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DIGITALEUROPE recommendations on Article 11: Assess the impact or amend the current text



Executive summary

DIGITALEUROPE calls upon the co-legislators to either introduce surgical changes to Art. 11 or to carry out an additional impact assessment. The European Parliament, Council of the European Union and the European Commission agreed in 2016 in its Interinstitutional Agreement on Better Law-Making¹ to consider “impact assessments in relation to their substantial amendments to the Commission’s proposal.” (Art. 15) DIGITALEUROPE is noting with concern that changes have been introduced to Art. 11 at the technical meetings of the trilogue negotiations that entirely re-write the removability and replaceability provisions as initially impact assessed and drafted by the European Commission in its 2020 proposal.

In particular, DIGITALEUROPE recommends to consider changes to or impact assessing the new text with regards to:

- **Lifetime provision.** All policy options impact assessed by the Commission assumed that batteries do not need to be replaceable when the “durability of the battery is equal or higher to that of the appliance and removability is ensured”.² The co-legislators, however, have re-written the proposal by the European Commission and consider deleting the lifetime provision without quantitative or qualitative analysis.

¹ Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making, 13 April 2016, [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016Q0512\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016Q0512(01)&from=EN)

² European Commission, Directorate-General for Environment, Stahl, H., Mehlhart, G., Gsell, M., et al., Assessment of options to improve particular aspects of the EU regulatory framework on batteries : final report, Publications Office, 2021, <https://data.europa.eu/doi/10.2779/432234>, p.183

- **Further policy changes** that are not impact assessed appropriately are: the focus on consumer-replaceable batteries, the current wording of the wet environment exemption, as well as transition timelines.
- **Battery labels on products.** The addition of a provision that labels for exempted products should move from the battery to the product have no practical added value but come with significant burden of implementation.

An evidence base would allow the co-legislators to avoid the risk of “overregulation and administrative burden, and [the Battery regulation would] be practical to implement”, as envisaged by Art. 3 of the Better Regulation Interinstitutional Agreement. With a lack of quantitative assessment underpinning the initial proposal, and the absence of even a detailed qualitative assessment for more than headline products with the close to final text, the regulator can all but assume impacts.

DIGITALEUROPE believes that, in times of economic uncertainty, unstable supply chains and high inflation, the co-legislators should have a more in-depth knowledge of the impacts they are about to cause. Alternatively, minor changes, as suggested throughout, could mitigate the negative side effects without having to compromise on the envisaged environmental benefits.

DIGITALEUROPE views in detail

Transition timelines should be proportionate to the depth of envisaged interventions in design choices of manufacturers (here: 38-48 months) and allow sufficient time to adjust products already introduced and future launches alike. The actual compliance window will be shorter than the transition times granted given that guidelines on removability and replaceability will only be published after the entry into force of the regulation by the Commission. Commencing a re-design process without legal certainty exposes manufacturers to potentially costly mistakes in design and set up of manufacturing processes.

The Impact Assessment for the Revision of the Battery Directive delivered by the Oeko-Institut and Umweltbundesamt Austria³ featured a chapter on removability and replaceability of batteries. DIGITALEUROPE has pointed out in the past that the initial impact assessment had its own limitations and the co-legislators are thus unable to fully assess the implications of their deliberations. The assessment was not adequately supported by data: “Quantified estimations were not performed in light of the difficulty to estimate the type of appliances to be affected [...] It is expected that impacts of measures could vary between product

³ European Commission, Directorate-General for Environment, Stahl, H., Mehlhart, G., Gsell, M., et al., Assessment of options to improve particular aspects of the EU regulatory framework on batteries : final report, Publications Office, 2021, <https://data.europa.eu/doi/10.2779/432234>

groups considerably. The lack of quantified data is also mentioned as a general limitation of this investigation”.⁴ Additionally, cursory as the assessment was, it focused exclusively on smartphones, e-bikes, scooters and power tools. Given that the initial impact assessment did not provide quantitative modelling, the co-legislators cannot ascertain which product groups are affected⁵, what the costs of re-design would be nor the impacts on longevity of devices or their environmental lifecycle costs. One of the policy options under assessment was sub-measure 1A focused on introducing a replaceability obligation with an exemption mechanism. In particular, the impact assessment:

- a) did not explore under which conditions a battery should only be removable but not replaceable and, in consequence, did not provide guidance on this question to policy-makers;
- b) acknowledged that under certain conditions batteries should be replaced by professionals, but did not elaborate on those;
- c) assumed that batteries do not need to be replaceable when the “durability of the battery is equal or higher to that of the appliance and removability is ensured”.⁶ The co-legislators, however, have re-written the proposal by the European Commission and deleted the lifetime provision.

The co-legislators now seem to be concluding that batteries should be removable and replaceable by the end-user at any time and, under certain exemptions, removable and replaceable only by professionals. In doing so, the co-legislators conflate the concepts of repair (battery “replaceability”) and recycling (battery “removability”). Further, they define a list of allowable tools that excludes thermal energy and specialised tools. This is unnecessarily restrictive for some product groups. For instance, thermal energy is successfully used by consumers and professionals alike to soften the adhesive that holds the display of smartphones in place, before removing the battery without the use of heat from the housing. The use of adhesive helps protect smartphones from water ingress and this way increases the longevity of portable electronics. 95 million smartphones sold annually on the European market, as well as other products such as toys might face the risk of major re-design putting water ingress protection at risk, and associated costs without apparent environmental benefit. A simple “or” would overcome the lack of technology neutrality in the formulation of Art. 11(1). It would suffice to address the issue and still require design for consumer-led replacements: “...with the use of commercially available tools, *or without*

