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New Removability and Replaceability Requirements for Batteries Marketed in the European Union

*By Cándido García Molyneux**

In this article, the author outlines one of the obligations that the European Union's new Sustainable Batteries Regulation will impose: the specific removability and replaceability requirements on portable batteries and light means of transport batteries marketed in the EU/EEA.

The European Parliament and Council are about to adopt an agreed text on a Regulation on Batteries and Waste Batteries (Sustainable Batteries Regulation or SBR) that will impose a broad range of requirements on the safety, sustainability and circularity of batteries, including batteries that are part of devices (e.g., laptop batteries), industrial batteries (e.g., large stationary storage applications) and means of transport batteries (e.g., car batteries), as well as extended producer responsibility obligations (including waste take back) on producers marketing them. The SBR is likely to be published in the official journal of the EU within the next couple of months and will repeal and replace the existing Directive 2006/66/EC on Batteries and Accumulators and Waste Batteries and Accumulators.¹

This article outlines one of the obligations that the new SBR will impose: the Regulation's specific removability and replaceability requirements on portable batteries and light means of transport (LMT) batteries (e.g., batteries for electric bicycles) marketed in the EU/EEA that will apply as of around September/October 2026. The new requirements will require producers of appliances to introduce design changes to their appliances so that the portable batteries they incorporate can be removed and replaced during the appliances' lifetime.

In effect, these new requirements will complement upcoming requirements on the sustainability and ecodesign of appliances and consumer's right of repair

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¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02006L0066-20180704&qid=1679841789519&from=EN>.

that are intended to achieve the objectives of the European Commission's Circular Economy Action Plan.²

Thus, this article first briefly outlines those upcoming sustainability and reparability requirements for appliances and, thereafter, explains in more detail the specific removability and replaceability requirements for batteries in such appliances.

CIRCULAR ECONOMY AND THE SUSTAINABILITY OF APPLIANCES

In its Circular Economy Action Plan of 2020, the European Commission outlined a series of legislative initiatives to establish a product policy framework to ensure the sustainability of products, services and business models and transform consumption patterns to reduce the production of waste and allow for an internal market for high quality secondary raw materials.

Among other things, the Commission announced that its legislative initiatives would aim at “improving product durability, reusability, upgradability and reparability.” Specifically for the electronics sector, the Commission indicated its intention to introduce a series of regulatory measures for appliances, including mobile phones, tablets and laptops, so that they are designed for energy efficiency, durability, reparability, upgradability, maintenance, reuse and recycling.

In line with its Action Plan, during the last three years the European Commission has presented – and the Parliament and Council are considering for adoption – a series of legislative proposals affecting the durability, reparability and reusability of appliances. These include a proposal for a Regulation on Ecodesign Requirements for Sustainable Products (Proposed Sustainable Products Regulation);³ a proposal for a Directive on Common Rules Promoting the Repair of Foods and amending Regulation (EU) 2017/2394, Directives (EU) 2019/771 and (EU) 2020/1828 (Proposed Right to Repair Directive);⁴ or a proposal for a Directive amending Directives 2005/29/EC and 2011/83/EU as regards Empowering Consumers for the Green

² https://ec.europa.eu/environment/circular-economy/pdf/new_circular_economy_action_plan.pdf.

³ https://environment.ec.europa.eu/system/files/2022-03/COM_2022_142_1_EN_ACT_part1_v6.pdf.

⁴ https://commission.europa.eu/system/files/2023-03/COM_2023_155_1_EN_ACT_part1_v6.pdf.

Transition Through Better Protection Against Unfair Practices and Better Information (Proposal for a Greenwashing Directive).⁵

The removability and replaceability requirements for portable batteries in appliances of the SBR are intended to complement the product sustainability requirements of these different legislative initiatives.. For example, the Proposed Sustainable Products Regulation, would replace the existing Ecodesign Directive,⁶ and is intended to establish a legal framework empowering the Commission to impose specific product durability, reusability, upgradability and reparability, ease of maintenance and refurbishment requirements on defined categories of products. These requirements would consider different parameters, such as lifetime of the product and the mean time between failures; compatibility with commonly available spare parts; complexity of processes and tools needed to refurbish or remanufacture; and use of easily recyclable materials.

