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New European Batteries Regulation Has Been Adopted

The European Union (EU) published its new Batteries Regulation on July 28, 2023. The long-awaited text, presented for the first time by the EU Commission in late 2020 and subject to negotiations since then, contains a comprehensive legal framework addressing the entire life cycle of batteries, from their manufacturing to end-of-life disposal.

The Batteries Regulation, formally referred to as “Regulation (EU) 2023/1542 of the European Parliament and of the Council of 12 July 2023 concerning batteries and waste batteries, amending Directive 2009/98/EC and Regulation (EU) 2019/1020 and repealing Directive 2006/66/EC”, is part of the European Green Deal, a political agenda initiated by the EU Commission in 2019 to reach climate neutrality. Therefore, the new Regulation aims to achieve “sustainable batteries for a circular and a climate neutral economy”, to quote the EU Commission.¹

The text comes into effect on August 17, 2023, in the twenty-seven EU Member States. Some provisions however have a progressive entry into force.

Penalties for breaches of the obligations laid down in the Batteries Regulation are to be adopted by each Member State.

WHICH BATTERIES ARE CONCERNED?

The Regulation contains specific provisions for portable batteries; light means of transport (LMT) batteries; starting, lighting and ignition (SLI) batteries; industrial batteries; and electric vehicle (EV) batteries. A definition is provided for each. Notably, the EV batteries category is being enshrined for the first time in EU law, reflecting Brussels’ desire to tailor a regime for this specific automotive category.

All the above batteries are covered, regardless of their shape, volume, weight, design, composition, use or purpose. The text is also intended to apply to batteries incorporated into, or added to, other products (and not only to batteries marketed individually) as well as to battery packs and



batteries that can be made ready for use by the end-user with commonly available tools by using a “Do It Yourself” kit. Finally, it covers both batteries produced in the EU and imported batteries.

WHAT ARE THE NEW OBLIGATIONS?

The Batteries Regulation is particularly long and complex as it covers many aspects and addresses a wide range of stakeholders. This Client Alert is not intended to give a comprehensive presentation of the text, but to discuss the key measures affecting battery manufacturers and importers. In a nutshell, the composition of a battery placed on the EU market is subject to stricter requirements: the restriction of the use of hazardous substances in batteries is strengthened (1) and recycled content must be incorporated in batteries (2). Electrochemical performance and durability parameters are also set out. Regarding end-of-life management, measures to promote second life (3) and to improve the collection and recycling of batteries are laid down (4). Finally, the new Batteries Regulation introduces greater transparency and communication requirements for manufacturers or importers (5).

1. The use of hazardous substances for battery manufacturing has always been restricted under EU law, either by the Batteries Directive 2006/66/EC now repealed, or by more general regulations such as the REACH Regulation No. 1907/2006. The new Batteries Regulation goes further, as it first prohibits the placing on the market (it being specified that the importation is considered equal to the placing on the market) of certain batteries that contain mercury, cadmium, or lead beyond the indicated concentrations. Secondly, the Regulation creates a new restriction procedure: the EU Commission or the EU Member States can propose the inclusion of a new substance on the list of restricted hazardous substances in battery manufacturing. The procedure, which lasts around three years at best but can vary substantially depending on the dossier, involves consultations of scientific bodies placed under the supervision of the EU Chemical Agency (ECHA), as well as a public consultation.

By the end of 2027, the EU Commission is due to issue a report on substances “having an adverse effect on human health or the environment or hampering recycling for safe and high quality secondary raw materials, present in batteries or used in their manufacture”. Depending on its conclusions, this report should allow a first update of the list of restricted hazardous substances in battery manufacturing. There are indications that lithium hexafluorophosphate could be of particular interest to the EU Commission during this process.

2. Battery manufacturing will also be subject to requirements regarding the incorporation of recycled content. Indeed, when certain batteries contain cobalt, lead, lithium, or nickel amongst active materials, the Regulation imposes that a minimum rate of these materials be derived from waste recovery. The required recycled content rate varies according to the material considered. The Batteries Regulation also provides a definition of “active material”. The EU Commission is entitled to amend the list of active materials subject to recycled content. It is also empowered to revise the targets laid down, both regarding the recycled content rates and the implementation timescales.