⁴ ibd., p.162

⁵ https://www.digitaleurope.org/wp/wp-content/uploads/2020/10/Integrated-Batteries-DigitalEurope-infographic_final.pdf

⁶ ibd., p.183

requiring the use of specialized tools, proprietary tools, thermal energy, or solvents to disassemble”

The co-legislators are drawing up a list of exemptions that have not been impact assessed either. Firstly, they ignore the only exemption that was impact assessed for all policy options (durable batteries/ lifetime provision). Logically, it cannot be ascertained whether said deletion would have a positive or negative impact on the environment or business. Secondly, the introduction of the exemption for products designed for wet environments – though never impact assessed - is necessary not to compromise water tightness and guarantee consumer safety. However, its language and scope is ill-defined. For instance, wearables are a growth market in Europe (170 million unit sales p.a. predicted by 2025) and are a significant source of innovation, with European champions and a flourishing start-up scene. While most wearables are designed to meet internationally recognised water resistance standards⁷, they may not be “washable or rinseable” as required for this exemption. Their sale would be at risk with the current language. They are designed for water resistance due to their use case (fitness, swimming etc) but have a size and form factor that make consumer-led repair impossible. These devices are partly certified for medical use, where a reliable power supply after repair is most relevant. A simple reference to internationally recognised standards and the introduction of an “or” would address this concern: “...*designed to meet established industry standards for water resistance, or that operate normally in an environment that is regularly subject to splashing water, water streams or water immersion or that are intended to be washable or rinseable*”

We also suggest that for these exemptions, the removal and replacement of the battery is performed by “qualified” independent operators, as foreseen by the Council General Approach.

Lastly, DIGITALEUROPE understands that products with batteries that are not consumer- but only professional repairable will need to be labelled with the markings mentioned in Art. 13 that would otherwise be on the battery itself (Art. 11(3)). This provision needs to be re-considered: labelling should be kept on the battery. According to the WEEE Directive, recyclers are required to remove the battery at end-of-life. When doing so, they would separate the device (with all the labels) from the battery (without the labels), and send them into different waste streams – making it impossible to trace back the information the recyclers are seeking. Additionally, the thought of colour coding batteries by chemistry as proposed by the European Parliament is not pragmatic – particularly if the colour code was to migrate to the product markings. We would end up with a waste

⁷ Such as IEC 60529 and ISO22810

stream that is labelled as if it had a battery (although it doesn't), and another waste stream that is exclusively battery (but not accordingly labelled). What is more, for consumer electronics, there is no need for colour coding. Recyclers both know that consumer electronics typically include lithium-ion batteries, and they know that soft pouch batteries are typically lithium-ion batteries.

The 2021 impact assessment never went deeper than positing that “manufacturers may have costs for redesign and also lost revenue. [...] Redesign costs can be expected to be shifted to consumers.”⁸ In a refreshed impact assessment to the debated changes to Art. 11, DIGITALEUROPE would suggest to focus on:

- ▶▶ A more detailed assessment of the impact of suggested requirements by product group, and a quantification of the amount of products at risk of redesign, as well as associated costs for manufacturers and consumers.
- ▶▶ A detailed environmental assessment of the difference of policy options, namely whether it is environmentally more advantageous to pursue water ingress protection or consumer-replaceable batteries - or provide a choice to manufacturers, including a lifetime exemption and the associated expected impact on longevity of devices.
- ▶▶ An investigation of interlinkages and potentially unintended consequences, such as child safety associated with easily removable coin cell batteries or the impact of consumers disposing batteries they have removed inappropriately and hence impacting Europe's goals on recycling and critical raw materials (see upcoming Critical Raw Materials Act).
- ▶▶ Costs and benefit analysis in economic and environment terms for the envisaged changes to labelling requirements, taking into account interaction with other Union legislation.
- ▶▶ A detailed investigation on design and production cycles of the affected industries and the extent to which the envisaged transition timelines force premature stop of sales of older designs.

⁸ ibd., p.193

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About DIGITALEUROPE

DIGITALEUROPE is the leading trade association representing digitally transforming industries in Europe. We stand for a regulatory environment that enables European businesses and citizens to prosper from digital technologies. We wish Europe to grow, attract and sustain the world's best digital talents and technology companies. Together with our members, we shape the industry policy positions on all relevant legislative matters and contribute to the development and implementation of relevant EU policies. Our membership represents over 45,000 businesses who operate and invest in Europe. It includes 98 corporations which are global leaders in their field of activity, as well as 41 national trade associations from across Europe.

DIGITALEUROPE Membership

Corporate Members

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National Trade Associations

Austria: IOÖ

Belgium: AGORIA

Croatia: Croatian Chamber of Economy

Cyprus: CITEA

Czech Republic: AAVIT

Denmark: DI Digital, IT BRANCHEN, Dansk Erhverv

Estonia: ITL

Finland: TIF

France: AFNUM, SECIMAVI, numeum

Germany: bitkom, ZVEI

Greece: SEPE

Hungary: IVSZ

Ireland: Technology Ireland

Italy: Anitec-Assinform

Lithuania: Infobalt

Luxembourg: APSI

Moldova: ATIC

Netherlands: NLdigital, FIAR

Norway: Abelia

Poland: KIGEIT, PIIT, ZIPSEE

Portugal: AGEFE

Romania: ANIS

Slovakia: ITAS

Slovenia: ICT Association of Slovenia at CCIS

Spain: Adigital, AMETIC

Sweden: TechSverige, Teknikföretagen

Switzerland: SWICO

Turkey: Digital Turkey Platform, ECID

Ukraine: IT Ukraine

United Kingdom: techUK