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Upcoming European Union Removability and Replaceability Requirements on Portable Batteries

*By Cándido García Molyneux and Lucas Falco**

In this article, the authors outline the European Parliament's and Council's main positions on the replaceability and removability requirements of a proposed Regulation on Batteries and Waste Batteries as well as those aspects for which they have already reached a provisional agreement.

The European Parliament and Council are in the last stages of the legislative procedure to adopt a Regulation on Batteries and Waste Batteries (the “Sustainable Batteries Regulation”), which the European Commission proposed in December 2020.¹ Among other many requirements, the proposed Sustainable Batteries Regulation will require manufacturers to ensure that the portable batteries contained in their electronic devices are removable and replaceable.

These requirements will apply to a large variety of electronic devices, including household appliances, IT, telecommunications equipment, and medical devices. They are part of a broader sustainable products package that includes other legislative proposals, such as the Commission proposal² for a Regulation on Ecodesign Requirements for Sustainable Products and an upcoming legislative initiative on the right to repair,³ and will require manufacturers to redesign the electronic devices that they market in the European Union and European Economic Area (“EU/EEA”).

The European Parliament and Council adopted their position at first reading⁴ and common approach,⁵ respectively, in March 2022, and they are now in so-called “Trilogue” negotiations to try to reach an agreement on the

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¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020PC0798&qid=1613426366165>.

² https://environment.ec.europa.eu/system/files/2022-03/COM_2022_142_1_EN_ACT_part1_v6.pdf.

³ https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12797-Designing-mobile-phones-and-tablets-to-be-sustainable-ecodesign_en.

⁴ https://www.europarl.europa.eu/doceo/document/TA-9-2022-0077_EN.pdf.

final wording of the Regulation. They expect to adopt the Regulation by the end of the year. The removability and replaceability requirements on portable batteries are likely to apply as of early 2025.

This article outlines the Parliament's and Council's main positions on the replaceability and removability requirements as well as those aspects for which they have already reached a provisional agreement.

THE REMOVABILITY AND REPARABILITY REQUIREMENTS

The draft used in preparation of the second Trilogue meeting of June 30 (the "Second Trilogue Draft") indicates that the EU institutions agree that as "[f]rom 24 months after the entry into force of the [Sustainable Batteries Regulation] any natural or legal person that places on the market products with portable batteries . . . incorporated, shall ensure that those portable batteries . . . are designed in such a manner to be readily and safely removable and replaceable by the end-user or by independent operators during the lifetime of the appliance . . . , if the batteries have a shorter lifetime than the appliance . . . , or at the latest at the end of the lifetime of the appliance."

The current Batteries and Waste Batteries Directive⁶ 2006/66 already requires manufacturers to "design appliances in such a way that waste batteries . . . can be readily removed." The WEEE Directive 2012/19⁷ also requires that batteries be removed from any "separately collected [waste electrical and electronic equipment]." The Sustainable Batteries Regulation's requirements on removability and replaceability are intended to ensure the enforcement of the obligation to remove the batteries to allow their recycling and to prolong the expected lifetime of the appliances they are part of. While the Second Trilogue Draft's wording is unclear, the removability and replaceability requirements are likely to be interpreted as requiring that portable batteries be removable and replaceable if their lifetime is shorter than that of the appliances in which they are contained, and that they be removable at the end of the lifetime of the appliances. This could suggest that portable batteries do not need to be replaceable if their lifetime is the same or longer than that of the appliances in which they are contained.

The Council is proposing that a battery should be considered as "readily removable" "where it can be removed from an appliance . . . without the use

⁵ <https://data.consilium.europa.eu/doc/document/ST-7103-2022-REV-1/en/pdf>.

⁶ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02006L0066-20180704&qid=1657719150300&from=EN>.

⁷ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02012L0019-20180704&from=EN>.

of specialized tools, thermal energy, or solvents to disassemble.” A battery would be replaceable “where, after its removal from an appliance . . . it can be substituted by a similar [“compatible” according to the Parliament] battery without affecting the functioning or the performance or safety of that appliance.” The European Parliament is also proposing prohibiting manufacturers from using software “to affect the replacement of a portable battery . . . or of their key components with another compatible battery or key component.”

