

**REPLY FROM THE EUROPEAN UNION TO THE COMMENTS RECEIVED FROM CHINA
REGARDING NOTIFICATION**

G/TBT/N/EU/775

**PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
CONCERNING BATTERIES AND WASTE BATTERIES, REPEALING DIRECTIVE 2006/66/EC AND
AMENDING REGULATION (EU) No 2019/1020 (COM(2020)798)**

The European Union (EU) would like to thank China for its comments on the *"Proposal for a Regulation of the European Parliament and of the Council concerning batteries and waste batteries, repealing Directive 2006/66/EC and amending Regulation (EU) No 2019/1020 (COM(2020)798)"*.

The EU appreciates the comments made by China and would like to clarify the following:

Points 1-2, and point 1 of the additional comments: The EU would like to clarify that the aim of the classification of batteries in the notified draft is to update the battery categories and definitions of Directive 2006/66/EC¹, to bring them in line with the latest technological developments. This concerns in particular the differentiation of electric vehicle batteries from industrial batteries. The definition of industrial batteries in the notified draft (Article 2 (7)) continues to encompass broad group of batteries (such as those batteries intended to be used for industrial activities, communication infrastructure, agricultural activities or generation and distribution of electric energy, etc.). However, the EU sees no need to further differentiate within this category in order to achieve the purposes pursued by the notified draft. For that same reason the EU sees no need to follow the strict 'physical' approach to classification of batteries according to standard IEC/TC21, but rather one based on the use of the batteries.

Further, the notified draft now addresses batteries for light means of transport, specifically for the purpose of waste collection targets. The EU will take the comments made by China into account in this regard.

Point 3, and point 2 of the additional comments: As China is aware, batteries are essential for the energy transition, helping to achieve climate neutrality. However, at the same time the raw material acquisition, pre-processing, manufacturing, distribution and recycling of batteries causes greenhouse gas emissions and to a certain extent offset those environmental benefits. The EU carefully considered how to address this and the draft Regulation introduces progressive requirements to minimise the carbon footprint over the life cycle of batteries. Accordingly, the EU opted for a step-wise approach of first detailing the calculation rules based on the Product Environmental Footprint (PEF) method, then requiring reporting, after that comparative labelling, and only at the last stage applying a maximum life cycle

¹ Directive 2006/66/EC of the European Parliament and of the Council of 6 September 2006 on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/157/EEC, OJ L 266, 26.9.2006, p.

carbon footprint threshold. In addition, this requirement will only apply for batteries larger than 2 kWh capacity. This also limits the number of categories of application.

The EU has chosen the PEF method because, among the different existing life cycle assessment approaches, it is the one that the European Union considers guarantees the highest level of reproducibility, comparability and verifiability of the results. Moreover, it has gone through a multi-year road testing phase (2013-2018), involving about 300 companies of different sizes and located in different parts of the world. The PEF method is grounded in the ISO 14040/44 standards on life cycle assessment, while further specifying some methodological aspects in order to limit the variability of choices by life cycle assessment practitioners, and overall guaranteeing consistency, reproducibility and verifiability of results.

The use phase is included only to the extent that battery manufacturers have direct influence over it. Thus, aspects of the use phase are included in the functional unit, but for the rest the use phase is excluded unless it is demonstrated that choices made by battery manufacturers at the design stage can make a non-negligible contribution to this impact. For example, the carbon footprint of the electricity with which the battery is charged is not something manufacturers have direct influence over.

The EU considers that carbon footprint at the level of the model would not be specific enough, because the units of a model may be produced in different batches at different production plants, which may have different carbon impacts, for example due to the type energy used during the manufacturing process. Activity data of anode, cathode, electrolyte, separator and cell-casing are significant factors for the carbon footprint. The EU would like to highlight that details of the calculation need to be included only in the documentation that is shared with notified bodies and market surveillance authorities, who have to respect the principles of professional secrecy. The end of life and recycling stage is also significant and manufacturers may have influence over this. Secondary datasets will be made available for all processes for which there is no obligation to use product-specific data, including to model recycling and end of life stages.

Point 4: The introduction of minimum levels of recycled content of cobalt, lead, lithium and nickel in batteries is part of the EU's effort to foster the circular economy and have markets for secondary raw materials work efficiently. Given that those mandatory levels will only come into force in 2030, economic operators will have sufficient time to make the necessary adjustments. The EU estimated the availability of such materials recovered from waste by 2030 and 2035 on the basis of the best available evidence and information. The amounts proposed as targets come from 'macro' calculations: the estimated amount of the substances available on the market, obtained from the recycling of batteries. These are conservative assumptions, but were also intended to ensure that no major distortion of EU and global markets should arise. The impact assessment summarises the different sources of information that have been used, including the following two studies carried out for the Commission:

- Study to identify and assess the feasibility of measures to enhance the impact of Directive 2006/66/EC, Oko Institut 2020²
- Assessment of options to improve particular aspects of the EU regulatory framework on batteries, Oko Institut 2021³

The EU included the possibility to adjust the targets in 2027 should trends in availability differ significantly from those estimates. The EU will adopt, by the end of December 2025, a methodology for the calculation on recycled content in batteries through an open and participatory process.

