

EU Battery Regulation

Due diligence rules: what next in the implementation?

Extraction of all manner of resources, including fossil fuels and minerals, has a history of mismanagement. As the world shifts to renewables and electric vehicles, which are indispensable for climate change action, attention is also turning to the centuries' old problem of how supply chains can become more responsible and sustainable.

In 2016, Amnesty International came out with its famous [report](#) on human rights abuses in the Democratic Republic of the Congo which at the time put extreme pressure and scrutiny on mining companies and cobalt buyers. Fast-forward a few years, the issues denounced by Amnesty and many others, as evidenced by the more than 500 allegations of human rights abuses collected by the [BHRRC](#) in the past decade, are finally being tackled in the regulatory landscape with real solutions.

The EU battery regulation due diligence rules will be a turning point for sustainable batteries, but to ensure that they are truly effective, not only across cobalt, but also nickel, lithium and graphite supply chains they must be implemented well.

This briefing explains the due diligence provisions of the EU Battery Regulation, which entered into force in 2023. It also outlines what is key for effective compliance and what governments and other stakeholders should be looking for as the provisions are being implemented.

T&E's recommendations for policymakers is to:

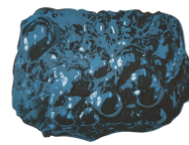
- **Ensure the guidelines for implementation are developed according to best practice and according to existing international standards, no later than January 2025.**
- **Closely monitor the implementation of the due diligence provisions**, not solely relying on due diligence schemes.
- **Work with producing countries to inform them about the implications of the regulation**, and adequately support smaller companies in meeting the requirements.
- **Update as soon as possible the list of raw materials covered by the regulation.**

Whilst many automotive companies are preparing for the rules to come, others (notably Chinese companies) [are lagging behind](#). T&E recommends companies to:

- **Plan proactively**, from implementing management systems that foster resilient and sustainable supply chains, to strong monitoring and accountability.
- **Work with actors on the ground**, from representatives of affected rights-holders, to civil society organisations and workers' unions.
- **Leverage supplier relationships**, by creating more transparent supply chains via collective corporate action.
- **Source from IRMA-audited mines, directly or indirectly.**

Relevant commodities

In August 2023, a new European battery regulation (Regulation 2023/1542) was approved by the EU with the aim of creating a harmonised legislation for the sustainability and safety of batteries. The law is a landmark piece of legislation as for the first time a product is being regulated in the entirety of its lifecycle, from performance requirements to end of life ones including recycling. Importantly, the law introduces due diligence obligations for economic operators requiring companies to establish a batteries due diligence policy, for the purpose of identifying, preventing, mitigating and accounting for human rights, environmental and climate change impacts along the battery materials supply chain.



Cobalt



Lithium



Graphite

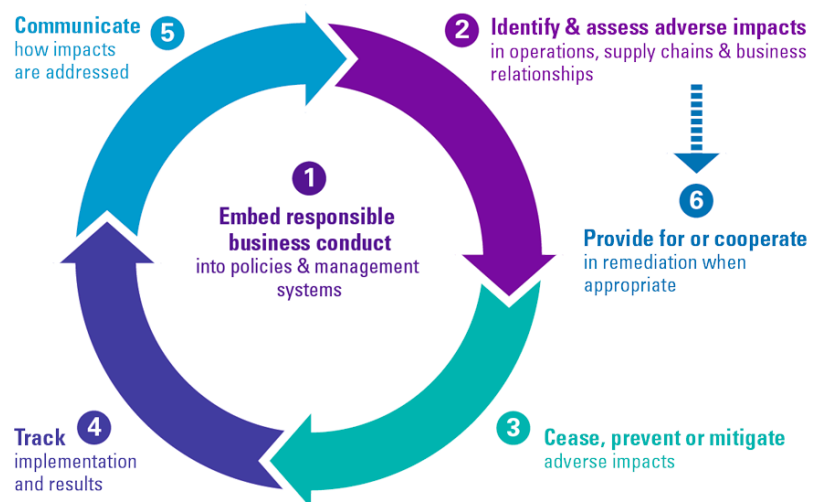


Nickel

What are the due diligence requirements?

A foundational requirement of the Regulation is for companies to establish an effective battery chain due diligence management system that addresses risks and impacts on social as well as environmental issues (further outlined below).