The Proposed Right to Repair Directive would also encourage the sustainability and reparability of appliances by, for example, requiring producers, upon consumers' request, to repair for free or against a price specifically listed categories of appliances (including mobile phones, cordless phones and tablets, and electronic displays). Similarly, the Proposal for a Greenwashing Directive would explicitly prevent traders from misleading consumers about the durability and reparability of their appliances. Among other things, it would consider as an unfair practice to omit to inform consumers about the existence of features introduced to limit the durability of appliances or claiming that an appliance has a certain durability in terms of usage time or intensity when it does not. Moreover, the Proposal would require producers to inform consumers if their appliances do not have a guarantee of durability and of the appliance's reparability through a reparability score or other relevant repair information.

REMOVABILITY AND REPLACEABILITY REQUIREMENTS FOR PORTABLE BATTERIES AND LMT BATTERIES

Article 11 of the SBR imposes different removability and replaceability requirements for portable batteries and LMT batteries. These requirements are intended to ensure the objectives of sustainability, durability and replaceability of appliances of the Commission's Circular Economy Action Plan and the different legislative initiatives mentioned above.

⁵ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022PC0143&from=EN>.

⁶ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02009L0125-20121204&from=EN>.

Portable Batteries

The SBR defines portable batteries as any battery that is sealed, weighs below or equal to 5 kg, is not designed specifically for industrial uses, and is not an electric vehicle, LMT or SLI battery. However, it would exempt from the removability and replaceability requirements portable batteries where continuity of power supply is necessary and a permanent connection between the device and the portable battery is required to ensure the safety of the user and the appliance, or for products that collect and supply data as their main function, if this is necessary for “data integrity reasons.”

As from 42 months after the entry into force of the SBR, producers marketing appliances incorporating such portable batteries must ensure that the batteries are “readily removable and replaceable” by the “end user” at any time during the lifetime of the appliance. Thus, the general rule for portable batteries is that it must be possible for the end user, and not a qualified professional, to remove and replace the batteries “at any time during the lifetime of the product.” This wording also suggests that the Commission and Member States could take the position that portable batteries should be removable from appliances and replaceable “at any time” even if the appliance has a shorter life than that of the batteries.

Article 11(1) of the SBR also clarifies that a portable battery is “readily removable” by an end user, if it can be removed “with the use of commercially available tools” without requiring the use of: “specialized tools” unless they are provided free of charge with the product, “proprietary tools,” “thermal energy” or “solvents.” A recital of the SBR also explains that “commercially available tools are tools available on the market to all end users without the need for them to provide evidence of proprietary rights and that can be used with no restriction, except for health and safety reasons.”

Producers marketing appliances incorporating portable batteries will also be required to ensure that their devices are accompanied by instructions and safety information on the use, removal and replacement of the batteries. The instructions and safety information must be posted online in a publicly available website in a manner that is easily understandable for end users.

Article 11 establishes two exceptions to the general rule that portable batteries must be removable and replaceable by end users. Appliances incorporating portable batteries may be designed in such way as to make their batteries removable and replaceable only by “independent professionals” if they are:

1. specifically designed to operate primarily in an environment that is regularly subject to splashing water, water streams or water immersion and that are intended to be washable or rinseable.

Article 11(2) adds that this derogation is only applicable where removability and replaceability by an independent professional is necessary to ensure the safety of the user and the appliance. A recital of the SBR further tightens the derogation, stating that it “should only apply when it is not possible, by way of redesign of the appliance, to ensure the safety of the end user and the safe continued use of the appliance after the end user has correctly followed the instructions to remove and replace the battery.” Arguably, the Commission will have to refer to socio-economic and technical feasibility considerations when adopting guidance defining the scope of what is “not possible.”

