

The Confederation of Swedish Enterprise Consultation response: The Battery Regulation

The Confederation of Swedish Enterprise supports the Commission's work on sustainable products, in accordance with the Circular Economy Action Plan. The Swedish business community is already at the forefront of this work, and wishes to play a leading role in developing and contributing constructively to the European Commission's work on the topic. The action plan contains a range of initiatives that the Confederation sees – if designed appropriately – can become valuable tools in enabling a transition into a circular economy. It is important that the work remains oriented towards securing the EU's long-term competitiveness.

Electrification will be a vital tool in achieving the EU's climate goals, and batteries will play an important role in the transition process. The Confederation of Swedish Enterprise is grateful for the opportunity to provide its inputs on the proposed battery regulation. Our comments address the proposal on a general level.

Overall comments:

- The European Commission's proposal for a battery regulation envisages extensive legislation and provides the Commission with increased powers. This deviates from the working method that has been used to a large extent in the past, where the Commission determines the framework, and the industry the details in technical standards. We find this troublesome.
- As written today, the proposal suggests that a large number of issues are to be dealt with through so-called delegated acts. This makes the legislation difficult to review and its impact challenging to assess. It is important that the industry is given the opportunity to participate in the work of developing new goals and requirements in these acts.
- The Confederation of Swedish Enterprise also sees that the proposal risks creating dual regulation in certain areas, such as due diligence and chemicals. This will lead to inefficiency and ambiguity over which regulations are being prioritised. We therefore call on the Commission to review the proposals in order to avoid this happening. It must also ensure synchronisation with the other initiatives within the European Green Deal and the Circular Economy Action Plan and ensure alignment with existing legislation.

Confederation of Swedish Enterprise

Address: SE-114 82 Stockholm Visitors: Storgatan 19 Phone: +46 (0)8 553 430 00

www.swedishenterprise.se

- The proposal includes a large number of new initiatives that will entail increased reporting requirements for companies. It is important that the proposal does not create a situation where businesses face a total administrative burden that is too heavy. Given the complexity of the proposal, together with a long list of administrative requirements, SMEs will need support in their efforts to comply. The demands for providing information must always be proportionate to the benefit that such information ultimately provides. A heavy administrative burden means that companies have less resources to take concrete measures. If it becomes overly demanding to meet the administrative requirements, it can risk hamper investments and create obstacles to the important transition to climate neutrality.
- A well-functioning market control is central in guaranteeing a level playing field and providing the ability to fulfil the goals set. Furthermore, third-party verifications must also be verified in order to ensure that products placed on the market are equally evaluated. The Confederation of Swedish Enterprise therefore calls on the Commission to prioritise this area.

The proposal on the use of delegated acts

In its proposal for a battery regulation, the European Commission suggest the use of delegated acts for a large number of the future requirements. These include, for example, requirements for recycling and the use of recycled material, for setting requirement levels for maximum permitted carbon footprint levels and for determining calculation methods. A delegated act approach can be a useful tool in dealing with certain issues, but this should only be used where it is properly justified. This deviates from the previous working method that has been used to a large extent in the past, where Commission determines the framework and the industry the details in technical standards.

The process for producing delegated acts is not sufficiently transparent and only includes a limited role for business participation. The process needs to be changed and to include the business community and other actors to a much greater extent. Handling the process through delegated files can also lead to rapid and unforeseen changes for the business community; these can be difficult to introduce as time for adjustment is often required. It is important that delegated acts do not deal with issues that have already been addressed, or commonly are dealt with, through standards. Nor should they entail requirements imposed in addition to those defined by international standards, produced for a global market.

The proposal suggests including a lot of detail within the regulations, which risks leading to both a large regulatory burden and increasing complexity. Such an approach can also reduce the flexibility required for developing the desired fossil-free and circular economy. Overall, we believe that it is better to have the regulations determine the framework, and to leave it to business and industry - in collaboration with academia - to develop the relevant technical solutions.

Product passport

The Battery regulation proposes introducing a product passport for batteries over 2 kWh. The Confederation of Swedish Enterprise sees it as positive that the Commission has selected a specific range of the batteries to be covered by the product passport requirements, and that such requirements do not automatically apply for all types of batteries.

