

**REPLY FROM THE EUROPEAN UNION TO THE COMMENTS RECEIVED FROM P. R. OF CHINA
REGARDING NOTIFICATION**

G/TBT/N/EU/1088

**DRAFT COMMISSION DELEGATED REGULATION SUPPLEMENTING REGULATION (EU)
2023/1542 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL BY ESTABLISHING THE
METHODOLOGY FOR CALCULATION AND VERIFICATION OF RATES FOR RECYCLING EFFICIENCY
AND RECOVERY OF MATERIALS FROM WASTE BATTERIES, AND THE FORMAT FOR THE
DOCUMENTATION**

The European Union (EU) would like to thank P. R. of China for its comments on the draft *"Commission Delegated Regulation supplementing Regulation (EU) 2023/1542 of the European Parliament and of the Council by establishing the methodology for calculation and verification of rates for recycling efficiency and recovery of materials from waste batteries, and the format for the documentation"*.

The EU would like to provide the following reply to the comments submitted on 11 November 2024.

Point 1:

Annex 3 of the notified draft Commission Delegated Regulation is mainly addressed to recyclers, as they are the ones who have to comply with the targets set in Part B and Part C of Annex XII in connection with Article 71 of Regulation 2023/1542. According to section 3 of the Annex of the notified draft Commission Delegated Regulation battery manufacturers do not have to document the proportion of elements in each type of batteries, but battery recyclers have to document the overall chemical composition of the input to and output of their operations. This can be done as mixed/average values on the composition of the input and the output over a year. The EU can therefore not see how a leakage of core technology of the enterprise based on the required information can occur.

The requested information is required to do necessary checks on compliance of recyclers with the targets given in Part B and Part C of Annex XII in connection with Article 71 of Regulation 2023/1542. In addition, it is pointed out that the level of detail required by the data documentation requirements is the same for all recyclers, disregarding whether they are located within the EU or outside the EU and that therefore there is no different treatment of recyclers outside the EU.

Point 2:

The requirements on recycling efficiency and recovery of materials set out in Part B and Part C of Annex XII in connection with Article 71 of Regulation 2023/1542 are the same for all recyclers, disregarding whether they are located within the EU or outside the EU. Therefore, there is no different or even unfavourable treatment of recyclers outside the EU. The definition of black mass in the notified draft Commission Delegated Regulation has been clarified to the notion that black mass is an intermediate fraction. For the generation or treatment of black mass by recyclers it is irrelevant how much black mass is produced. As black mass is an intermediate fraction, the amount of black mass generated does not directly affect the

achievement of the targets for recycling efficiency and recovery of materials set out in Part B and Part C of Annex XII in connection with Article 71 of Regulation 2023/1542 or the calculation rules set out in the notified draft Commission Delegated Regulation. Therefore, also Chinese recyclers, in case they should produce less black mass, are not disadvantaged by any means, neither in terms of achieving compliance nor in terms of increased responsibilities. The EU does not intend to introduce different requirements for black masses generated by distinct processing methods as this does not seem to be justified for the given reasons. The introduction of different requirements for different sources of black mass would also increase complexity, including increased demands on the data documentation side, which the EU intends to keep to the minimum necessary to check compliance with the targets. We understand from point 1 raised by China that this may be also in the interest of China.

Point 3:

The notified draft Commission Delegated Regulation is based on the empowerment given to the Commission in paragraph 4, not paragraph 5, of Article 71 of Regulation (EU) 2023/1542 and does not exceed the parameters set by paragraph 4 of Article 71 of Regulation (EU) 2023/1542 as this paragraph relates to both recycling efficiency and recovery of materials. Related to the recovery of materials, cobalt, copper, lead, lithium and nickel are named in paragraph 5 of Article 71 of Regulation (EU) 2023/1542 and also in Part C of Annex XII of Regulation (EU) 2023/1542. However, recycling efficiency is broader and defined in point 60 of paragraph 1 of Article 3 of Regulation (EU) 2023/1542 as "(...) the ratio, expressed as a percentage, obtained by dividing the mass of output fractions accounting for recycling by the mass of the waste batteries' input fraction, in relation to a recycling process". Therefore, recycling efficiency can include oxygen (O₂), phosphorus (P), and other metallic and non-metallic elements and for the compliance checks their documentation is required.