The Parliament’s proposal to ensure that portable batteries can be substituted by “compatible,” rather than “similar,” portable batteries is intended to ensure that batteries can be replaced by batteries that are not of the same brand or from the same manufacturer. The Parliament also proposes to require that manufacturers keep available portable batteries as spare parts of the appliances they power for a minimum of ten years after placing on the market the last unit of the same model “with a reasonable and non-discriminatory price for independent operators and end-users.”

TO WHAT BATTERIES AND APPLIANCES WOULD THE REQUIREMENTS ON REMOVABILITY AND REPLACEABILITY APPLY?

The Second Trilogue Draft defines a portable battery as any battery that: (i) is sealed; (ii) weighs below or equal to five kilograms; (iii) is not designed specifically for industrial uses; and (iv) is neither an electric vehicle battery, nor a light means of transport battery, nor a starter, lighting or ignition power battery of a motor vehicle. A battery is “any ready for use, source of electrical energy generated by direct conversion of chemical energy, having internal or external storage, and consisting of one or more non-rechargeable or rechargeable battery cells, modules or packs of them, including a battery that has been subject to preparing for re-use, preparing for repurpose or repurposing, or remanufacturing.” It also defines an “appliance” as any “electrical and electronic equipment” that is fully or partly powered by a battery or is capable of being so.”

In practice, the removability and replaceability requirements will apply to portable batteries contained in a wide variety of electrical devices, including household appliances, IT and telecommunications equipment, consumer and lighting equipment, electronic tools, toys and leisure equipment, medical devices, monitoring equipment, and automatic dispensers. However, the reference of the definition of appliance to the WEEE Directive 2012/19 suggests that the removability and replaceability requirements may not apply to all products containing batteries. For example, it is unclear whether the requirements would apply to teddy bears with an electronic function.

The Second Trilogue Draft imposes identical requirements on batteries for light means of transport (e.g., electrical bicycles), and the European Parliament is also proposing to impose similar requirements on automotive batteries, electric vehicle batteries and industrial batteries.

WHO SHOULD BE ABLE TO REMOVE AND REPLACE THE PORTABLE BATTERIES?

The Second Trilogue Draft indicates that the Parliament and Council have reached a provisional agreement in that the manufacturer of the appliances may choose between ensuring that the portable batteries be removable and replaceable by an end-user or by an independent operator. However, as with the EU rules on the type approval of vehicles,⁸ the EU institutions intend to ensure that manufacturers may not limit the possibility to remove and replace the batteries to only their dealers. The Draft defines an independent operator as a “person who is independent from the manufacturer and the producer and is directly or indirectly involved in the repair, maintenance or repurposing of batteries, and include waste management operators, repairers, manufacturers or distributors of repair equipment, tools or spare parts, as well as publishers of technical information, operators offering inspection and testing services. . . .”

The Parliament would also require manufacturers of appliances to provide their customers at the time of purchase of the appliances and permanently online with “clear and detailed instructions for removal and replacement” of the portable batteries.

The Council also proposes that in the case of appliances “designed to operate normally in a wet environment” the portable batteries shall be removable and replaceable “only by qualified independent operators.” The concept of “qualified” independent operator would have to be defined in the guidance on the removability and replaceability requirements that the Commission is mandated to adopt and/or by Member State legislation.

POSSIBLE EXEMPTIONS

The European Parliament and Council are likely to agree that the removability and replaceability requirements should not apply to portable batteries where the “continuity of power supply is necessary and a permanent connection between the [appliance] and the [respective] portable battery is required for safety, medical or data integrity reasons.” The Parliament is also proposing to grant an exemption where “the functioning of the battery is only possible when the battery is integrated into the structure of the appliance and it can be proved

⁸ See e.g., Regulation 2018/858, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02018R0858-20210926&from=EN>.

by the manufacturer that there is no alternative available on the market.” The Second Trilogue Document suggests that the Parliament and Council have provisionally agreed that the removability and replaceability requirements should only apply to battery packs as a whole and not to individual cells or other parts included in the battery pack.

