

## Case Commentary

### EU Commission to adopt a regulation on batteries, energy storage and electric vehicle batteries

**Paul A Davies and Federica Rizzo**

*Latham & Watkins LLP*

On 28 May 2020, the European Commission (EC) published its inception impact assessment (IIA) to modernise the EU's batteries legislation, in particular Directive 2006/66/EC of 6 September 2006 on batteries and accumulators, and waste batteries and accumulators (the so-called Batteries Directive).

The initiative is in line with the European Green Deal, which promotes the decarbonisation of the EU economy to achieve climate neutrality by 2050. The legislative proposal is also based on the Strategic Action Plan on Batteries adopted by the EC<sup>1</sup> in 2018, which promotes the growth of safe and sustainable battery production, and a better functioning of the internal market as concerns batteries, products incorporating batteries and recycled materials.

The IIA is open for citizens, companies and stakeholders to submit feedback until 9 July 2020.

#### What does the current Batteries Directive regulate?

The Batteries Directive aims to minimise the negative impact of batteries and accumulators and waste batteries and accumulators on the environment through the following key objectives: (i) to prohibit certain hazardous substances from being placed on the EU market; (ii) to implement extended producers' responsibility (EPR) schemes and other measures in line with the Circular Economy objectives; and (iii) to establish labelling requirements and implement a similar approach to with other sector-specific legislation (WEEE, RoHS and ELV etc).

The Batteries Directive classifies batteries depending on their use in the following types:

- *portable batteries* (eg those used in laptops or smartphones, and the typical cylindrical AAA or AA-size batteries)
- *automotive batteries* (eg to start vehicle engines, to power a lighting system; note that this does not include traction batteries for electric cars)
- *industrial batteries* (eg for energy storage or to mobilise vehicles, such as fully electric vehicles or electric bikes).<sup>2</sup>

<sup>1</sup> SWD (2019) 1300 final.

<sup>2</sup> Ca 75 000 tonnes, SWD(2019) 1300 final.

#### Issues the initiative aims to tackle

The existing batteries legal framework seems unable to address certain issues attributable to technological developments, the increasing number of new applications of batteries (such as the classification of electric bikes among industrial batteries) and the need to reduce the impact of batteries' lifespan on the environment.

A 2019 report<sup>3</sup> from the EC highlighted the need to tackle the Batteries Directive's shortcomings and inconsistencies. The report set new standards to increase batteries' performance and safety – as well as batteries' 'green standards' – by regulating the new range of applications of batteries in the transport sector; and in the context of other stationary and connecting applications (including energy storage systems, drones and robots).

According to the Commission's report, a large number of lithium-ion batteries were placed on the EU market<sup>4</sup> in 2015, and the current recycling efficiency target does not ensure the recovery of lithium or other valuable and/or critical materials, such as cobalt. A new sustainable recovery scheme must be adopted in light of the expected growth and increase of battery deployment in electric vehicles in the coming years, and in order to meet the Green Deal's reduction of emissions targets.

The initiative will establish new obligations upon manufacturers, importers and distributors (including electrical equipment products incorporating batteries), as well as consumers, and will set up green technical standards on a wider range of products. For example, in the EU market, the Initiative will prioritise products that can be reused or recharged, while aiming to phase out non-rechargeable batteries when an alternative exists.

Consequently, economic operators will have to comply with new labelling requirements and align the value chain to stricter EPR schemes.

Lastly, the Batteries Directive does not currently consider the second life of batteries, although the proposed regulation is expected to address this topic. Economic operators must simultaneously comply with the existing sector-specific legislation and their market restrictions, as well as the requirements more broadly established in the context of the Waste Framework Directive, which are already generating confusion among companies.

#### Looking ahead

The EC's proposal for a regulation on batteries, including energy storage systems and electric vehicle batteries, is

<sup>3</sup> Annex 2 to COM(2018) 293 final.

<sup>4</sup> Commission Staff Working Document on the evaluation of the Directive 2006/66/EC on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/157/EEC (SWD(2019) 1300 final) 9.

due to be published by September 2020, unless the EU institutions encounter a delay due to the COVID-19 pandemic.

While the EC is finalising its assessment on the extent to which the new regulatory requirements would increase costs (and barriers) for economic operators in the EU batteries market as well as non-EU operators, the initiative must be cross-read with the 'right to repair' to be ensured

for electronic products, including smartphones and laptops, in favour of EU consumers.

Economic operators who intend to start placing their products on the EU market or keep marketing them should be ready to adapt their business choices in a timely manner and to understand the technical implications of these cross-sector products' regulatory developments.