While it has to be highlighted that the notified draft Commission Delegated Regulation is based on the empowerment given to the Commission in paragraph 4 of Article 71 of Regulation (EU) 2023/1542, the requirements for documenting the quantity and proportion of inputs and outputs also do not exceed the parameters set by paragraph 5 of Article 71 of Regulation (EU) 2023/1542 as also paragraph 5 relates to both recycling efficiency and recovery of materials.

Point 4:

The EU does not intend to exclude converted slag from the recycling efficiency calculations, as point (a) of paragraph 2 of Article 3 of Regulation (EU) 2023/1542 refers to Article 3 of Directive 2008/98/EC for the definition of recycling and converted slag fulfils the definition of recycling as laid in Article 3 of Directive 2008/98/EC.

The EU also does not intend to increase complexity of the calculation rules by requesting to take into account variations in processing technologies when considering the calculation of slag as output fraction as this is not seen as necessary to ensure the fairness for companies employing diverse recycling methods.

Also, taking into account variations in processing technologies would lead to increased demands on the data documentation side, which the EU intends to keep to the minimum necessary to check compliance with the targets. We understand from point 1 raised by China that this may be also in the interest of China.

Point 5:

The EU would like to highlight that the points raised cannot be taken into account in relation to the notified draft Commission Delegated Regulation, because they are either already regulated by Regulation (EU) 2023/1542 itself or are not related to the matters to be regulated in the notified draft Commission Delegated Regulation.

Point 6:

The EU would like to highlight that the points raised cannot be taken into account in relation to the notified draft Commission Delegated Regulation, because they are not related to the matters to be regulated in the abovementioned notified draft.

The EU would like to provide the following reply to the supplementary comments submitted on 19 November 2024.

Point 1:

While it remains unclear which parts of section 2 of the Annex of the notified draft Commission Delegated Regulation are seen as ambiguous, we will make every effort possible to further clarify how the input fractions per calendar year (m_{input}) are to be calculated.

It is to be noted that a certain flexibility in the calculation of the recycling efficiency, and therefore in the calculation of m_{input} and m_{output} , is intentional to take into account the currently different capabilities of different recyclers and the technologies they apply. It also has to be noted that every substance or material that is accounted for in the calculation of the recycling efficiency as an output fraction (m_{output}) has to be accounted for also on the input side (m_{input}) to ensure a correct calculation of the recycling efficiency rate.

Point 2:

While it remains unclear which parts of section 3 of the Annex of the notified draft Commission Delegated Regulation are seen as ambiguous, we will make every effort possible to further clarify how the mass of the target material in the input fraction, namely the yearly average mass of TM contained in the input fractions per calendar year ($m_{TM, input}$), is to be calculated.

Point 3:

Sections 5-9 of the Annex of the notified draft Commission Delegated Regulation are addressed to recyclers, as they are the ones who have to comply with the targets set in Part B and Part C of Annex XII in connection with Article 71 of Regulation 2023/1542.

The notified draft Commission Delegated Regulation describes the calculation rules and the rules for verification and the format for the documentation. The number of actors in the recycling chain does not change those requirements.

According to sections 5-9 of the Annex of the notified draft Commission Delegated Regulation battery manufacturers do not have to document the proportion of elements in each type of batteries. Similarly, according to sections 5-9 of the Annex of the notified draft Commission Delegated Regulation battery manufacturers do not have to document raw data such as detailed material composition and formula of the positive and negative electrodes and the composition and additives of the electrolyte. According to sections 5-9 of the Annex of the notified draft Commission Delegated Regulation battery recyclers have to document the overall composition of the input to and output of their operations. This can be done as mixed/average values on the composition of the input and the output over a year.

The EU therefore does not introduce requirements to submit critical sensitive information that may violate information security laws or the WTO/TBT principle of limited intervention.

On the contrary, the requested information is required to do necessary checks on compliance of recyclers with the targets given in Part B and Part C of Annex XII in connection with Article 71 of Regulation 2023/1542. In addition, it is pointed out that the level of detail required by the data documentation requirements is the same for all recyclers, disregarding whether they are located within the EU or outside the EU and that there is therefore no different treatment of recyclers outside the EU.

