



SolarPower Europe key recommendations on the draft EU Battery Regulation

- 1. Ensure proportionate obligations for smaller market actors**
- 2. Implement a timely and appropriate framework for CO2 footprint obligations** (Art. 7)
- 3. Avoid retroactivity on existing products**
- 4. Clarify and narrow down access to battery data** (Art. 14, 59, 64, 65)
- 5. Reconsider the suitability and usefulness of recycled content requirements** (Art. 8)
- 6. Improve the framework for Extended Producer Responsibility** (Art. 46, 47, 49, 59)

Introduction

SolarPower Europe welcomes this legislative proposal for a new EU Battery Regulation, which brings a much-needed update to the obsolete Battery Directive through a Regulation that will ensure harmonised EU rules and will constitute a solid legislative basis for a competitive and well-functioning EU battery market. We applaud the proposal to enhance sustainability and safety features in batteries, targeting different stages of the product lifecycle; in particular, it is important to address liability and safety challenges related to end-of-life management to facilitate regulated second life and to help boost best practices for the EU battery recycling market. We also support the rationale of a step-wise approach to introduce information disclosure requirements first and performance requirements at a later stage, as the former will allow the industry to prepare for the latter.

In order to establish fair market conditions, sustainability, supply chain and safety requirements set out in the regulation should also be extended to the applications that compete with battery storage and electric transport, including fossil-fueled options, with the aim to provide more transparency on the different energy system and mobility options available on the market.

SolarPower Europe has identified some crucial issues in the draft regulation that require an improvement of the current proposal. Our specific recommendations, outlined below, are instrumental to ensure a balanced and future-proof battery market in line with EU climate neutrality ambitions.

In addition to this, there are a number of overarching issues that require further consideration:

- First, the reliance on a large number of secondary acts and the leeway for further legislation or standardisation included in Art. 16 should be addressed as it creates large uncertainty and unpredictability for the industry;
- Second, the timeline of several provisions should be reconsidered as it appears rather challenging, both in terms of the time for the industry to adapt to the new rules and to develop the right methodologies;
- Third, administrative processes and requirements are at times too burdensome and unnecessary and should be overall streamlined and simplified;
- Fourth, differences in products, industries, market players and applications need to be better acknowledged throughout the regulation, and the scope of provisions adapted accordingly;



- Fifth, the practical enforcement of certain provisions requires particular attention as battery compliance could be challenged by national market surveillance authorities on a wide basis, which could lead to market fragmentation. Moreover, carbon footprint declarations, minimum recycled content obligations and due diligence policies would require third-party verification via notified bodies: it is unclear how these and other requirements will be enforced in practice to ensure that the same conditions apply to all battery products – both those domestically manufactured and those imported.

1. Ensure proportionate obligations for smaller market actors

One of the main objectives of this regulation is to address sustainability issues linked to the expected massive growth of electric vehicles (EVs). At the same time, the regulation covers other products with similar characteristics such as stationary Battery Energy Storage Systems (BESS), which are fundamental enablers of system flexibility in a more decentralised and renewable-based energy system. Although a strong deployment of BESS is anticipated, this is expected to take place at much smaller volumes compared to EV battery sales, at least in the short to medium term.¹ The BESS storage market does not only differ from the automotive industry in output volumes, but also in terms of actors. While the automotive sector is characterised by few large players, European BESS manufacturers include small and medium enterprises operating at the national or regional level. The regulation needs to acknowledge the different capabilities/resources of the wide varieties of actors that will fall within the scope of the regulation; even more so considering that the approach initially outlined in the preparatory study limited the scope of carbon footprint provisions to EV and large-scale batteries.

In light of the above, obligations should be made proportionate to the volumes of batteries put on the market. We recommend setting minimum market volume thresholds, expressed in annual energy storage capacity production (GWh), under which simplified reporting procedures for CO₂ footprint calculation, supply chain due diligence and recycled content are available. In this manner, smaller actors will not be overburdened with excessive obligations.

2. Implement a timely and appropriate framework for CO₂ footprint obligations (Art. 7)

The regulation outlines the setup of CO₂ footprint calculation methodologies, followed by mandatory CO₂ footprint disclosure, allocation into performance classes and minimum thresholds. At this stage, however, no product environmental footprint category rules (PEFCR) are available for any stationary BESS, whereas a PEFCR for lithium-ion batteries only exists for the mobility sector and requires an in-depth revision.

To ensure a meaningful differentiation between the variety of products, technologies and applications under the scope of the carbon footprint provisions, **it is essential that specific PEFCRs for stationary storage chemistries are prepared and the PEFCR for EV li-ion batteries is significantly improved, including for better comparability and representativity of environmental impacts, ahead of the entry into force of the carbon footprint obligations.** A failure to do so would result in severely biased, hard-to-compare carbon footprint calculations.

¹ As an example, the current residential BESS market in Europe is estimated at less than 1 GWh annually. (SolarPower Europe (2020): *European Market Outlook for Residential Battery Storage*).