The same recital also suggests that an appliance is designed to “operate primarily” in a water environment if it is “specifically designed to be used, for a majority of the active service of the appliance” in a water environment.

2. professional medical imaging and radioactive appliances.

Article 11 also empowers the European Commission to introduce additional derogations for other types of appliances whose portable batteries may only be removable and replaceable by independent professionals, instead of end users. However, the Commission may do so only if the additional derogation is necessary to take into account technical and market developments and there are scientifically grounded concerns over the safety of end users removing or replacing the portable batteries, or such removability or replaceability by end users risks being in violation of other EU product safety rules.

The SBR does not define “independent professionals.” However, such category of professionals also includes those that are not dealers authorized by the manufacturers of the devices. The Commission’s guidelines may have to provide criteria on the qualifications that such professionals must meet in order to ensure the safety of end users and the appliances.

LMT Batteries

The SBR defines LMT batteries as those that are sealed and weigh below or equal to 25 kg, are designed to provide electric power for the traction to wheeled vehicles that can be powered by an electric motor alone or by combination of motor and human power, including type-approved vehicles of category L under Regulation 168/2013, and are not electric vehicle batteries (e.g., batteries for electric bicycles). As from 42 months from the entry into force of the Regulation, producers marketing devices incorporating LMT batteries in the EU/EEA must ensure that the batteries are readily removable and replaceable “at any time during the lifetime” of the device.

However, in contrast with the requirements for portable batteries, the LMT must be removable and replaceable by “independent professionals,” and not end

users. Moreover, in the case of LMT batteries, the removability and replaceability requirements also apply to the battery cells included in the battery pack.

Replaceability Requirements

In the last stage of the legislative procedure, the European Parliament and Council introduced a second subparagraph to Article 11(5) that seems intended to define the “replaceability” requirements for both portable batteries and LMT batteries. This is despite the fact that the first subparagraph of Article 11(5) regulates the removability and replaceability of only LMT by professional users.

In particular, the second subparagraph of Article 11(5) states that a portable and LMT battery is “readily replaceable” if after its removal from an appliance or light means of transport, “it can be substituted by a similar battery, without affecting the functioning or the performance or safety of that appliance or light mean of transport.” While unclear, the Commission and Member State authorities could take the view that the obligation to ensure that the battery can be substituted by a “similar” battery, “without affecting the functioning or the performance of the appliance or light mean of transport” also applies when an end user, and not only an independent professional, removes and replaces the portable battery from the device. This view could be supported by the fact that the subparagraph also contains a requirement on producers to ensure that portable and LMT “batteries be available as spare parts of the equipment they power for a minimum of five years after placing the last unit of the model on the market, with a reasonable and non-discriminatory price for independent professionals and end users.”

The guidelines that the Commission is expected to adopt will also have to clarify this second subparagraph of Article 11(5). Among other things, we anticipate that the guidelines will have to take into account the Sale of Goods Directive when interpreting the subparagraph’s removability requirements. In any event, the use of the term “similar” suggests that producers must ensure that portable and LMT batteries in appliances can be replaced by batteries that are not identical, and therefore arguably can also be competing batteries, as long as they do not affect the performance or safety of the appliance.

It is also possible that this subparagraph to Article 11(5) may be slightly edited (e.g., it may be converted into a separate paragraph) before the SBR is published.

UPCOMING COMMISSION GUIDELINES

The SBR’s new removability and replaceability requirements will apply to portable and LTM batteries, and appliances and LTMs containing them, that are marketed in the EU/EEA as of (around) the second half of 2026. Before then, the European Commission and Member States will have to agree on

guidelines interpreting the different requirements in order to ensure that they both can be applied in a practical manner and contribute to achieve the objectives of the Circular Economy Action Plan and the other EU legislative initiatives on the sustainability, durability and reparability of appliances. Thus, we expect that the discussion and adoption of these guidelines will create much controversy among the Commission, Member States, businesses and other stakeholders.