Delegated regulation on methodology for the calculation and verification of cobalt, nickel, lithium and lead recycled content and the documentation format (Article 8 (1), (EU) 2023/1542)

Joint position of DUH, ECOS, EEB and ZWE

We welcome the opportunity to comment on draft act of the delegated regulation on the methodology for the calculation and verification of cobalt, nickel, lithium and lead recycled content in certain batteries, and the format for the documentation of such recycled content as mandated by Article 8 (1) of Regulation (EU) 2023/1542. The usage of recycled materials to produce batteries is crucial to reduce social and environmental impacts in mining countries. Additionally, recycled content targets may become an effective tool to support collection infrastructure and the recycling sector by creating market demand. For this delegated regulation to be effective, it is important to establish reliable and transparent rules that exclude fraud during calculation and reporting.

The signing organisations seek to emphasize that the chain of custody model of mass balance with volume reconciliation and credit allocation under Annex 2.2.2. of the draft act bears considerable risks of jeopardizing consumer confidence, the effectiveness of recycled content targets as a whole and the coherence between legislative initiatives. **Although we support efforts to promote the use of materials derived from European waste, we are firmly opposed to any reduction in recycling target requirements in this context.**

Allowance of mass balance with credit allocation for processing as a service jeopardizes consumer confidence and renders the instrument of recycled content targets ineffective

An effective circular economy relies on trustworthy calculation and verification rules for recycled content in products and a transparent execution. The undersigning organisations are deeply concerned that the Commission proposes mass balance with volume reconciliation and credit allocation for processing as a service for the calculation of recycled content in batteries and thus follows proposals from industry actors. Credit methods are a chain of custody model with very low level of traceability because physical traceability is lost. Therefore, they are difficult to control and may jeopardize consumer confidence in the recycling industry by incentivizing misleading claims. **We therefore propose to only allow the methods segregation and, in case needed, controlled blending** (*see Fig.1*) as proposed by the JRC in option 1a for all supply chain actors in the JRC draft recommendations in November 2024.

Allowing credit-based methods undermines the goals of transparency and trust in claims regarding the recycled content. It weakens the effectiveness of the Batteries Regulation and creates a loophole, enabling **manufacturers to falsely present themselves as environmentally responsible** by indicating shares of recycled content that is not actually present in the purchased battery model. A clear distinction between genuinely innovative recycling processes—particularly those using high contents of post-consumer

waste inputs—and less sustainable approaches is crucial for transparency and for driving environmental progress in industry practices. Innovation is necessary towards processes that produce battery-grade material from high shares of battery waste. It is crucial that innovative processes become visible on the market that do not simply "dilute" impurities. The option proposed by the Commission makes such distinctions impossible.

The calculation method must **align with the Empowering Consumers Directive**, which seeks to prevent greenwashing and strengthen consumer trust in environmental claims. The proposed chain of custody currently undermines this goal by preventing consumers from receiving reliable information on which production processes can actually handle large volumes of waste, while rewarding producers that simply buy large quantities of post-industrial waste. This enables claims that a product is "made from 100 percent recycled materials" even when its actual recycled content is minimal, thus resulting in misleading environmental claims.

We **demand that the calculation method for recycled content is based on the weight of recycled material that is actually present in the final product**. This has also been recognized in the US by the Environmental Protection Agency with its Safer Choice Standards, which states: "Allowing producers to advertise that a product contains "recycled content" based on the amount of recycled material purchased is deceptive" in its comments to the U.S. Federal Trade Commission in April 2023. In addition, allowing for transfers of green claims from one product to another produces misleading sustainability claims on recycled content. This has been the case in the clothing sector. The Dutch Authority for Consumers and Markets criticised H&M and Decathlon for their misleading claims.

A credit-based calculation **sets wrong incentives:** We do not consider the argument made by industry actors that the recycled content calculation needs to set incentives for producers to collect high amounts of battery waste for recycling as comprehensive. Such an approach would incentivize producers to collect mainly post-industrial waste from their own processes. Instead, **there should be an incentive to use high amounts of post-consumer waste in battery production and to develop production processes that can handle high amounts of waste inputs.** These developments can only be incentivized if the calculation method reflects the real recycled content in the final product. Collecting high amounts of post-consumer batteries should be a responsibility of the producer responsibility organisations in which producers have to participate according to the Batteries Regulation.

In addition, we also believe that allowing credit allocation for processing as a service under eligible contractual agreements are not in line with the legal requirement of Article 8 defining that the documented share of recovered materials reported by the battery manufacturer has to be "present" in the active materials or the battery, respectively.