Companies subject to the Regulation must:



- Adopt and communicate a company battery due diligence policy aligned with international standards¹;
- Develop strong company management systems in support of the policy;
- Implement a system of transparency and controls, such as a chain of custody or traceability system all the way to the mine;
- Establish grievance and remedy mechanisms;
- Identify and assess risks along the battery supply chain;
- Design and implement a strategy to respond to identified risks working with suppliers; and
- Have their battery materials due diligence systems verified by an independent third party.



Who does it apply to?

The EU Battery regulation applies to all “economic operators” that place batteries on the EU market for the first time. The batteries are divided into four categories which are portable, automotive, electric vehicle and industrial batteries.

The obligations apply to companies with a turnover greater than 40 million euros, meaning that most start-ups and SMEs are exempt from due diligence obligations².

INFO BOX 1 : Placing on the market and economic operators³

Placing on the market

The placing of a product on the market means the first making available of a product for the purpose of distribution and/or use in the EEA territory.

¹ Such as those outlined in Annex X (4)

² Unless they are part of a group, consisting of parent and subsidiary undertakings, which, on a consolidated basis, exceeds the limit of EUR 40 million.

³ T&E interpretation based on a DG ENVI explanation in relation to the implementation of the Single Use Plastics Directive ([link](#)).

Economic operator

An economic operator, in the context of the regulation, means a manufacturer, an importer or a distributor.

In the context of EV batteries, an economic operator could be either a car manufacturer or a battery manufacturing company producing in the EU or outside of the EU market.

Example 1: Tesla produces and markets its vehicles with Tesla-branded batteries. Tesla would have to conduct due diligence along its battery supply chain, being both a manufacturer and a distributor.

Example 2: A battery that is produced in China (e.g. for use in a EU-made EV) would have to have its due diligence conducted ahead of entering the EU market by the company (e.g. battery producer) itself.

Example 3: A company placing an electric vehicle (including the battery) produced outside of the EU on the EU market would have to conduct due diligence on the vehicle's battery.

What are the risk categories?

The regulation uniquely outlines for the first time both social and environmental risk categories with associated international instruments.

Whilst for human rights risks there is a strong set of international instruments and standards, as outlined by the OECD responsible business conduct guidance, on the environmental due diligence side it is a novelty. What creates an additional layer of complexity is the fact that international environmental law is fragmented and often does not come with implementing guidance for businesses.

INFO BOX 2 : Social and environmental risk categories

(a) **environment**, climate and human health considering direct, induced, indirect and cumulative effects, including but not limited to:

- (i) air, including but not limited to air pollution, including greenhouse gas emissions;
- (ii) water, including seabed and marine environment and including but not limited to water pollution, water use, water quantities (flooding or draughts) and access to water;
- (iii) soil, including but not limited to soil pollution, soil erosion, land use and land degradation;
- (iv) biodiversity, including but not limited to damage to habitats, wildlife, flora and ecosystems, including ecosystem services;
- (v) hazardous substances;

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- (vi) noise and vibration;
 - (vii) plant safety;
 - (viii) energy use;
 - (ix) waste and residues;

(b) **human rights**, labour rights and industrial relations, including but not limited to:

- (i) occupational health and safety,
- (ii) child labour,
- (iii) forced labour,
- (iv) discrimination,
- (v) trade union freedoms;
- (c) community life, including that of indigenous peoples;

Annex X also includes two additional sections [(3) and (4)] which include a list of international instruments related to the risks outlined above and a list of internationally recognized due diligence instruments.

Environmental impacts in mineral supply chains may arise in different ways. They may be for example linked to a company's direct operational practices. One example of this could be a mine contributing directly to [deforestation and biodiversity loss](#).

Another example may be a mine causing remote harm, such as the case where toxic waste produced by a refining plant is carried across long distances in rivers and sediment deposition which can cause pollution, harm to human health, and biodiversity loss to mention a few.⁴

Companies buying the raw materials and introducing them into EU supply chains in the first instance have therefore a responsibility to identify the most salient risks in their supply chains and address them.

As greenhouse gas emissions are also identified as one of the risks, economic operators should prefer working with suppliers using low carbon processes, such as [geothermal lithium](#) or using less impactful [nickel production](#) methods. This is a win-win as companies would be meeting the carbon footprint obligations as well as their climate ones.

