation of EU policies.

DIGITALEUROPE Membership

Corporate Members

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National Trade Associations

Austria: IOÖ

Belarus: INFOPARK

Belgium: AGORIA

Croatia: Croatian Chamber of Economy

Cyprus: CITEA

Denmark: DI Digital, IT BRANCHEN, Dansk Erhverv

Estonia: ITL

Finland: TIF

France: AFNUM, SECIMAVI, Syntec Numérique, Tech in France

Germany: BITKOM, ZVEI

Greece: SEPE

Hungary: IVSZ

Ireland: Technology Ireland

Italy: Anitec-Assinform

Lithuania: INFOBALT

Luxembourg: APSI

Netherlands: NLdigital, FIAR

Norway: Abelia

Poland: KIGEIT, PIIT, ZIPSEE

Portugal: AGEFE

Romania: ANIS

Slovakia: ITAS

Slovenia: ICT Association of Slovenia at CCIS

Spain: AMETIC

Sweden: Teknikföretagen, IT&Telekomföretagen

Switzerland: SWICO

Turkey: Digital Turkey Platform, ECID

United Kingdom: techUK