

Removability and replaceability of portable batteries (Article 11 of Batteries Regulation)

Sustainability has been a driver for the video games sector for many years. In cooperation with the European Commission, the console manufacturers signed the [Games Consoles Voluntary Agreement](#) (GCVA) to improve the energy and resource efficiency of games consoles. The GCVA is a successful example of EU self-regulation, setting a precedent for other regions and sectors as it has proved that substantial results can be achieved in energy savings and resource efficiency, further contributing to Europe's green transition. In addition, a number of video game companies, both big and small, gathered in September 2019 to launch the UN [Playing For The Planet Alliance](#), making commitments to preserve the environment.

The Commission's original version for an Article 11 on the removability and replaceability of portable batteries within the proposal for a Batteries Regulation¹ sets out a nuanced replaceability provision which aims to strike a balance between protecting the environment and enabling innovation. Importantly, the proposal foresees derogations in Article 11(2), which cover safety and data integrity reasons.

We have concerns however regarding Article 11 as [adopted](#) by the European Parliament, as outlined below:

Article 11 – paragraph 1 – subparagraph 1

1. The Amendment sets a specific date, "By 1 January 2024...".

We are concerned that by setting a fixed date, manufacturers will have insufficient time to prepare if the issuing of the revised regulations is delayed. Product development cycles are typically at least 24 months long and manufacturers may need to redesign batteries and appliances or to adapt processes to meet the new obligations.

For this reason, we believe that adequate transition periods should be provided for the requirements of the proposal. The effective date in Article 11 – paragraph 1 – subparagraph 1 should be defined not as a fixed calendar date but as a period **after** the Regulation comes into effect as expressed elsewhere in the draft, e.g. "From 24 months after entry into force of the Regulation", as per the European Council's [general approach](#).

2. In addition, the second sentence of the Amendment states that "Portable batteries shall be removable and replaceable by the end-user." This is a departure from the text proposed by the Commission which states that "Portable batteries incorporated in appliances shall be readily removable and replaceable by the end-user or by independent operators."

Electronic equipment comprises a complex and diverse range of devices. Due to safety concerns, not every electronic device is suitable for battery replacement and removal by end-users. We

¹ https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12399-Batteries-modernising-EU-rules_en

are concerned that this requirement ignores safety considerations for certain types of appliances for the following reasons:

- Batteries require more expertise in handling than the other components of which the electronic device consists.
- Negligence on the end-user's side (damaging or deforming the battery) can cause a short circuit and the heat generated by the battery can lead to serious accidents such as fire or explosion.
- Incorrect handling of the battery by the end-users cannot be completely prevented by applying design safety measures to the battery or by providing the end-users information on safe handling of batteries.
- End-users may replace the original battery with a battery made by a third party, that does not meet the manufacturer's safety specification.
- Using batteries that does not meet the required battery performance and safety measures, may cause abnormal heating of the battery, which could result in fire or explosion.

In addition to the above concerns, there are environmental concerns that arise with designing products to allow batteries to be removed and replaced by end-users, as mentioned below:

- In order to enable the product to have batteries that can be easily removed by the end-users, measures such as providing a secure battery cover or a fixing mechanism that enables easy attachment and removal are necessary. As a result, the size or weight of the device would likely increase to incorporate the battery and the larger housing.
- Increasing the size of a product to accommodate such specifications would require more material resources and also increase the environmental impact of the product transportation.
- Certain products require batteries with high energy density, which carry a higher risk of ignition and fire when handled incorrectly. Not being able to adopt an energy dense battery would be undesirable in terms of energy and resource efficiency and would reduce the end-user's enjoyment of the product.
- The end-users may not recycle the removed battery appropriately. Facilitating end-users to exchange batteries may hinder the proper collection and disposal of batteries.

We understand that the term "independent operator" indicates an expert who has been trained and properly understands the product specifications and disposal considerations. By allowing for battery removal and replacement to be carried out correctly by experts, all the risks that might be caused by end-users replacing the battery can be avoided, manufacturers can continue to design products with resource efficiency and energy efficiency in mind and end-users can continue to use their device safely.

Taking all of the above points into account, designing a product with batteries to be exchanged by independent operators can continue to present a more advantageous option from both an environmental standpoint and a safety standpoint. Whilst we do not oppose the removability and replaceability of portable batteries by end-users, we believe this should be kept optional, and allow manufacturers to determine whether battery removability by end-users is feasible based on the product's overall characteristics and the above-mentioned safety and

environmental concerns on a case-by-case basis. Therefore, we would support a slightly amended version of the Council's position in the upcoming trilogue negotiations, so that the second sentence reads as follows:

"Portable batteries and batteries for light means of transport shall be removable and replaceable **by the end-user or by independent operators** during the lifetime of the appliance or light mean of transport, if the batteries have a shorter lifetime than the appliance or light mean of transport, or at the latest at the end of the lifetime of the appliance or light mean of transport."

Article 11 – paragraph 1 – subparagraph 2a (new)

The Amendment states that batteries shall be available as spare parts “for a minimum of 10 years after placing the last unit of the model on the market”.

We are concerned that this requirement will have a disproportionate impact on products like game consoles, where the sale period for one model can be a long time, compared to products where the sales period for one model is shorter.