Compliance with these obligations must be demonstrated in the technical documentation submitted by the manufacturer as part of the conformity assessment procedure. In other words, if these objectives are not met, the products will not obtain a “EC” marking. Manufacturers or importers are also required to provide, in the short term (meaning, prior to the entry into force of the obligation to incorporate recycled content), certain information on the proportions of recycled content. The latter aims to value stakeholders which have already adopted a circular economy approach and encourage the others to follow this path.



3. The Batteries Regulation contains several measures to promote second life of batteries, as the EU Commission expressed its will to “ensure that no battery is lost to waste, but the batteries are rather repurposed or remanufactured and that the valuable materials they contain feed back into the economy”.² These two management methods, the repurposing and remanufacturing, are therefore being officially recognized. The first one, “repurposing”, refers to any operation that results in a battery, that is not a waste battery, being used for an application for which it was not originally designed. The second one, “remanufacturing”, means any technical operation on a used battery in view of restoring its capacity to at least 90% of the original rated capacity. More detailed definitions are provided in the text.

The Regulation contains numerous provisions to facilitate the implementation of repurposing and remanufacturing operations and to ensure that they are carried out in conditions that are respectful of the environment and human health.

As the repurposed or remanufactured batteries are seen as batteries that are being replaced on the market, the requirements related to the placing on the market are adjusted, including requirements concerning the Extended Producer Responsibility (EPR) system.

4. Regarding waste batteries, the new Regulation contains numerous provisions to improve their collection and recycling rates. It first sets out collection targets for certain categories of batteries. A method for calculating the collection rate is provided. As for the incorporation of recycled content, the EU Commission is empowered to revise the targets of collection.

In addition, distributors must take back all waste batteries from end users. It is a free-of-charge take back, which means that it applies without any obligation of past nor future purchase for the end users, and regardless of the chemical composition, condition, brand, or origin of the batteries in question. This obligation can be organized through collection points, where appropriate in cooperation with various operators: distributors, waste electrical and electronic equipment treatment facilities and end-of-life vehicle treatment facilities, public authorities, or third parties carrying out waste management on their behalf.

The stakeholders involved in the collection of waste batteries should set up communication campaigns to raise end-users’ awareness of the importance of separate collection of batteries and the existence of collection systems.

Also in view of improving collection and recycling of batteries, some provisions impose the manufacturers to ensure the removability and replaceability of batteries contained in appliances they place on the market.

5. Lastly, the Batteries Regulation introduces requirements in terms of transparency. Notably, a carbon footprint declaration and carbon footprint performance class shall accompany the placing on the market of certain batteries, and the Regulation specifies a methodology for calculating these parameters. Furthermore, maximum carbon thresholds will be proposed by the EU Commission in the coming months. A “battery’s product passport”, containing various information, shall also be created and made available to consumers, for instance through a QR code printed on the battery’s packaging. More marking and labelling requirements are detailed in the text.

The Batteries Regulation finally addresses social and environmental risks inherent in the extraction, processing and trading of certain raw materials and secondary raw materials used for battery manufacturing. These issues shall be analyzed in “battery due diligence” policies that will become mandatory for certain manufacturers and publicly released. The implementation of these policies will be controlled by a third party and audit reports will have to be issued.

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Companies involved in the manufacturing and placing on the EU market of batteries will be impacted by this new Regulation and should work with legal counsel to review the exact provisions applicable to their businesses.

King & Spalding Environmental lawyers can help you better understand the changes that will result from the entry into force of the Batteries Regulation. They can also provide assistance regarding the interactions between this text and other existing EU regulations applicable to the battery sector (REACH Regulation, CLP Regulation, ELV Directive, etc.).

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¹ European Commission, Press release, "Green Deal: Sustainable batteries for a circular and climate neutral economy", 10 December 2020, Brussels.

² European Commission, Questions and Answers, "Questions and Answers on Sustainable Batteries Regulation", 10 December 2020, Brussels.