



FEEDBACK

Feedback on the draft Commission's guidelines on Article 11 of the Batteries Regulation

Brussels, March 2024

The [Right to Repair Europe](#) coalition represents over 140 organisations from 24 European countries. It represents environmental NGOs and repair actors such as community repair groups, social economy actors, spare parts distributors, self-repairers, repair and refurbishing businesses, and any citizen who would like to advocate for their right to repair. This is a rapidly growing movement, and its objective to make repair affordable, accessible and mainstream is aligned with the objectives of the European Green Deal and the Circular Economy Action Plan. Browse member organisations by country [here](#).

This feedback concerns the draft Commission notice on *Commission guidelines to facilitate the harmonised application of provisions on the removability and replaceability of portable batteries and LMT batteries in Regulation (EU) 2023/1542*, shared with stakeholders on February 7, 2024, and discussed during an Expert Group meeting on March 6, 2024.

Our comments on the JRC's report *Support for the new batteries regulatory framework: technical input for the Guidelines on removability and replaceability of portable and light Means of Transport batteries* first draft and second draft can be found [here](#) and [here](#), respectively.

The [Right to Repair Europe](#) coalition, [ECOS](#), and the [EEB](#) applaud the intent and effort to clarify the precise meaning of several aspects of battery replaceability in *Regulation (EU) 2023/1542 of the European Parliament and of the Council concerning batteries and waste batteries*.

However, we reiterate our concern about the **shift in interpretation regarding the interaction between the Batteries Regulation and the Ecodesign Regulation** for smartphones, resulting in less ambitious requirements for user-replaceability of batteries.

We are also alarmed at the **change of wording between the JRC report and the Commission's draft guidelines with regard to the application of the five criteria for the partial derogation for appliances designed to operate in a wet environment.**

We also have other concerns related to **access to information on battery replacement**, the concept of **compatible batteries**, and the availability of **batteries as spare parts**.

Below, we present our comments and suggestions in more detail, with a view to improving the guidance's relevance and effectiveness to the Regulation.

Interaction between Ecodesign and Batteries regulation

We remain concerned about the **shift of interpretation compared to the first draft of the JRC report regarding the interaction between the Ecodesign requirements for smartphones and tablets laid down in Regulation (EU) 2023/1670 and the removability requirements in Regulation (EU) 2023/1542 on batteries.**

According to the first draft of the JRC report, the requirements laid down in the Ecodesign and Batteries Regulations were considered to be both applicable after the entry into force of both regulations, resulting in a requirement for *all* batteries to be removable by end users. In the second draft of the JRC report as well as the draft Commission's guidelines, however, the Ecodesign exemption from requirements for user-replaceable batteries in the case of durable batteries in ingress-protected phones is considered to take precedence over the requirements of the Batteries Regulation.

As written in our previous feedback, we **find the reasoning behind this interpretation difficult to reconstruct**. Art. 11.1 of the Batteries Regulation states that its removability and replaceability requirements "shall be without prejudice to any specific provisions ensuring a higher level of protection of the environment and human health *relating to the removability and replaceability of portable batteries by end-users* laid down in any Union law on electrical and electronic equipment" (emphasis added). While one **might argue that the Ecodesign requirements could provide environmental benefits in terms of battery life, they do not do so in terms of removability and replaceability of portable batteries by end-users.**

We appreciate the additional contextual information that was provided during the Expert Group meeting on 6 March and understand that the circumstances of the simultaneous negotiation of both legislations have contributed to the present interpretation of their interaction. We also welcome the Commission's further explanation that, therefore, this instance should rather be considered an exception.

However, in the absence of conclusive arguments justifying the current interpretation, we are quite **concerned that this situation could serve as a precedent leading to future exemptions eroding the Battery Regulation's effectiveness, one product at a time.**

We would therefore **ask for the Commission to provide an in-depth justification of the way in which the current interpretation fulfils the requirements of Art. 11.1.** - specifically how the Ecodesign requirements regarding the life cycle of batteries that are not removable by end-users can be considered as ensuring a higher level of protection relating to the replaceability by end-users - **as well as guidance on the principles by which the interaction between the Battery Regulation and any future product-specific regulations will be interpreted.**

Appliances designed to operate in a wet environment

We welcome the addition of the clarification that “as such, the IP rating alone is not understood to meet fulfilment of the above-mentioned criteria,” with regards to the inclusion of IP classes to help to understand the meaning of ‘wet environments’. However, we have **strong concerns about the weakening in wording** between the JRC report and the draft Commission’s guidelines **regarding the need for all five criteria to be fulfilled** in order for the partial derogation for appliances designed to operate primarily in a wet environment to apply.

In the final JRC report, the wording is as follows: “In other words, the following five specifications are identified *as being all relevant criteria* to consider for such appliances for the derogation to apply” (emphasis added). In the draft Commission’s guidelines, the following wording was chosen instead: “Therefore, the following indicators *may be used to interpret and apply the criteria* for the applicability of a derogation for an appliance operating in a wet environment.”

We **strongly recommend reverting to the wording included in the JRC report**, as it better reflects the intention of the Regulation. In addition to the concepts of "specifically designed", "primarily" and "intended to be washable or rinseable" which are explicitly listed in Art. 11.2. (a) of the Regulation, as per Recital 39, “this derogation 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” (emphasis added). Therefore, the wording of the second JRC report adequately and clearly reflects that indeed all five criteria have to be met in order for the derogation to be applicable.