Furthermore, allowing mass balance with flexible allocation for processing as a service under eligible contractual agreements is **not necessary to fulfil the recycling targets** set in the EU-Batteries Regulation: Often it is argued that producers supplying both EU and non-EU-markets should be able should be able to concentrate recycled content in production destined for the EU market rather than distributing it proportionally across their output. Considering the low net export share of passenger vehicles of 4.4% for the period 2018 – 2021[1] we do not see relevant additional challenges to achieve the target without flexible allocation (or allocation on product line level). Furthermore, this creates an uneven playing field: producers supplying only or predominantly the EU market have considerably less scope to concentrate recycled content credits, while manufacturers – particularly non-EU manufacturers – supplying only a limited share of their production to the EU may be able to meet EU recycled content requirements while using comparatively little recycled material across their overall production.

All plants producing batteries for the European Market should fulfil the recycled content targets set in Article 8 or keep their production lines for different markets separated. This is the only way to ensure that the use of recyclates becomes the standard in Europe and to exploit the potential of recycling. This is also an important measure to create a stable economic situation for the recycling industry by maintaining a high demand for recyclates. We also like to note in this context that recycling plants are still able to sell/ confirm the character as recyclate to their suppliers of battery wastes, since the discussed allocation method within mass balance only refers to the production of batteries and not to recycling.

Finally, we would like to note that the Single Use Plastics Directive (SUPD) must not become a blueprint for the calculation of recycled content for all other products. Many Environmental NGOs as well as economic actors in the recycling sector oppose the use of mass balance with flexible allocation (called "fuel use exempt model") within the SUPD framework.[2,3]

Support EU-sourced recycled content without weakening recycled content targets

The undersigning organisations generally welcome measures that **prioritise recycled content originating from recycling in the EU**, as they can provide an important incentive to use European waste batteries as input material and strengthen recycling value chains within the Union. However, such incentives **must not undermine the recycled content targets themselves**. The proposed correction factor of 1.3 would allow recycled content from the EU to be counted above its actual physical mass and could therefore reduce the amount of recycled content that needs to be physically incorporated into batteries to comply with the targets.

In addition, it is questionable whether the introduction of a 1.3 correction factor **is covered by the empowerment to establish a methodology for the calculation and verification of recycled content**. We therefore demand to consider other approaches to support EU-sourced recycled content without weakening the overall recycled content requirements. For example, higher recycled content thresholds could be set for recyclates originating outside the EU or the use of EU-sourced recycled content could be incentivised through other instruments, such as **eco-modulation of EPR fees**.

Contacts

About DUH

Environmental Action Germany (Deutsche Umwelthilfe – DUH) is a recognized German environmental and consumer protection organization, which has been campaigning for resource conservation and consumer interests since 1975. DUH is politically independent, non-profit and it campaigns on a national and European level. It is for example renowned for its role in uncovering the Diesel Scandal and in establishing a deposit system for non-refillable beverage containers in Germany. Within its Department Circular Economy, DUH promotes waste prevention, responsible consumption and a sustainable economy. For more information, please visit: www.duh.de/englisch

- **Deutsche Umwelthilfe (DUH)** – Marieke Hoffmann, Senior Expert Circular Economy, hoffmann@duh.de

About EEB

European Environmental Bureau (EEB): The European Environmental Bureau (EEB) is Europe's largest network of environmental citizens' organisations, standing for environmental justice, sustainable development and participatory democracy. It represents over 180 members in over 38 countries: www.eeb.org

- **European Environmental Bureau (EEB)** – Eva Bille, Head of Circular Economy, eva.bille@eeb.org

About ECOS

ECOS - Environmental Coalition on Standards is an international NGO with a network of members and experts advocating for environmentally friendly technical standards, policies, and laws. We ensure the environmental voice is heard when they are developed and drive change by providing expertise to policymakers and industry players, leading to the implementation of strong environmental principles. For more information visit: www.ecostandard.org

- **Environmental Coalition on Standards (ECOS)** – Edoardo Bodo, Programme Manager Energy Transition, edoardo.bodo@ecostandard.org

About ZWE

Zero Waste Europe (ZWE) is the European network of communities, local leaders, experts, and change agents working towards a better use of resources and the elimination of waste in our society. We advocate for sustainable systems; for the redesign of our relationship with resources; and for a global shift towards environmental justice, accelerating a just transition towards zero waste for the benefit of people and the planet.
http://www.zerowasteeurope.eu

- **Zero Waste Europe** – Aline Maigret, Head of Policy, aline@zerowasteeurope.eu

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[1] Eurostat, detailed data on international trade in goods (Comext), accessed the 2 May 2024

[2] Joint statement calling for a transparent and reliable policy framework defining recycled content in plastic, July 2023, https://zerowasteeurope.eu/wp-content/uploads/2023/07/Joint_letter_recycled_content_methodology_SUPD-1.pdf

[3] Business-NGO Coalition supports the motion objecting to the Commission's draft Implementing Act on the calculation of recycled content in single-use plastic beverage bottles, April 2024, https://fead.be/position/ngo-business-coalition-supports-the-objection-to-the-draft-implementing-act-for-the-calculation-of-recycled-plastic-content-in-single-use-plastic-beverage-bottles/