It has to be noted that the minimum requirements for reporting to the competent authorities, including by recyclers, are regulated in Article 75 of Regulation (EU) 2023/1542 and cannot be amended by the notified draft Commission Delegated Regulation. Also related to Article 75, the number of actors in the recycling chain does not change those minimum requirements.

For the reasons specified above, the EU considers that the notified draft Commission Delegated Regulation does not require to submit critical sensitive information and does not violate relevant information security laws and does not violate the WTO/TBT principle of limited intervention. The notified draft Commission Delegated Regulation therefore fully complies with the provisions of the TBT Agreement.

The EU would like to provide the following reply to the comments submitted on 3 December 2024.

Point 1:

In the notified draft Commission Delegated Regulation black mass has been defined as an intermediate fraction, which does not count towards the achievement of recycling efficiency and recovery of materials targets. Therefore, the EU does not see the need to provide more detail on the composition of black mass in its definition as it would complicate matters, especially related data documentation requirements, without a clear benefit for the calculation of rates of recycling efficiency and recovery of materials.

In particular, the EU does not agree with the suggestion to define black mass as “processable intermediate material”, as this would bring in uncertainty into the definition of black mass as an intermediate fraction, not counting towards the output fractions.

The requested introduction of different classifications of black mass would increase complexity, including increased demands on the data documentation and verification side, which the EU intends to keep to the minimum necessary to check compliance with the targets. We understand from point 1 raised by China in its submission from 11 November 2024 that this may be also in the interest of China.

Point 2:

The EU has clarified that a recycler conducting only preliminary treatment cannot be seen as a first recycler to avoid a heavy administrative burden on those usually small economic actors. The responsibilities of a first recycler regarding reporting to competent authorities are already mandated in paragraph 5 of Article 75 of Regulation (EU) 2023/1542 and cannot be amended by the notified draft Commission Delegated Regulation (“Reporting on the recycling efficiency and recovery of materials shall cover all individual steps of recycling and all corresponding output fractions. Where recycling operations are carried out at more than one facility, the first recycler shall be responsible for collecting the information and reporting that information to the competent authorities.”).

Point 3:

Article 1(4) of the notified draft Commission Delegated Regulation currently defines “output fraction” as including the mass of converted casings and external components, the mass of converted plastics, and the mass of converted slag but not as including only those, as seemingly understood by China. Of course, for example the recovered target materials are included in the “output fraction” as well.

Point 4:

As understood by China, it is indeed the intention of the EU to provide some flexibility in the calculation of the rates of recycling efficiency, which inevitably leads to less harmonization than a “one size fits all” approach. However, the EU does not see the need for further clarifications in this area as a good balance has been achieved between providing flexibility and clarity at the same time.

Point 5:

The EU sees it has already achieved a good balance between simplicity and required level of detail in the data documentation format to conduct verification on provided

data. Further simplifications would be to the detriment of being able to conduct meaningful verification of the data provided. It has to be noted that certain aspects are already mandated in paragraph 5 of Article 75 of Regulation (EU) 2023/1542 (“Reporting on the recycling efficiency and recovery of materials shall cover all individual steps of recycling and all corresponding output fractions.”) and cannot be amended by the notified draft Commission Delegated Regulation.

Point 6:

The EU has no mandate to specify how data and information are to be kept confidential, e.g. by defining data encryption.

It has to be noted that certain aspects are already mandated in paragraph 8 of Article 75 of Regulation (EU) 2023/1542 (“The competent authorities shall establish electronic systems through which data shall be reported to them and specify the formats to be used.”) and cannot be amended by the notified draft Commission Delegated Regulation.

Point 7:

The EU sees it has already achieved a good balance between simplicity and verification requirements to ensure the robustness of provided data can be verified. It is noted that the verification requirements are the same for all recyclers, disregarding whether they are located within the EU or outside the EU. Therefore, there is no different or even unfavourable treatment of recyclers outside the EU.

Point 8:

The EU has no mandate to develop a harmonized data-filling software to help recyclers generate reports automatically and cannot provide technical support to small and medium-sized enterprises (SMEs) to help them adopt digital tools for data management. The templates in sections 6 to 9 of the Annex of the notified draft Commission Delegated Regulation should provide sufficient clarity to support the required data documentation.

The EU would like to thank the Chinese authorities once again for providing comments on the notified draft Commission Delegated Regulation and hopes that the responses conveyed sufficiently clarify the issues raised.