It is finally worth mentioning that the risk categories are accompanied by a list of international instruments, which can be found under Annex X (III).

⁴ Further examples of impacts can be found listed in the OECD [Handbook on Environmental Due Diligence for Mineral Supply Chains](#), Box 2.

What does good implementation look like?

Beyond the development of a strong due diligence policy, with adequate measures in place for reporting, monitoring and evaluating, key in successful implementation will be cooperation with suppliers.

Due diligence should be an ongoing collaborative approach throughout the supply chain (as defined in the UN Guiding Principles and the OECD Guidelines for multinationals), and companies should consider working with their suppliers instead of cascading responsibilities onto them. Equally, suppliers should work in a collaborative manner with their customers. In this instance, the [Responsible Contracting Project](#) can be a useful tool to explore this further.

Nonetheless, as outlined in Art. 50 (b) (ii), economic operators shall consider their “ability to influence, and where necessary take steps to exert pressure on, suppliers, including their subsidiaries and subcontractors, who can most effectively prevent or mitigate the identified risk”. As outlined in the United Nations Guiding Principles, [using leverage](#) in a situation linked to abuses is a clear expectation for companies. Instances where leverage is not possible, companies should refer to a recently released [OHCHR guidance](#) on ending business relationships.

Specific to environmental due diligence, companies should identify the environmental impacts in their supply chains and work with suppliers to mitigate them, for instance in the case of biodiversity hotspots.

As outlined under Art. 50 (2), economic operators should consult not only with suppliers when risks are identified but also with concerned stakeholders which include national government authorities, international or national civil society organisations and affected third parties. This point is extremely important and somewhere where companies can show leadership in their implementation strategies.

What about industry schemes?

Replicating the approach of the EU conflict mineral regulation, the battery regulation offers the possibility to companies to support their due diligence compliance with so-called due diligence schemes (hereafter referred to as schemes).

The proponents of such schemes will have to apply to the European Commission to be recognised as meeting the requirements laid out in the regulation itself, and the Commission shall do so in consultation also with the OECD Responsible Business Conduct Centre.

Whilst schemes may play a role in providing companies with information about a given site or supplier, they should [not act as a substitute](#) for effective due diligence nor should they act as a

safe harbour for a company should a legal dispute arise. This is because not all schemes are [created or managed equal](#), as also [pointed out by industry](#) itself. For example in the case of the conflict minerals regulation, which entered into force in 2021, no schemes have yet been recognised by the Commission. This proves that schemes are rarely equipped to meet legislative requirements as already reflected in the OECD alignment exercise (a process by which the OECD assesses the alignment of participating industry-schemes with the OECD Conflict Minerals Guidance) which has shown that industry schemes regularly fail to adequately ensure that their members are compliant with due diligence standards.

Companies should instead rely on a variety of sources - including credible schemes such as the Initiative for Responsible Mining Assurance - such as reports from civil society, journalists, trade unions and others.

What role do traceability systems have?

Tracing systems can be a good solution to offer transparency along battery supply chains via the identification of the chain of custody (i.e. name and address of suppliers, transport route, smelter and refiner), providing information about geographical locations and as a tool for information gathering in the case of the battery passport. Nonetheless, these systems are only as good as the information that is put into them.

The Global Battery Alliance for example has developed a Human Rights Index and is currently working on indicators on biodiversity and circularity. Companies are encouraged to make use of such systems, provided they include accessible, accurate and reliable information and that they are used as wider efforts in relation to due diligence.

What happens in the case of non-compliance?

So-called notified bodies⁵ will be responsible to attest the compliance with the requirements laid out in the regulation (in relation to due diligence but also to other provisions). On due diligence specifically, a third-party verification of the policies and risk management systems of the economic operators shall take place with an accompanying “approval decision”.

Further, member states will have to set up market surveillance authorities, which will need to check the compliance of the products with the requirements set out in the regulation.

In the case of non-compliance, the economic operator must put an end to the non-compliance concerned. Where that is not possible, the Member State is expected to take appropriate

⁵ A notified body is an organisation designated by an EU country to assess the conformity of certain products before being placed on the market.

measures to restrict or prohibit the batteries made available on the market by the economic operator that is non-compliance and, if the non-compliance is serious, the products may be withdrawn / recalled. However, prior to this, companies will have a responsible period (prescribed by the market surveillance authority) to take corrective measures in the spirit of due diligence.

