EUCOBAT

European Compliance Organisation for Batteries

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EUCOBAT Position Paper
Article 61 of the Batteries Regulation: what are the "take-back" obligations?

1. Introduction

This paper sets out EUCOBAT's interpretation of Article 61 of the Batteries Regulation (EU) 2023/1542 concerning the "take-back" obligation for producers and Producer Responsibility Organisations (PROs).

The objective of this document is to clarify:

1) The legal meaning and interpretation of the "take-back" obligation for producers and PROs;
2) The absence of a dismantling obligation under Article 61;
3) Consequences of a misinterpretation of Article 61;
4) The temporal scope of the obligation, in particular regarding batteries placed on the market before 18 August 2025.

This position is based on legal analysis and aims to ensure legally sound, proportionate and harmonised implementation across Member States.

2. The Meaning and Interpretation of the "Take-Back" Obligation

a. Legal nature of the obligation

Article 61 requires producers (and PROs acting on their behalf) to "accept to take back" waste SLI, industrial and electric vehicle batteries. The wording of the provision is decisive. The obligation is framed as an **obligation** to **accept returns**, **not** as **an obligation to actively retrieve, collect or dismantle batteries** at the premises of end-users.

Article 61(1) provides that producers shall accept to take back waste batteries:

- from end-users,
  or
- from take-back and collection systems, which include collection points.

This alternative formulation confirms that the obligation may be fulfilled by establishing an accessible return system and accepting waste batteries within that system.
The legal structure of Article 61 therefore establishes:

- an obligation of **organisation** and **financing** (extended producer responsibility),
- an obligation to **ensure** that end-users can **return** batteries **free of charge at collection points**,
- **no** obligation to **proactively visit**, **retrieve** or **technically process** batteries at end-user premises.

b. What batteries are covered?

The take-back obligation applies to all waste batteries within the SLI, industrial and EV battery categories, irrespective of:

- nature,
- brand,
- chemical composition,
- origin,
- condition.

c. Collection Points

According to Article 61, Producer Responsibility Organisations (PROs) may satisfy their "take-back" obligation by setting up a take-back and collection system and **accepting** returns of waste SLI, industrial and EV batteries **at collection points**.

d. Financial Responsibilities

This implies that PROs may receive waste batteries from producers that are **not affiliated** with them. However, under the **principle of extended producer responsibility**, the **financial responsibility remains with the original producer** that placed the battery on the market. Where a PRO takes back batteries placed on the market by a non-affiliated producer, cost recovery mechanisms may arise under applicable national civil law.
The obligation to "take-back" does not alter the allocation of financial responsibility under extended producer responsibility.

3. Dismantling Is Not Part of the "Take-Back" Obligation

Article 61 does **not impose a dismantling obligation** on producers or PROs. A clear distinction must be made between:

- **"Take-back"**: organisational and financial responsibility to accept returned waste batteries.
- **Dismantling/removal**: a technical treatment operation requiring specific competence, equipment and safety procedures.

Dismantling constitutes a waste treatment activity. Such operations must be performed by authorised operators in accordance with applicable waste legislation. Interpreting Article 61 as requiring PROs to dismantle batteries at end-user premises:

- **transforms** a "take-back" obligation into a treatment obligation,
- creates **significant safety risks**, particularly for lithium-based batteries,

- **conflicts** with permitting and authorisation requirements for waste treatment activities,
- **exceeds** the wording and legislative intent of the provision.

The "**take-back" obligation is fulfilled** by ensuring that waste batteries can be **returned** and subsequently **transferred** to authorised treatment operators. It does **not require on-site dismantling** by PROs or producers. Costs arising from dismantling or removal of batteries at end-user premises do not fall within the scope of extended producer responsibility under Article 56 and therefore are not the responsibility of producers or PROs.