In order to avoid administration of the system becoming overly cumbersome, the information included in the product passport should be limited to what is relevant and necessary for the purpose and current product. In other words, it should only address what is demanded in the value chain and how that information can be used. Furthermore, the value of the information requirements must be balanced against the sustainability benefits it can bring. The Confederation calls on the Commission to evaluate the value of the specific information before setting any requirements. In addition, information shared with other actors must consider company-sensitive information such as IP and property rights.

There must be a clear division of responsibilities between the different actors with responsibility for data - and reporting of data. It is important that companies are able to retain control of their basic data. The actor placing the product on the market must – as is the case with other product legislation - own the information and be responsible for its accuracy. The Confederation of Swedish Enterprise also wants to refer to its position paper on product passports. [The position can be found here.](#)

Carbon footprint

The Commission is proposing to introduce requirements for producing carbon footprints per production batch. This seems an unreasonable requirement for continuous production processes. Rather, it should be sufficient to report by battery type and as an annual average.

It is positive that the Commission is proposing a gradual introduction of requirements for reporting environmental performance, by introducing reporting requirements as a first step in advance of finalising the requirement levels. When introducing any new requirements, it is important that the measures proposed deliver a clear environmental benefit and that the Commission's planned impact assessment is suitably thorough. Industry must also have the opportunity to participate in the preparation of the requirements.

The proposal states that calculation methods for reporting requirements should be developed by the Commission. The fact that this has not been established ahead of the regulation entering into force creates a great deal of uncertainty about what the impact will be for companies. It is important that the business community has the opportunity to participate in the upcoming work of developing harmonised rules for reporting and calculating carbon footprints.

It is also positive that the Commission is planning to establish a database where companies can retrieve secondary data for carbon footprint calculations; this will be particularly useful and important for many SMEs. At the same time, there is a balance between the use of secondary data and specific data. A heavy reliance on secondary data over specific data will make it difficult to differentiate between different products. This is particularly true where the secondary data has a large impact on the lifecycle analysis. It is also important to

consider how to create incentives for companies to share information that is not simply universal but rather is of real value.

Recycled material

Use of recycled materials needs to be increased, and the Commission is proposing targets for battery recycling and for the proportion of recycled materials used in batteries. The targets for both recycling and the proportion of recycled material must be realistic, and based on the availability of batteries for recycling, the technical solutions available for recycling and the available levels of recycled materials. The goals now being proposed are material-specific, which means that - as a result of technological advances - they may become obsolete as other, materials may become relevant in the future. Depending on the availability of recycled material, the objectives need to be revised over time. Also when it comes to recycled content the term 'batch' is used by the Commission, which creates the same type of concern as when it comes to the reporting on carbon footprint.

In parallel with increased recycling, another ambition is to ensure that products have a longer lifespan and remain in use for longer before being recycled at end of life. Objectives for the recycling of batteries could conflict with the actual reuse of batteries, if the demand for recycled materials in the production of new batteries means that you choose to recycle batteries that otherwise should be reused. This potential conflict must also be taken into account when setting targets, and it is essential that industry is part of the work involved in setting these goals.

Handling of chemicals

On the issue of restrictions for hazardous substances in batteries it is important to avoid dual regulation. Ordinary legislative procedures should be used for chemicals, in order to maintain Member States' influence. Dividing substance restrictions across several legal acts is not in line with the principles of better regulation and creates ambiguity. We propose that the EU commission evaluate the substance restrictions and the battery regulation against its guidelines for better regulation in order to determine whether the proposal is truly proportionate and whether it is the easiest, least costly way to reach the intended political goal.

Due diligence

The Commission is proposing to regulate the due diligence requirements in the battery regulation. The Confederation of Swedish Enterprise believes that the creation of specific due diligence requirements for individual product groups is not appropriate, as it risks leading to contradictory dual regulation. Many companies already work with due diligence, linked to both conflict minerals and - on a more voluntary basis - based on UNGP and OECD Due Diligence Guidance. Work is also underway within the Commission, with a proposal for a horizontal due diligence regulation expected in the spring of 2021. The Confederation calls on the Commission to focus on general regulation, and thus ensure that it avoids the risk of a contradictory dual regulation of due diligence.

Stockholm, March 1st 2021

Jenny Svärd, Director of environmental policy

Jenny.svard@svensktnaringsliv.se