Too burdensome obligations not only result in higher costs for end-customers and lower competitiveness; they will also affect in particular smaller and innovative market players with fast innovation cycles. Therefore, **declaration obligations should be streamlined and simplified in different ways:**

- First, obligations could be adapted based on the volume of batteries placed on the EU market;
- Second, a mandatory evaluation mechanism for producers to demonstrate year-on-year improvement (accompanying their carbon footprint declarations) could be considered instead of setting minimum performance classes, as this, alongside information in absolute values in gCO₂e/kWh, could be an effective market-based tool to drive change and meaningful incremental improvements;
- Third, the scope of the carbon footprint declaration should only be on battery model and plant but not 'per batch' as this term is undefined and could greatly increase the number of required declarations;
- Fourth, actors with annual energy storage capacity production below a minimum threshold should be exempted from independent third party verification requirements.

3. Avoid retroactivity on existing products

We recommend including a grandfathering clause on the new regulation that exempts products already being sold or with a purchasing agreement already being signed to comply to the new rules. This is a necessary action to avoid that the regulation is applied retroactively to products already contracted and to legacy spare parts used for repairing products no longer produced. A retroactive regulation could cause negative effects to the profitability of existing projects.

4. Clarify and narrow down access to battery data (Art. 14, 59, 64, 65)

Provisions included in Art. 14, 59 and 64 require more detailed definitions of the type of information and data that manufacturers need to disclose, which actors are given access to such data, and under which specific conditions. For instance, the definition of "independent operators" who should be given access to BMS data for repurposing, remanufacturing or reuse (Art. 59) is too broad and inconsistent with the BMS data access to be provided on battery state of health and expected lifetime (Art. 14), which should be given "at any time", "on a non-discriminatory basis" and to "any third party".

A closely regulated access to data is key to ensure the safety of users/actors manipulating batteries at all times, and especially in the context of reusing and remanufacturing; however, as a general principle, **only essential, must-have information should be included among the disclosure requirement as BMS/battery data is highly sensitive and IP-protected.** As a minimum, useful data points should be defined before a disclosure obligation kicks in.

Moreover, **the definition of actors being given access to data should be significantly narrowed down.** For instance, access to BMS data could be justified and made conditional to a signed contract as is the case when EPR is transferred (as per Art. 59(5)b). Batteries that are unsuitable for any repurposed or second-life application because they were used until the very end of the duration of their first life should not be required to share sensitive BMS data with third party operators. 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 disclosure obligations enter into force (Art. 64, 65).



In addition, it should be acknowledged that the provisions need a more differentiated approach depending on the products taken into consideration, especially with regard to the Battery Management System provisions included in Art. 14, which cannot apply to certain battery chemistries such as lead-acid or nickel-based batteries.

Overall, unnecessary duplication of information requirements should be avoided. We recommend reviewing the information requirements related to Art. 13, 14, 59, 64 and 65 to avoid any redundancy.

5. Reconsider the suitability and usefulness of setting recycled content requirements (Art. 8)

The new regulation outlines reporting obligations on recycled content and, at a later stage, minimum levels of recycled content in manufacturing. However, a methodology for calculation of recycled content has not yet been designed. **It is essential to develop a detailed and EU-harmonised methodology for recycled content calculation** that allows collection of data on the current state of play before putting any reporting and minimum levels obligation.

Importantly, recycled content requirements should not be implemented without a careful evaluation of the actual environmental benefits they bring in relation to the obligations borne by market actors. **We strongly recommend carrying out a more detailed assessment of the effectiveness, economic impact, feasibility and enforceability of such provisions before including minimum level requirements in the new regulation.** Setting minimum levels of recycled content in manufacturing could result in unanticipated market distortions, such as:

- A need to import secondary materials from third countries due to insufficient availability in the EU;
- A decrease of material availability in other applications;
- A perverse incentive to limit battery lifetime in order to get the recycled materials needed to meet the minimum levels.

In addition, we signal a large underestimation of administrative costs associated with recycled content requirements, which are expected to be multiple orders of magnitude larger than what assumed in the impact assessment.

Against this background, we believe that **recycled content reporting should start on a voluntary basis** and be encouraged by EU policymakers. With this approach, building on the experience gained from industry initiatives, policymakers would be able to keep track of the progress on this front and consider different policy options only if slow uptake is observed. In line with this, the voluntary reporting on recycled content should be **complemented with an explicit review clause** to reconsider the approach in light of the observed progress.

6. Improve the framework for Extended Producer Responsibility (Art. 46, 47, 49, 59)

We recommend that **the EPR rules be adjusted to better reflect a fair allocation of responsibilities across parties**, and to provide more precise definitions of producer responsibilities.

Specifically, with reference to Art. 47 and 49, producers should not be forced to organise the preparation for repurposing and remanufacturing of batteries, and to cover the cost of this activity, including having to cover dismantling costs of waste industrial batteries on private premises. The decision to recycle or repurpose the market should be left to the market, and battery repurposing costs should be borne by the actor carrying out



the activity. The take-back obligation shall be limited to those products the producer has placed on the market, and shall not include products from other producers. Moreover, the financial contributions paid by producers should be based on the costs of collection and recycling and not be adjusted based on the rechargeability or on their level of recycled content.

In addition, obligations on producers are at times too burdensome – for example, the obligation to notify competent authorities of any changes to the EPR registry “without undue delay” in Art. 46(4), to perform “regular independent audits” in Art. 47(3)b, or to cover the costs of surveys identifying inappropriately discarded batteries. It is recommended to allocate more appropriate and balanced responsibilities to actors.

The legislative framework for repurposed batteries regulated in Art. 59 also needs to be strengthened, with more robust and explicit wording on the transfer of EPR to the repurposer and the safety requirements needed for repurposed or repaired batteries.