4. Consequences of a Misinterpretation of Article 61

A misinterpretation of the "take-back" obligation under Article 61, in particular an interpretation extending it to active collection or dismantling at end-user premises, has significant legal and practical consequences.

a. Legal Fragmentation and Loss of Harmonisation

The Batteries Regulation is directly applicable and aims to ensure harmonised rules across Member States. Divergent national interpretations expanding the scope of Article 61:

- undermines legal certainty for producers and PROs operating cross-border,
- creates inconsistent compliance obligations between Member States,
- de facto reintroduces regulatory fragmentation contrary to the Regulation's harmonisation objective.

Article 61 does not provide discretion for Member States to redefine the nature of the "take-back" obligation.

b. Disproportionate and Unforeseen Financial Burdens

If "take-back" were interpreted as requiring, such as active on-site dismantling, direct retrieval from end-user premises, or technical treatment activities, producers and PROs incurs substantial **additional operational and liability costs that are not foreseen in the Regulation**. Such obligations alters the balance of extended producer responsibility by transforming an organisational and financing obligation into a direct treatment mandate.

c. Interaction with Article 55 – Registration of Producers

The "take-back" obligation under Article 61 applies to all in-scope waste batteries. PROs may receive waste batteries originating from **producers** that are **not registered** and **do not contribute financially** to the system. Article 55 of the Batteries Regulation requires **all producers** placing batteries on the market in a Member State to be **registered** in that Member State. Under the principle of EPR, the **obligation to finance the collection or take-back and treatment** of waste batteries **remains with the producer** that placed the battery on the market. Failure to register constitutes a breach of Article 55 and must be addressed through national enforcement mechanisms. Consequently, operational and financial responsibility remains with the producer, if unregistered.

5. No "Take-Back Obligation" for Batteries Placed on the Market before 18 August 2025

The Batteries Regulation applies from 18 August 2025, subject to specific transitional provisions. There is **no explicit retroactive obligation** in Article 61 requiring **producers or PROs**

to **take back waste batteries** that were placed on the market **before** that date. In accordance with general principles of EU law:

- legislative provisions do not apply **retroactively** unless explicitly stated,
- new obligations **cannot be imposed** on economic operators for products placed on the market prior to the entry into application of the Regulation, unless the legislator clearly provides otherwise.

Therefore:

- the "take-back" obligation under Article 61 **applies only to batteries placed on the market from 18 August 2025 onwards**,
- PROs may require **adequate documentary** or other **verifiable evidence** demonstrating when batteries offered at collection points were placed on the market. Where such evidence is not provided, PROs may apply appropriate conditions or even refuse the "take-back", in particular where batteries may have been placed on the market before 18 August 2025,
- there is **no legal basis** under the Batteries Regulation for imposing additional or retroactive "take-back" obligations on producers or PROs for batteries placed on the market before that date. This retroactive application should only be considered on a case-by-case basis, taking into account the historical responsibilities assumed by the PROs under the former Batteries Directive.

Any interpretation suggesting otherwise **conflicts** with the principles of legal certainty and non-retroactivity.

6. Conclusion

EUCOBAT considers that a legally sound interpretation of Article 61 leads to the following conclusions:

1) The "take-back" obligation is an organisational and financial responsibility to accept returned waste batteries, not an active obligation to retrieve or dismantle them at end-user premises.
2) PROs may satisfy their "take-back" obligation by setting up a take-back and collection system and accepting returns of waste SLI, industrial and EV batteries at collection points.
3) Dismantling constitutes a treatment operation and does not fall within the scope of the "take-back" obligation under Article 61.
4) Article 61 does not impose retroactive "take-back" obligations for batteries placed on the market before 18 August 2025.

A harmonised interpretation across Member States is essential to ensure legal certainty, operational feasibility and the effective functioning of extended producer responsibility systems.

About EUCOBAT

EUCOBAT is the European association of national compliance schemes for waste batteries. Representing not-for-profit organizations, EUCOBAT supports sustainable battery use,

ensures proper recycling, and promotes environmental protection through efficient collection networks.

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