The EU considers that documentation at the level of the model would not be specific enough, because the units of a model may be produced at different production plants with different levels of recycled content.

Points 5-6: Batteries that last longer and display higher performance deliver more energy throughout their useful lifetime. In general terms, this represents a reduction in their overall environmental impact. However, market competition is currently largely based on price differentiation. The performance and durability parameters address this. The EU would like to highlight that this is a similar approach as is taken under the EU's Ecodesign Directive⁴ for various products. The minimum values will apply to a limited number of types of batteries: portable batteries with the following common formats: 4,5 Volts (3R12), D, C, AA, AAA, AAAA, A23, 9 Volts (PP3); and industrial batteries larger than 2 kWh capacity.

As for the review to assess the feasibility of measures to phase out the use of non-rechargeable portable batteries of general use, the EU prefers to carry out an assessment encompassing all such batteries together, but will of course take into account the specificities of the different battery types and battery chemistries.

Point 7, and point 3 of the additional comments: The EU would like to highlight that the intention is either to have harmonised standards or common specifications, as referred to in Articles 15 and 16 of the notified draft, respectively, for the safety of stationary battery energy storage systems. However, in the absence of or as an alternative to such standards or specifications, it is permitted – as indicated in Article 15 – to use other reliable, accurate and reproducible methods that take into account generally recognised state-of-the-art methods, and the results of which are deemed to be of low uncertainty.

Annex V of the notified draft sets out the safety parameters which are to be tested. A mere reference to the provisions of the EVS-GTR Global Technical Regulation on Electric Vehicle Safety would not be appropriate and may be over-restrictive, because the necessary safety parameters for stationary batteries differ to a certain extent from safety parameters for electric vehicles and their batteries, because of their different uses. The EU will consider international standards on safety of electric vehicle batteries as a basis for the harmonised standards or common specifications on safety of stationary batteries.

² <https://op.europa.eu/en/publication-detail/-/publication/d8eb3539-8089-11eb-9ac9-01aa75ed71a1/language-en>

³ <https://op.europa.eu/en/publication-detail/-/publication/78f09953-8c53-11eb-b85c-01aa75ed71a1/language-en/format-PDF/source-219833293>

⁴ <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32009L0125>

Points 8-10, 15-17, and points 5-6 and 8 of the additional comments: The EU will carefully examine the technical suggestions made by China. Inconsistencies such as indicated in point 9 will be addressed. The EU would further clarify in relation to these points that it is important for some key information to be directly available through labelling rather than only accessible through a QR code, which involves more effort from the user.

Point 12: The EU has chosen a different approach than that applied in other, older, EU legislation on harmonisation rules on products, because the establishment of more complex or new supply chains means that there is not always a manufacturer or importer established in the EU to whom market surveillance authorities can address questions regarding a battery's compliance with the EU legislation. That could be detrimental to compliance and or could restrict the possibility to enforce EU regulatory requirements. The requirement that there is an authorised representative in the event that the manufacturer is not in the EU was considered the most effective and proportionate way to address this.

Point 13: The EU would like to clarify that the rules for calculating collection rates are included in Annex XI of the notified draft. Article 55, paragraph 4, provides that the Commission may adapt those rules, which allows – based on a scientific approach - to set a new methodology for the collection rates based on the availability of batteries for collection.

Point 4 of the additional comments: The EU would clarify that the rules for collection of batteries are differentiated by category of batteries (portable/automotive/electric vehicle/industrial) and not by battery chemistries.

Point 7 of the additional comments: concerning the provisions on responsible sourcing of certain minerals used in batteries, the EU would like to highlight that the option of having a supply chain due diligence scheme recognised by the Commission, as referred to in Article 72, is not obligatory. The economic operator that places the battery on the EU market can also opt for following all the rules in Article 39 without relying on such a recognised scheme. This includes third-party verification by a notified body selected by the economic operator from a list of such available bodies. These are private or public bodies that have to observe professional secrecy with regard to all information obtained in carrying out the conformity assessment activities.

Points 11 and 14, and point 9 of the additional comments: The application dates for the notified draft in general and for due diligence requirements specifically are relatively soon. This is because significant developments in the battery sector are taking place in the near future. However, the EU would like to clarify that the indicated application dates are provisional, because it will depend on the time needed for the regulatory process to adopt the notified draft. For the electronic exchange system, the notified draft already provides a long adaptation period for economic operators: the requirement for economic operators only starts to apply in 2026, while the publication of the notified draft is expected in 2022. That publication will already include the data and information requirements. The implementing regulation that is scheduled for adoption by the end of 2024 will only establish the

architecture of the electronic exchange system, formats of data and information, and rules for accessing, sharing, managing, exploring, publishing and reusing of the information and data.

In conclusion, the EU stresses that the notified draft seeks to fulfil multiple, interlinked objectives including the protection of the environment and human health and safety, all of which are legitimate policy objectives under Article 2.2 of the TBT Agreement.

For the reasons specified above, the EU considers that the notified draft is not more trade restrictive than necessary to fulfil these legitimate policy objectives, taking into account the risks that non-fulfilment would create. The notified draft therefore fully complies with the provisions of the TBT Agreement.

The EU would like to thank the Chinese authorities once again for providing comments on the notified draft and hopes that the responses conveyed sufficiently clarify the issues raised.