It is important that both member states and the European Commission monitor the implementation of the law, and take into account reports from civil society and independent organisations on the results achieved on the ground.

INFO BOX 3 : What are companies already doing to prepare?

A few automotive companies are strengthening their responsible sourcing policies for raw materials and preparing for the entry into force of the regulation.

For example, major players such as [Mercedes](#), [Volkswagen](#) and [Tesla](#) all release as a stand-alone document or as part of their sustainability report a deepdive on their raw materials responsible sourcing practices and challenges they face.

In the case of Mercedes for example, 24 raw materials are identified, from aluminium and gold to leather and rubber. For each, the company highlights what the identified risks are, where in the product the material can be found and which implemented measures have been taken. The report also outlines which actions have been put in place along with the next steps.

These reports are helpful not only for the company as it helps them understand their supply chains, work with their suppliers and ultimately address and improve but also for civil society as they create greater transparency and the opportunity for a dialogue. To increase transparency, automakers could include in their reports also from which mine / supplier the raw materials originate.

Recommendations for policymakers

Policymakers should:

- **Ensure the guidelines for implementation are developed according to best practice and according to existing international standards, no later than January 2025.** A particular focus should be had on environmental due diligence, building on the work done by the OECD but not only focusing on mining but also on smelting and processing of minerals, and on the production of batteries. The guidelines should also carefully look at

community and Indigenous People's rights, labour rights and industrial relations. The guidelines should be developed in consultation with other actors.

- **Monitor the implementation of the due diligence provisions**, not solely relying on due diligence schemes. The Commission and Member States should also have enough staff and resources for this.
- **Work with producing countries to inform them about the implications of the regulation**, and adequately support smaller companies in these regions meeting the requirements. This should especially be done in the light of future projects moving forward under [Strategic Partnerships](#) and the Global Gateway initiative which aim to meet highest ESG standards and make projects mutually beneficial.
- **Remove the qualifier "considering" from the current language of the EU Battery Regulation [under Art. 50 (b) points (ii) and (iii)]**. These points call on economic operators to consider taking steps to identify and mitigate any major damage that may have occurred along their supply chains, and only ask them to consider suspending engagement with suppliers that do not mitigate such damages. The Commission should strengthen this in line with the provisions laid out in Art. 48 (8) (c), where it reserves itself the right to strengthen the language of the regulation.
- **Update as soon as possible the list of raw materials covered by the regulation**. Today, [one out of five batteries](#) sold in the EU market are LFP (lithium-iron-phosphate) meaning that, with the exception of the lithium supply chain, the batteries would not be produced in accordance with the same standards giving an advantage to Chinese competitors which today have [99% of the global market share](#).

Recommendations for companies

Companies should:

- **Plan proactively**, from implementing management systems that foster resilient and sustainable supply chains, to strong monitoring and accountability. In a context where [low commodity prices are set to persist](#), projects with strong ESG credentials will be more resilient in the long run and be able to sell at a premium.
- **Work with actors on the ground**, from representatives of affected rights-holders, to civil society organisations and workers' unions.
- **Leverage supplier relationships**, by creating more transparent supply chains via collective corporate action. Suppliers that invest in cleaner operations and responsible business practices should be rewarded via, for example, sharing costs with the purchaser.
- **See due diligence as a collaborative approach** across the supply chain, thereby working with their suppliers instead of cascading responsibilities onto them. Equally, suppliers should work in a collaborative manner with their customers. The [Responsible Contracting Project](#) can be a useful tool to explore this further. Nonetheless, companies should also

consider removing from their supply chains any suppliers who do not respond to requests to mitigate and address impacts.

- **Source from IRMA-audited mines, directly or indirectly.** The Initiative for Responsible Sourcing Assurance (IRMA) is today the strongest standard that is able to provide information transparently not only to companies but also to civil society. By committing to source from IRMA audited mines, companies would be sending a clear signal to the market that strong criteria are not up for compromise. Nonetheless, companies should only use the information provided as part of a broader assessment and not over-rely on them.

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