In line with this, we **object to the suggestions that were brought forward by several industry representatives on the inclusion of limiting qualifications with regards to the ‘no way to redesign’ criterion**, especially with regards to production

cost. Recital 39 expresses clearly that the derogation should *only* apply if it is not *possible* to redesign the appliance, and does not include any other considerations including production cost. **Therefore, the criterion should be kept as intended in the regulation and not be curtailed retrospectively by adding any such considerations to the requirements for the derogation.**

If further qualifications for this criterion were required, we reiterate our suggestion to simply refer to it as **not being possible ‘with the current state of the art’**, meaning that no technology currently exists that would allow the product to satisfy the criteria for user-replaceable batteries. As such, a claim to the ‘no way to redesign’ criterion can be indisputably refuted not just by **the existence of a product of a similar type with user-replaceable batteries**, but even by the **existence of technologies used in other products** that would allow for the design of the applicable product with user-replaceable batteries.

Finally, we would like to reiterate that the use of **very specific examples when outlining general principles can lead to confusion**, as the reason for the selection of this specific example could be misunderstood. For instance, we appreciate the use of a counterexample for appliances with removable and end-user replaceable batteries that can safely be used in wet environments, but we are concerned that the specification that “examples of such appliances, *powered by portable batteries of general use*, include toothbrushes and shavers” might be understood to mean that *only* appliances with portable batteries *of general use* could fall in this category. We would therefore suggest removing the specification “powered by portable batteries of general use” in order to avoid confusion.

Information for battery replacement

In our previous feedback, we welcomed the inclusion of an overview of relevant information on battery replacement in the JRC report. We are concerned about the **lack of such an overview in the Commission’s draft guidelines. It is crucial that all the types of information listed as relevant in the JRC report** be made available in order to ensure the safe removal and replacement of batteries.

Furthermore, we would like to reiterate that the guidelines should not only state which information needs to be provided, but also the means by which such information should be communicated. Therefore, the guidelines should specifically **require the inclusion of instructions for battery replacement in the user’s manual**. As explained in [our previous feedback](#), any statements in the user’s manual or other documentation misrepresenting the replaceability of the battery by the user or by a professional repairer should be explicitly identified as contradictory to the Regulation.

Concept of compatible battery

We welcome the Commission's draft guidelines' omission of the reference to compatible batteries "allowing the device to operate **seamlessly**," which had previously been included in the second draft of the JRC report. However, we feel that the concept of compatible batteries could still be specified more clearly, in order to safeguard the Regulation's requirement to ensure that **batteries can be replaced with any compatible battery, not just an OEM battery**,¹ as well as its intention to allow the user of the product or, where applicable, a competent technician, to **select a compatible battery among those offered for sale by a variety of producers** and use it to replace a faulty or aged battery.

Specifically, the **applicable criteria to evaluate a battery's compatibility with regards to safety should be defined more clearly in order not to render art. 11.6 of the Batteries Regulation inoperable**. We would therefore like to reiterate the suggestion from our [feedback on the first JRC report draft guidelines](#) that the manufacturer should communicate in the user's manual the **technical specifications (such as capacity, internal resistance, temperature range, charge and discharge thresholds etc.) that compatible batteries need to meet** in order to be safe, with reference to international standards.

This is in line with the wording used in EN50614 § 5.7.2 to specify suitable replacement parts to be used for preparing for reuse:

"the preparing for re-use operator shall ensure that components of WEEE are sourced only with:

- *a like-for-like REEE component recovered which complies with the specifications of the manufacturer for the specific equipment and that has been assessed for preparing for re-use;*
 - *a new or used manufacturer's spare-part / component which complies with the specifications of the manufacturer for the specific equipment, or*
 - *an after sales spare-part / component that complies with the specifications of the manufacturer for the specific equipment manufactured by a third party other than the manufacturer.*
- (...) Any replacement components shall comply with all of the legal requirements in force at the time when the EEE was placed on the market."*

¹ By OEM or Original Equipment Manufacturer, we refer to the producer of the product containing a portable or light means of transportation battery.

Availability as spare parts

With regards to the interaction between Regulation (EU) 2023/1542 and Regulation (EU) 2023/1670 in cases where both are applicable to portable batteries in smartphones and tables, we welcome the draft guidelines' interpretation that requirements from both legislations apply.

Regarding the availability of spare batteries for a reasonable and non-discriminatory price, we would like to draw attention once more to the need for more guidance on the interpretation of this requirement. We **encourage the Commission to propose criteria for reasonable end-user battery prices based on proportionality to product price**. It is generally admitted that 33% of the price of the whole product is the psychological threshold over which consumers generally refuse to repair a product ([ADEME, 2021, p16](#)). Considering also transportation costs, a reasonable price for spare batteries could be 25% of the product sold new.

In addition to the price of spare batteries, we suggest that **guidance is also provided on the delivery time of spare parts**. In order to ensure consistency with Ecodesign regulations, we suggest that manufacturers, importers or authorised representatives shall ensure the delivery of the spare batteries within 5 working days after having received the order.

For more details on this subject, we refer to the comments provided in our [feedback to the first JRC draft report](#).

Contact:

Cristina Ganapini, Right to Repair Europe coordinator: info@repair.eu

Mathieu Rama, ECOS: mathieu.rama@ecostandard.org

Sonja Leyvraz, EEB: sonja.leyvraz@eeb.org