For example, if the same model is sold for 10 years, the manufacturer would be required to make spare parts available for 20 years. Continuing to manufacture 20 year old spare parts would not only be difficult from a procurement perspective, it hinders switching to parts that have better environmental considerations. Also there might be a need to build up a stock of the parts in anticipation of it not being possible to manufacture them any more in the future, resulting in excess warehouse stock and increasing the burden on the environment.

Considering the above, ISFE is opposed to this amendment, or would alternatively suggest that an appropriate time period should be set for each product category, to ensure that the Regulations do not disproportionately impact manufacturers who sell one model for a longer period than other appliances.

Article 11 – paragraph 1 b (new)

The Amendment does not clearly set out the intention of the text where it says “Software shall not be used to affect...”.

We are concerned that this lack of clarity could have an unintended impact on software that is not intended to be captured by this amendment. For example, products may utilise software as part of technological protection measures to prevent reverse engineering and protect intellectual property.

Considering the above, ISFE is opposed to this amendment, or would alternatively suggest that the text is clearly amended to show that it is intended to capture software used for intentional exclusion of third party products.

Article 11 – paragraph 2 – point a

The Amendment sets out a new wording “**and it can be proved by the manufacturer that there is no alternative available on the market**” as an additional condition for the manufacturers to benefit from these exemptions.

We are concerned that this wording is a moving target that creates legal uncertainty: a design may be admissible today but non-compliant the next day when a new technology becomes available. Moreover,

in practice it would be extremely challenging for manufacturers to ensure and prove that there is no alternative being available on the market for the following reasons:

- Even if a device of one manufacturer enabled the replacement of batteries, it is impossible to know whether the same technology could be applied to a device of another manufacturer. Devices may have different functions, performance and specifications. For example, they may have different durability requirements or may have waterproof functions, for example.
- There may be cases where intellectual property rights prevent the adoption of the same technology or design of another manufacturer. In some cases, the technology that enables replacement of batteries also protects the products from being reverse engineered, therefore being specific for a given model to safeguard its intellectual properties. In such cases, it would be impossible for another manufacturer to adopt the same structure as that of another company.
- Even if there was an Authority to identify alternatives, changing the structures of our products would significantly impact marketability and the compliance with other regulations related to product safety, environment, etc.

Considering the above, ISFE is opposed to the wording “and it can be proved by the manufacturer that there is no alternative available on the market” in Article 11(2). Instead, we would support the Commission’s original version of Article 11(2), or alternatively the Council’s general approach i.e. “The obligations set out in paragraph 1 shall not apply where continuity of power supply is necessary and a permanent connection between the product and the respective portable battery is **required** for safety, medical or data integrity reasons”.

Article 11 – paragraph 2 – point b

The exemption set out in this amendment, “the functioning of the battery is only possible when the battery is integrated into the structure of the appliance.” is unclear.

We are concerned that the lack of clarity makes it impossible for manufacturers to determine whether the exemption applies to the rechargeable batteries for their products by reference to the Regulations. Furthermore, guidance on the derogations set out in Paragraph 2 may not be available for up to 12 months after the entry into force of the Regulation, which will further prolong the period of uncertainty regarding this exemption.

Considering the above, ISFE would support the inclusion of wording to clarify what types of batteries this exemption is intended capture. The scope of this exemption should be clearly set out in the Regulation text and not expressed as guidance.

Article 11 – paragraph 3

The Amendment states that the Commission shall adopt, no later than 12 months after the entry into force of this Regulation, guidance to facilitate harmonised application of the derogations set out in paragraph 2.

We are concerned that it would be too late if the guidance clarifying products to which the exception rules in paragraph 2 are applied is only adopted/issued after the Article 11 requirements come into effect (after the Article 11 requirements become required). For products where it is found that an

exception is not possible based on the guidance, it will be necessary to make design changes and prepare battery replacement service in a very short space of time in order to make it possible to comply.

For this reason, ISFE would support that an appropriate transition period of at least 24 months between the publication of the guidance on Article 11 and the application of the replaceability obligation is implemented to allow to re-design of appliances in a way that batteries can be safely replaceable.

May 2022

Contact:

Benjamin Seignovert
Policy & Public Affairs Officer | ISFE
benjamin.seignovert@isfe.eu

About ISFE

ISFE represents the video games industry in Europe and is based in Brussels, Belgium. Our membership comprises of national trade associations in 15 countries across Europe which represent in turn thousands of developers and publishers in the member states. ISFE also has direct members, the leading console manufacturers and European and international video game companies, many of which have studios with a strong European footprint. They produce and publish interactive entertainment and educational software for use on personal computers, game consoles, portable devices, mobile phones and tablets.

ISFE's purpose is to serve Europe's video games ecosystem by ensuring that the value of games is widely understood and to promote growth, skills, and innovation policies that are vital to strengthen the video games sector's contribution to Europe's digital future. The video games sector represents one of Europe's most compelling economic success stories, which enjoyed a growth in European revenues in 2020 of 22%, reaching a total market size of €23.3bn and employing some 90,000 people². Today 51% of Europe's population plays videogames, which is approximately 250 million people, and 54 % of the players regularly play on consoles.

² ISFE Key Facts 2021 from GameTrack Data by Ipsos MORI and commissioned by ISFE <https://www.isfe.eu/isfe-key-facts/>.